

(1996) 07 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10116 of 1996

Vanka Nagarathnamma

APPELLANT

Vs

The Government of A.P. and Others

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Citation : (1996) 2 ALD(Cri) 424 : (1996) 3 ALT 94 : (1996) 2 APLJ 105 :
(1996) 1 APLJ 105

Hon'ble Judges : S.R. Nayak, J;M.N. Rao, J

Bench : Division Bench

Advocate : T. Niranjan Reddy, for the Appellant; Vijayalakshmi, G.P. for A.A.G.,
for the Respondent

Final Decision : Dismissed

Judgement

M.N. Rao, J.—An order passed by the Commissioner of Police, Visakhapatnam, u/s 3(2) of the Andhra Pradesh Prevention of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act") preventively detaining one Venka Siva Kumar, S/o Prakash Rao, resident of H.B. Colony, Visakhapatnam on the ground that he is a "Goonda" as defined u/s 2(g) of the Act and with a view to preventing him "from acting in any manner prejudicial to the maintenance of public order", is challenged in this application for a writ of habeas corpus filed by the mother of the detenu. A copy of the grounds of detention was served on the detenu enclosing as many as ten documents referred to in the grounds. The grounds of detention mentioned four incidents: (i) on 20-2-1994 at about 8.30 a.m., the detenu along with his associates formed into an unlawful assembly at Adarsh Nagar, Visakhapatnam, by arming themselves with deadly weapons and committed the murder of one Pallanti Siva Kumar Ramakrishna Prasad and in that connection, Cr. No. 59/94 was registered Under Sections 148, 302, 307, 324, 109 read with 149 IPC; (ii) on 25-1-1996 at about 21-45 hours, the detenu along with his associates went to the house of one Kotha Anjaneyulu of Sunder Nagar, called him out and

poured add on him and his family members with a view to committing the murder of the said Anjaneyulu since he chastised the detenu before the village elders. A case in Cr. No. 21 /96 in that connection was registered and it is under investigation; (iii) The detenu, while on bail, threatened the family members of the said Anjaneyulu that he will kidnap his daughter and commit rape on her. A complaint in relation to that incident was registered as Cr. No. 33/96 and is under investigation; and (iv) While on bail in Cr. No. 21 /96, the detenu again threatened on telephone Smt. Kavitha, the wife of Anjaneyulu that if her husband was not discharged from the hospital, he would kidnap her three daughters and commit rape on them. A case was registered in respect of this incident in Cr.No. 42/96. It is also mentioned in the grounds of detention that the detaining authority has considered the detenu as a habitual criminal, a dangerous and desperate character and that the ordinary provisions of penal law would not be sufficient to deter him from committing violent acts.

2. Sri Niranjan Reddy, learned Counsel for the petitioner, has urged the following contentions in support of the invalidity of the detention order: The first incident having taken place more than two years and two months prior to the order of detention has become so stale as not to have any reasonable link with the other three incidents. The acts alleged against the detenu pertain to the sphere of law and order and do not fall within the ambit of public order warranting preventive detention. Incidents 1, 2 and 3 suffer from the vice of vagueness in that the names of the alleged associates of the detenu have not been furnished.

3. Ms. Vijaya Lakshmi, learned Government Pleader, representing the learned Additional Advocate-General, has made submissions in support of the legality of the order of detention stressing the aspect that in the particular circumstances of the case, the order of detention is justified and there is no warrant for interference.

4. It is true mat the first incident mentioned in the grounds of detention had taken place on 20-2-1994 whereas the order of detention was made on 5-4-1996 - the interregnum being 2 years, 1 month and 15 days. Citing the observations of a two member Bench of the Supreme Court in *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta* 1995 SCC (Cri.) 454 the learned Counsel for the petitioner, with considerable vehemence, has contended that the long gap itself is sufficient to render the order of detention invalid. We are not inclined to accept In the above case (1 supra), the gap between two incidents was 16 months. On 24-4-1993, the detenu along with his associates assaulted one Mohd. Hussain in a hair cutting saloon but the order of detention was passed on 19-8-1994 after a lapse of more than 16 months. Adverting to that aspect, the Supreme Court observed:

"This long lapse of time between the alleged prejudicial activity and the detention order loses its significance because title said prejudicial conduct was not approximate in point of time and had no rational connection with the conclusion mat the detention was necessary for maintenance of public order. Such a stale incident cannot be construed as justifiable ground for passing an order of

detention."

The nature of the first incident in the context of the other grounds which constituted the basis for the detaining authority to pass the order of detention was construed to be lacking rational connection because of its not being proximate in point of time by the Supreme Court. The fact situation in the case on hand is different. The incident No. 1, we are inclined to view, is a mere indication of the past history of the detenu suggestive of his propensity to commit crimes.

5. A Constitution Bench of the Supreme Court in *Keshav Nilkanth Joglekar Vs. The Commissioner of Police, Greater Bombay*, speaking through Venkatarama Ayyar, J., had an occasion to consider what was the effect of referring to the past activities of the detenu in the grounds of detention:

"What a person is likely to do in future can only be a matter of inference from various circumstances, and his past record will be valuable, and often the only record on which it could be made."

6. Making an order of detention on the basis of the past conduct long separated in point of time from the date of the order inferentially leading to the conclusion that the basis for the order of detention is not so much the present act as the past one is qualitatively different from adverting to a past act as suggestive of the disposition or propensity of the detenu followed by the narration of other incidents proximate in point of time to the order of detention. Viewed in this light, there is little justification - either from the point of view of principle or precedent - to think that the mention of the first incident has a vitiating effect on the impugned order.

7. The distinction between "law and order" and "public order" is now well settled by a plethora of case law. The explanation to Section 2(a) of the Act says that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any of the categories of persons specified in the main clause "directly or indirectly is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health". The well known distinction made by the Supreme Court in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, is apposite in the context

"One has to imagine three concentric circles. The law and order represents the largest circle within which the next circle representing public order and the smallest circle represents security of State. It is then easy to say that an act may affect law and order but not public order just as an act may affect public order but not the security of the State."

8. The distinction between "law and order" and "public order" has been brought out by the Supreme Court in clearer terms in *Sushanta Goswami, In Re*. AIR 1969 SC 1004:

"The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is not necessarily sufficient for action under the Act but a disturbance which will affect public order can alone justify the detention under that Act."

9. Again in Arun Ghosh Vs. State of West Bengal, the concept was further explained: "Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or, even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order.....An act by itself is not determinant of its own gravity. In its quality, it may not differ from another but in its potentiality it may be very different."

10. Although, at first sight, a reading of incidents 2, 3 and 4 create the impression that they are acts directed against the family members of a particular individual and, therefore, fall within the sphere of law and order", on deeper considerations, we think that qualitatively these acts are different from the acts affecting law and order and so properly fall within the sphere of "public order". Incident No. 2, pouring acid on an individual at his house in a residential locality, will have a frightening effect creating terror in the minds of the generality of the public of the locality. The degree of disturbance or the even tempo in the locality is higher in a case of the third incident: threatening to kidnap the daughter of Anjaneyulu, who was already a victim at the hands of the detenu, suffering from add burn injuries. Coming to the fourth incident, the members of the locality where Anjaneyulu lives would be panic stricken when it was known that the detenu threatened to kidnap Anjaneyulu's daughters and commit rape on them. The women-folk would be apprehensive of their honour and this was bound to affect the public order in the locality. We, therefore, reject the contention that the incidents attributed to the detenu are outside the purview of public order.

11. The learned Government Pleader has placed the record before us and pointed out that the detenu had threatened the doctors and nurses of the hospital where Anjaneyulu was undergoing treatment and this itself had created terror in the minds of the hospital staff, the patients and their attendants. For reasons self evident, we do not want to judge the legality of the impugned order with reference to this allegation found in the records since the same is not mentioned in the grounds of detention.

12. The last contention urged for the petitioner that the names of the associates of the detenu have not been mentioned in the grounds of detention lacks factual foundation. The learned Government Pleader produced the record and after perusing the same, the learned Counsel for the petitioner was satisfied that

documents in fact were supplied to the detenu containing the names of his associates in so far as ground Nos. 1 and 2 are concerned. As regards the third incident, nothing was mentioned about the activities of the followers of the detenu. The allegation concerns only the individual act of the detenu and so the question of supplying any documents containing the names of his associates did not arise.

13. For these reasons, sustaining the legality of the impugned order, we dismiss the writ petition.