

(1992) 03 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 497 of 1992

Shaik Habeeb

APPELLANT

Vs

The Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 11-03-1992

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (1992) CriLJ 2246

Hon'ble Judges : V. Sivaraman Nair, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : M.A. Bari, Hamid and Rasheed, for the Appellant; A.G., for the Respondent

Judgement

Sivaraman Nair, J.—This petition was filed for a writ of Habeas Corpus, by the father of the detenu, who is a retired Head Constable from the State Special Police establishment, stating that his son Shaik Raoof was detained under orders in SB (1) No. 8/DGA/87/91 dt. 27-9-1991 which was issued u/s 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, hereinafter referred to as the "Prevention of Dangerous Activities Act". The 1st respondent, State Government issued G.O. Rt. No. 4696 General Administration (General-A) Department, dt. 8-10-1991 approving the detention by the Commissioner of Police, Hyderabad, by order dt. 27-9-1991. By a further G.O. Rt. No. 5131 General Administration (Genl. A) Department, dt. 11-11-1991, the 1st respondent directed continuance of the detention for a period of 12 months from 28-9-91. Petitioner challenges the above three orders.

2. The 2nd respondent passed the order dt. 27-8-91, on being satisfied from the materials placed before him that the detenu was a Goonda, within the meaning of Section 2(g) of the Prevention of Dangerous Activities Act and that it was necessary to detain him from acting in a manner prejudicial to the maintenance of public order. In the grounds of detention, which accompanied the order, it was

stated that the detenu was a dangerous Goonda and he had become a threat to the maintenance of public order in Hyderabad city. It was also stated that on account of violent criminal activities a rowdy sheet was opened for him on 16-3-1991 and that continued to be maintained and that the detenu along with his associates have been indulging in Goonda activities in the limits of Kalapather Police Station of Hyderabad City. It was also mentioned that the activities indulged in by the detenu on 9-12-1990 resulted registration of Crime Nos. 87 to 92 of 1990 due to the attacks on the houses of Sri Gopala Raju, Sri Govindarajulu, Sri. K. Govindan Sri Rajaiah, Smt. Neelamma and Sri E. Rama Reddy, Advocate in Tabtan. Crime No. 87/90 was registered for offences under sections 147, 148, 452, 427 and 153A, I.P.C. Crime No. 88 to 90 of 1991 related to offences under sections 147, 148, 452, 427, 435, IPC. Crime No. 91/90 was for offences under sections 147, 148, 452, 427, 307 and 153A, IPC. The last instance of attack on the house of Sri E. Ram Reddy, Advocate was that the detenu and his gang has stolen gold jewels and other costly items and set fire to his car AEY 9898 to communal frenzy. In all the instances, it was stated that the detenu indulged in communal frenzy and along with his gang assaulted and damaged property. The detenu was arrested by Kalapather Police in the above crimes and was sent for judicial custody. It was stated that full facts narrating the details of grounds were not given in public interest. It was on the basis of the above grounds that the 2nd respondent passed the impugned order of detention dt. 28-9-1991.

3. Petitioner submits that his son is not a Goonda within the meaning of Section 2(g) of the Prevention of Dangerous Activities Act. It is also his submission that his son is not a habitual goonda, he has not committed or attempted to commit any crime under Chapters XVI, XVII or Chapter XXII of the Indian Penal Code. It is submitted further that his involvement in Crime Nos. 87 to 92 of 1990 of Kalapather Police Station between 11.30 a.m. to 12.00 Hours on 9-12-1990 would not justify the 2nd respondent treating him as a Goonda and clamp the order of detention on him. Those instances were incidents of a single day during curfew which was imposed on 7-12-1990. Yet another submission is that even though the offences are committed on 9-12-1990, the crimes were registered against unidentified number of persons and the involvement of the detenu had not been definitely ascertained. Yet another submission is that during the interval between 9-12-1990 when the offences were committed and 28-9-91 when the order was passed, there was a reasonable period of interval and the detenu had not indulged in any criminal or dangerous activities affecting public order.

4. Counsel referred us to the decisions in P. R. Mohan v. Govt. of A.P. 1987 (2) ALT 518 and Lakshmi v. Commissioner of Police 1986 Cri LJ 2101, in support of his submission that since all the incidents which formed the subject-matter of Crime Nos. 87 to 92 were alleged to have taken place within half an hour on one particular day, he could not have been treated as a Goonda in terms of Section 2(g) of the Prevention of Dangerous Activities Act. Counsel submits that all these instances are part of one single transaction and there were no previous offences

charged against him. He submitted further that the detenu had been enlarged on bail in all the instances, and that it was for the State to move for cancellation of bail, if it apprehended that he was likely to commit any crime during the period he was on bail. Non-advertence of this aspect in the order or grounds of detention is said to vitiate the order of detention. Reliance is sought to be placed on the decisions of the Supreme Court in *M. Ahamedkutty Vs. Union of India (UOI) and Another*, and *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, . Yet another submission is that the six crimes were charged in respect of the incidents on 9-12-1990 against a multitude of people, none of whom was identified. Petitioner submits that details as to the identification of the detenu must have been gathered in the course of investigation by interrogation of witnesses u/s 161 of the Code of Criminal Procedure. He submits that the statements u/s 161 of the Code must therefore, be materials on the basis of which the detaining authority came to the satisfaction about the need for detention, and those materials ought to have been supplied along with the grounds of detention. Counsel also submits that there ought to have been at least a reference to those statements in the grounds. Reliance for this proposition is placed on the decision in *Ramesh Chandra Gupta v. State of U.P.* 1983 Cri LJ 184. His last submission is that the detenu was aged just 16 years at the time of alleged offence, that his father is a retired police constable and the aberration of his son who was of tender age cannot make him an irredeemable goonda.

5. Respondents have filed a counter-affidavit in which it is stated that there were sufficient grounds for detention, that the conduct of the detenu disclosed that he was a dangerous goonda. He indulged in acts of vandalism and ferocious attack on members of the other community in a fit of communal frenzy and was responsible for six incidents within a short period of half an hour on 9-12-1990 when there was a communal conflagration in the twin cities. Since he continued such activities, a rowdy sheet was opened in respect of the detenu on 16-3-1991. The twin cities was fast slipping back into communal riots in September, 1991 and it was felt necessary that in view of antecedents and propensities of the detenu to indulge in activities which might incite communal tension. It is asserted that the fact that the detenu was on bail was adverted to in the grounds and that was only a passing reference. Respondent also submits that the Commissioner of Police was satisfied on materials placed before him including the 161 statements recorded during investigation into the crimes which disclosed that the detenu was a potential danger to the maintenance of public order and it was on such satisfaction that the detaining authority passed the order. Respondent also asserts that the advisory Board considered the representations which the detenu had submitted on 9-10-1991 as also the subsequent representation which he filed on 3-1-1992 and that both were rejected. The latter was received by the State Government on 6-1-1992. It was forwarded to the detaining authority on 7-1-1992. The 2nd respondent submitted his report thereon to the Government on 23-1-1992 after obtaining the remarks

of the Inspector, Kalapather Police Station on 22-1-1992, pursuant to his communication dt. 18-1-1992. It is therefore, stated that there was no delay or any other irregularity in the proceedings of the Advisory Board in this regard. Referring to the statement of the petitioner that the detenu is only an immature youth and his apprehension that his incarceration in the company of hardened criminals in the Central Jail offends the guarantees to juvenile offenders under the International Charter of Human Rights and tantamounts to converting him into a criminal, it is stated that the detenu is confined as provided in the A.P. Preventive Detention (Regulation of Place and Condition) Order, 1969 and not with any hardened criminals. It is also stated that the frenzy and ferocious nature of the activities which he indulged in, made out that the detention of the petitioner's son was necessary to maintain public order particularly in the context of preventing further deterioration of the communal situation in the city.

6. Counsel for the petitioner submitted that the detenu does not satisfy the definition of "goonda" in Section 2(g) of the Act. To be a "goonda" under the Act, a person must be "either by himself or 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". He submits that all the incidents mentioned in the grounds of detention took place within a period of half an hour on one single day. He submits that there was no antecedent instances which will qualify him as a person "habitually" indulging in activities which are within the comprehension of the above definition. He relies on two decisions - one of this court and the other of the Madras High Court, the former P. R. Mohan v. Govt. of A.P. and the latter Lakshmi v. Commissioner of Police. As against these two decisions, the Advocate General referred to an array of decisions of the Supreme Court in Debu Mahato Vs. The State of West Bengal, , Ramesh Chandra Gupta Vs. State of U.P. and Another, , Vijay Narain Singh Vs. State of Bihar and Others, , Fitrat Raza Khan Vs. State of Uttar Pradesh and Others, , Mrs Saraswathi Seshagiri Vs. State of Kerala and Another, . In Fitrat Raza Khan v. State of U.P. the two incidents mentioned in the grounds of detention were almost one year apart the first on August 13, 1980 and the other on July 24, 1981. The two grounds urged before the Supreme Court against the order of detention as in the present case were that just two incidents of prejudicial acts may not justify the satisfaction that the person concerned was habitually indulging in such activities. The Supreme Court held otherwise. It also referred to a very material ground in the context of the present case at page 340 (of Cri LJ) :-

"both the incidents show the propensities of the petitioner to instigate the members of the Muslim community to communal violence. The act on the part of the petitioner squarely fell within the realm of public order, as it was calculated to disturb public peace and tranquility. It is needless to emphasise that the incitement of the members of a particular community to communal violence in a town like Moradabad, where the Muslim population pre-dominates, pertains to public order and not merely to law and order."

Mrs. Saraswathi Seshagiri relates to detention where there was only one single solitary act offending the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. The Court held (para 9 of Cri LJ) :-

"Whether a single solitary act attributed to a person is sufficient to warrant an inference that he will repeat his activity in future also, will depend on the nature of the act and attendant circumstances. The past act of the person, in the circumstances, might be an index of his future conduct."

The court relied on the observations of a three members Bench Judgment of the Supreme Court in *Debu Mahato Vs. The State of West Bengal*, to the following effect (at page 701) (of Cri LJ) :

"We must of course make it clear that it is not our view that in no case can a single solitary act attributed a person form the basis for reaching a satisfaction that he might repeat such act in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. But whatever it be, it must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention."

The Supreme Court in *Raj Kumar Singh* dealt with an almost identical situation under the Bihar Control of Crimes Act. The satisfaction of the District Magistrate in that case was that the detenu was an "anti-social element who habitually committed offences punishable under Chapters XVI and XVII of the Indian Penal Code and as such his movements and acts adversely affect the public order" was based on three incidents two of which - a case under Ss. 142, 149, 307, 326, 353, 333, 324, 225, Penal Code, read with S. 27 of Arms Act and a case of recovery of looted gun u/Ss. 25(1A), and 35 of Arms Act - were of the same date and the third incident of alleged murder by detenu and his associates in broad day light was of the year preceding the foresaid two incidents, although the proximity between the incidents betrays a nature and a tendency of committing these offences it cannot however be denied that they indicate that the detenu was one who habitually committed offences which are at least punishable under I.P.C. The satisfaction of District Magistrate that the detenu is one who was habitually committing or abetting the commission of offences is therefore neither irrational nor unreasonable."

7. We do not multiply authorities on this point. Preventive detention is a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the

surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. It must however be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. In a situation where the propensities of a person to instigate the members of one community involved in a likely conflagration, one single instance may fully justify an inference that immediate preventive action is necessary to maintain public order.

8. Counsel for the petitioner referred us to the decision in *Lakshmi v. Commr. of Police supra*, based on the decision in *Vijay Narain Singh Vs. State of Bihar and Others*, , where there was a gap of seven years between the first and second incidents as mentioned in the grounds of detention. The court therein held that the expression "habitually" meant "repeatedly" or "persistently" and "it implies a thread of continuity stringing together similar repetitive acts". The court also pointed out that repeated, persistent and similar, but not isolated or individual or dissimilar acts, are necessary to justify an inference of habit and that it connotes frequent commission of acts. It was also held that there could have been frequent commission of similar acts offending law to make the person concerned an "antisocial element" within the definition of S. 2(d) of the Bihar Control of Crimes Act 7 of 1981.

9. After referring to these decisions, the Madras High Court held in *Lakshmi* that the instances which were mentioned in the grounds of detention range from 1974 to 1980 almost continuously and are of the same character. The court held that there was no question of remoteness and upheld the detention u/S. 2(a)(iii) and 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982, which is *pari materia* with the Prevention of Dangerous Activities Act of Andhra Pradesh. We find that the decision renders no assistance to the petitioner.

10. P. R. Mohan decided by this court relied on *Vijay Narain Singh* and *Lakshmi*. The court found that the first two instances which were mentioned in the grounds of detention held the detenu as a "goonda" as defined in S. 2(g) of the Prevention of Dangerous Activities Act, and were committed on the same day in 1981. The 3rd ground related to an incident in 1985 which was totally different from the incident in 1981. The incidents in ground Nos. 5, 6 and 7 related to different offences. The court held that ground Nos. 1, 2, 3, 5, 6 and 7 did not show that the petitioner was habitually involved in the commission of offences mentioned in S. 2(g). Counsel for the petitioner relied on the passage in *Lakshmi* which was quoted in *P. R. Mohan* that "the detaining authority has to enumerate the number of cases or instances for a long period to show that the person who is to be detained is a goonda under the Act as a single act cannot be characterised as habitual act." This observation is far above the mark as we have seen from the decisions in *Debu Mahto*, *Fitrat Raza Khan*, *Mrs. Saraswathi Seshagiri*, *Vijay Narain Singh*, *Raj Kumar Singh*.

11. The next ground which counsel for the petitioner urged is that the detaining

authority did not advert to the fact that the detenu was released on bail in all the crimes alleged to have been committed on 9-12-1990. The orders granting bail were not placed before the authority; nor did the detaining authority advert to such special and compelling circumstances, as would justify the detention of the petitioner.

12. The detaining authority referred to the release of the detenu on bail and that was only a passing reference in the grounds of detention. If that be the position, there was no need to furnish the application for grant of bail and the orders thereon as emphatically urged by counsel for the petitioner.

13. In *Arjuna Kumar v. Govt. of A.P.* 1987 (1) APLJ 320, a division Bench of this court considered the same contention and held :

"Reference to certain facts only by way of narration and not as a basic fact are material constituting requisite satisfaction on the part of the concerned authority, leading to the order of detention and may not justify the submission that document relating to that effect ought to have been communicated to the detenu along with the grounds of detention."

14. We find from paragraph 7 of the grounds that the detaining authority made a passing reference to the effect that the detenu was arrested by Kalapathar Police and sent for judicial custody and was then on bail. In para 10 it was stated that -

"Launching of prosecution against you would not have desired effect of preventing you from further acting in future in a manner prejudicial to the maintenance of public order as the culmination of prosecution take considerably long time. I am satisfied that you are a fit person to be detained under the A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986."

An important fact to be remembered in all cases of preventive detention is that it is a preventive measure so as to disable the detenu from acting in future in any manner prejudicial to the maintenance of public order. The need for such precautionary and preventive action is part of the grounds communicated to the detenu. We are of the opinion that in the facts and circumstances, there was no obligation on the part of the detaining authority to advert to the contents of the applications for bail and the orders granting bail. Even assuming that there was need to mention special and compelling reasons to detain the detenu who was already on bail, the recitals in the para 10, according to us, satisfy that requirement also.

We were referred to the decisions in *M. Ahmadkutty* and *Abdul Sathar Ibrahim Manik*.

15. In *Ahamedkutty* the Supreme Court found that if the detenu was already in jail, the grounds of detention should show awareness of the fact on the part of the detaining authority. In that case the Supreme Court found that the bail application and bail order were furnished to the detaining authority on his

enquiry and reference was made to them in the grounds. But those were not furnished to the detenu. In those circumstances, the court held that refusal to furnish copies of relevant documents amounted to denial of the detenu's right to make an effective representation and that resulted in violation of Art. 22(5) of the Constitution of India. We have found that in the present case the detaining authority only adverted to the fact of the arrest and his subsequent release on bail as a recital of facts and not as ground for detention.

16. Even apart from that the detaining authority had referred to the fact that a rowdy sheet was opened in respect of the detenu by reason of his subsequent conduct. It is therefore evident that the detaining authority satisfied itself about the need to detain the petitioner's son, even though he had been released on bail in respect of other offences. The long line of decisions of the Supreme Court has held that non-supply of documents which are not material to the grounds do not have the effect of vitiating the order of detention.

Reference in this connection may be made to *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, *Haridas Amarchand Shah of Bombay Vs. K.L. Verma and Others*, *Kamarunnissa and Others Vs. Union of India* and another, *Madan Lal Anand Vs. Union of India* and others, .

The extent and the manner in which the effect of the likelihood of the detenu being released on bail or is actually released on bail at the time of passing the order of detention was considered in a number of decisions. Reference may be made to *Raj Kumar Singh v. State of Bihar* supra, *Dharmendra Suganchand Chelawat and another Vs. Union of India* and others, ; *Sanjay Kumar Aggarwal Vs. Union of India (UOI) and Others*, , and *Abdul Sathar Ibrahim Manik*.

17. We need refer only to *Kamarunnisa* and *Abdul Sathar Ibrahim Manik*, in this connection. In *Kamarunnisa* the court held that (at page 2067 (of Cri LJ 91) -

"Demand of any or every document, however irrelevant it may be for the concerned detenu, merely on the ground that there is a reference thereto in the grounds of detention cannot vitiate an otherwise legal detention order. No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to supply the documents before the meeting of the Advisory Board had impaired or prejudiced his right, however slight or insignificant it may be. In the present case, except stating that the documents were not supplied before the meeting of the Advisory Board, there is no pleading that it had resulted in the impairment of, his right nor could counsel for the petitioners point out any such prejudice."

In *Abdul Sathar Ibrahim Manik* the court held (at page 2270 of AIR) -

"failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority had not only referred to but also relied upon them in arriving at the necessary satisfaction, then failure to supply these documents, may, in

certain cases depending upon the facts and circumstances amount to violation of Art. 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the court."

Applying the principle stated above, we hold that the detaining authority only referred to that fact of arrest and his release on bail and had not relied upon those facts in the grounds of detention. Even otherwise, the detenu has not shown that non-supply of these documents had prejudiced his defence or impaired his rights in any manner. In this view it cannot be said that the order of detention violated the right of the detenu under Art. 22(5) of the Constitution of India.

18. Counsel for the petitioner submitted that the F.I.Rs. in crime Nos. 87 to 92 of 1990 did not mention his name, and, admittedly, he was identified as one of the assailants only in 161 statements recorded from the eye witnesses. The detaining authority did not furnish copies of those statements. That according to counsel has resulted in denial of an effective opportunity to him as provided under Art. 22(5) of the Constitution of India. He referred us to the decision in Ramesh Chandra Gupta supra of the Lucknow Bench of the Allahabad High Court. We find from the Annexure to the grounds of detention that the charge-sheets in the above crimes were furnished to the detenu. It was also specified that apart from the complainants there were occurrence witnesses who speak to the attack on the houses of Hindu community people in the locality. Advocate-General submits that further disclosure of facts would have endangered the witnesses since the anti-social elements would have retaliated against the witnesses if details of their statements were known. It is important to note that the grounds of detention specified in para 8 that full facts narrating the grounds of detention were not given in public interest. Section 8(2) of the Prevention of Dangerous Activities Act enables the detaining authority not to disclose facts which it considers to be against the public interest to disclose. Such non-disclosure of sensitive material is also protected by article 22(6) of the Constitution of India. In Ramesh Chandra Gupta the Allahabad High Court had no occasion to consider the scope of Art. 22(6) or any provision similar to S. 8(2) of the Prevention of Dangerous Activities Act enabling non-disclosure of such materials.

19. We are therefore of the opinion that non-disclosure of 161 statements or details of other grounds to the detenu was not such as to invalidate the order of detention. We should remind ourselves of what the Supreme Court observed in Raj Kumar Singh supra, that (Prs. 22 & 24 of Cri LJ) -

"Preventive detention is hard law and must be applied with circumspection rationally, reasonably and on relevant materials. Hard and ugly facts make application of harsh laws imperative. The detenu's rights and privileges as a free man should not be unnecessarily curbed. Preventive detention is a necessary evil in the modern restless society. But simply because it is an evil, it cannot be so

interpreted as to be inoperative in any practical manner."

20. We are not impressed by the last submission that the custody of the detenu along with hardened criminals is likely to negative the right guaranteed under the International Charter of Human Rights and tantamounts to converting him into a criminal.

21. Within half an hour of one single day, he had involved in acts of Vandalism and had assaulted members of the other community incited by communal frenzy. He acted in collusion with a gang of similar anti-social elements. In September, 1991 when the order of detention was passed against the detenu communal situation was slipping back fast out of the control in the City of Hyderabad. The memory of the carnage of December, 1990 in which scores of innocent people were massacred provided sufficient justification for the detaining authority to take extraordinary precautionary measures. There was sufficient justification for the detaining authority to resort to preventive action to maintain public order and to prevent mindless massacres by anti-social elements. The detenu had been kept separately from the hardened criminals as provided under the A.P. Preventive Detention (Regulation of Place and Conditions) Order, 1969.

22. In the light of the above discussion, we do not find any merit in this Writ Petition. We therefore, dismiss the same. No costs.

23. Petition dismissed.