

(2017) 01 AP CK 0045
In the Andhra Pradesh High Court
Case No : Writ Petition No. 29388 of 2016

Seema Bai

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Citation : (2017) 1 AndhLDCriminal 583

Hon'ble Judges : Suresh Kumar Kait and U. Durga Prasad Rao, JJ.

Bench : Division Bench

Advocate : Sri A. Prabhakar Rao, Advocate, for the Petitioner; G.P. for Home (Telangana), for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kumar Kait, J.—Vide present petition, the petitioner seeks direction thereby declaring the detention order dated 01.06.2016 passed by the 2nd respondent in SB(1) No.246/PD/S-1/2016 and approved by the 1st respondent in G.O.Rt.No.1315 dated 10.06.2016 General Administration (Law and Order) Department as illegal.

The present petition is filed by the wife of the detenu.

2. The 2nd respondent issued detention order dated 01.06.2016 detaining the detenu in Central Prison, Chenchalguda, Hyderabad on the ground that detenu was carrying activities prejudicial to the maintenance of public order in the area as he is allegedly involved in two criminal cases. The 2nd respondent has furnished grounds of detention order dated 01.06.2016 when the detenu was in jail.

3. Learned counsel appearing on behalf of petitioner would submit that against the same detenu, earlier a detention order dated 24.01.2015 was passed and he was kept under detention, however, same was challenged before this Court vide W.P.No.10257 of 2015 which was allowed on 08.09.2015. Consequently, detention order dated 24.01.2015 was quashed. Thereafter, two cases were

registered against the detenu vide Cr.No.199 of 2015 for the offence punishable under Section 307 r/w 34 IPC in Mangalhat P.S. and Cr.No.92 of 2016 for the offence punishable under Section 8(c) r/w 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") for possessing 1 KG of Ganja. He would submit that as per the detention order dated 01.06.2016, Cr.No.199 of 2015 was registered for the reason that the detenu bore grudge against the complainant - Sri Mohammed Amer, 24 years old having scrap business r/o H.No.14-1-410, B Class, Agahpura, Mangalhat, Hyderabad, but in the cases on the basis of which the detention order dated 24.01.2015 was passed, the above named Mohammed Amer was not the complainant which indicates, it is wrongly stated in the detention order that detenu bore grudge against the complainant and committed an offence vide Cr.No.199 of 2015 punishable under Section 307 r/w 34 IPC. Further, citing the definition of 'goonda' as defined under Section 2(g) of Telangana Prevention of Dangerous Activities of Boot-Leggings, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "Act 1 of 1986") learned counsel argued, the said definition is not attracted here.

For convenience, we re-produce the same as under:

"Goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code"

As per the said provision, a person can be termed as a member of or leader of a gang, who habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of IPC. It means before passing the detention order the detaining authority should satisfy that the person was a habitual offender and committed crimes in minimum two cases and cases are registered against the said person punishable under the Chapters mentioned above of I.P.C.

4. In the present case, after setting aside the first detention order dated 24.01.2015 two cases are registered. Admittedly, one is in Cr.No.199 of 2015 for the offence under Section 307 r/w 34 IPC and another one vide Cr.No.92/2016 under Section 8(c) r/w 20 (b) of NDPS Act. Thus, there is only one case registered against the detenu under the provisions prescribed in the Penal code.

5. Learned counsel for the respondents has opposed the present petition and submits that detenu had criminal background and therefore, rowdy sheet was opened against him. He also submits that even after quashing the earlier detention order the detenu has committed two crimes. Therefore, the 2nd respondent has passed the detention order to prevent the detenu to commit further crime, which is dangerous to the society. He further submits that even on single offence of IPC is sufficient to brand him as 'goonda' under Section 2(g) of Act 1/1986.

6. We put a specific query under what provisions respondents can brand the detenu as 'goonda' even for a single case, he has no answer thereto.

7. As per Section 14(2) of Act 1/1986, the revocation or expiry of a detention order shall not bar making of a fresh detention order under Section 3 against the same person. In any case, where fresh facts have arisen after the date of revocation or expiry, on which the Government or an Officer, as the case may be, are/is satisfied that such an order should be made.

8. Admittedly, in the detention order dated 01.06.2016 it is specifically mentioned as under:

"Having regard to his past and recent antecedents, there is every likelihood of his indulging in similar prejudicial activities adversely affecting the maintenance of public order and public health at large, unless he is prevented from doing so by an appropriate order of detention."

9. In view of the facts noted above, it seems that the 2nd respondent has passed the detention order keeping in view the previous cases based on which detention order dated 24.01.2015 was passed and the same was set aside by this Court in W.P.No.10257 of 2015 dated 08.09.2015, which is not permissible under law.

10. In case of Ramesh v. State of Gujarat and others AIR 1989 SC 1881 the Honourable Supreme Court has held thus:

"Para-10: On a careful scrutiny of the grounds of detention, we unreservedly hold that the detaining authority has taken into consideration the two criminal cases mentioned under Sr.Nos.1 and 2 of the table which were the materials in the earlier order of detention that had been quashed and that it cannot be said that those two cases are mentioned only for a limited purpose of showing the antecedents of the detenu.

Para-11: In view of the above finding, we hold that the ratio laid down in Chhagan Bhagwan Kahar case (AIR 1989 SC 1234) will squarely apply to the facts of the present case and the impugned order has become liable to be quashed."

11. The present case is squarely covered by the said judgment. Moreover, the detention order is contrary to the provisions of Section 2(g) of Act 1/1986. As per the said provision, the detenu cannot be termed as 'Goonda' keeping in view only one case - Cr.No.199 of 2015 registered for the offence punishable under Section 307 r/w 34 IPC. However, respondents 1 and 2 have deliberately, intentionally and with an ulterior motive after quashing the earlier detention order dated 24.01.2015, passed the fresh detention order dated 01.06.2016 to detain the detenu.

12. Thus, we are of the considered opinion that 2nd respondent has deliberately passed the detention order which was approved by 1st respondent without application of mind.

13. Because of detention order dated 01.06.2016, passed by Respondent No.2 arbitrarily and approved the same by Respondent No.1 without application of mind, the detenu is in jail since 01.06.2016 and the petitioner was compelled to file the petition. Moreover, precious judicial time has been consumed of this Court.

14. In view of the facts recorded above, we hereby set aside the detention order passed by the 2nd respondent in SB (1) No.246/PD/S- 1/2016, dated 01.06.2016. Consequently, the concerned police authorities are directed to release the detenu - Man Mohan Singh s/o Eshwarlal forthwith.

15. Accordingly, this writ petition is allowed with costs of Rs.25,000/- (Rupees twenty five thousand only) each to be paid by respondents 1 and 2 in favour of petitioner.

16. As a sequel, miscellaneous petitions, if any pending, shall stand closed.