(2003) 09 AP CK 0032

Andhra Pradesh High Court

Case No: Writ Petition No. 16195 of 2003

C. Anita		APPELLANT
	Vs	
Commissioner of Police and Additional District Magistrate, (Executive) and Others		RESPONDENT

Date of Decision: Sept. 11, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 116(6)

Citation: (2003) 5 ALD 387 : (2003) 5 ALT 515 : (2003) 3 APLJ 97 : (2004) CriLJ 515

Hon'ble Judges: Devinder Gupta, C.J; C.V. Ramulu, J

Bench: Division Bench

Advocate: C. Padmanabha Reddy, for T. Nagarjuna Reddy, for the Appellant; Advocate-General, for the Respondent

Final Decision: Allowed

Judgement

C.V. Ramulu, J.

This writ petition is filed seeking a Writ of Habeas Corpus to direct the respondents to produce the husband of the petitioner - Chinnaboina Shankar @ C.Shankar @ Amberpet Shankar (detenu), who is now detained in Central Prison, Chenchalguda, Hyderabad by invoking the provisions of Sub-section (2) of Section 3 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 Act"), before the Court and release him forthwith by declaring detention order as illegal and without jurisdiction.

2. A detention order has been passed by the Commissioner of Police, Hyderabad City in File S.B.(1) No. 12/PD-DG/S-1/2003, dated 15-7-2003 invoking the provisions of the Act against the husband of the petitioner on the ground that he is indulging in goondaism and land grabbing and his activities are causing a feeling of insecurity

and fear in the public and thus are prejudicial to the maintenance of public order and in proof of such subjective satisfaction, the following incidents in which the detenu is alleged to be involved were relied upon.

"1. Cr.No. 272/2002 under Sections 447. 506 and 384 IPC of L.B. Naear P.S.. Ranga Reddy District

On 6-5-2002 you, along with one Palle Satyanarayana Goud, went to the land i.e., Plot Nos. 71 and 72 in Survey No. 92, Vishalandra Colony, Mansoorabad Colony, Ranga Reddy District, belonging to one Shaik Mastan Vah, s/o Hussain Saheb, R/o 106, SBH Colony, L.B.Nagar, Ranga Reddy District trespassed into the said land, threatened the complainant to settle the dispute over the said land between him and one Smt. P. Padmavathi and demanded to pay an amount of Rs. 4 lakhs for settling the dispute, failing which he would be killed at the said land. In this case, you were arrested on 10-5-2002 and remanded to judicial custody. You were later released on bail. The case was charge-sheeted on 27-5-2002. The case was compromised in Lok Adalat on 15-3-2003, vide C.C.No. 1192/2003.

2. Cr. No. 192/2003 under Sections 447. 384 and 506 IPC of Uppal P.S.. Cvberabad:

You, alongwith your henchmen, went to the land i.e., Plot No. 3 in Survey Nos. 90, 93, 94/ 1 and 2, Balajinagar Colony, Ramanthapur, Ranga Reddy District admeasuring 157 sq.yds belonging to one Baddula Venkatesh, S/o Peddulu, Balajinagar Colony, Ramanthapur, Ranga Reddy District while the complainant was constructing a house in his site claiming that ybu had purchased the said land long ago and again on 9-1-2003 you went to the house of the complainant at the time of ''Gruhapravesham'' and demanded him to pay money failing which he would face serious consequences and extorted Rs. 25,000/- from him and then only you allowed him to perform ''Gruhapravesham'' ceremony, in this case, you were arrested on 22-4-2003 and an amount of Rs. 5,200/- was recovered from you on your confession and you were sent to judicial custody. You were later released on bail. The case was charge-sheeted on 10-5-2003 and C.C.No. is awaited."

In pursuance to the said order, the detenu was arrested and detained in Central Prison, Chenchalaguda, Hyderabad on 15-7-2003. The said order of detention was approved by the State Government in G.O.Rt.No. 3392, General Administration (Law & Order. 11) Department, dated 22-7-2003. Petitioner avers that the grounds of arrest and the material relating thereto were not supplied to the alleged detenu immediately and they were supplied only on 21-7-2003. Representation dated 23-7-2003 submitted by the detenu for his release was rejected by the 1st respondent-Commissioner of Police by an Order dated 29-7-2003. Similarly, the representation dated 23-7-2003 sent by the detenu to the Chief Secretary to Government was also rejected by Memo No. 92700-/&O.II/Al/2003-3, dated 7-8-2003. In the meanwhile, the present Writ Petition has been filed on 1-8-2003. Further, the 3rd respondent-Advisory Board by its Proceedings dated 25-8-2003

reviewed the case of the detenu and confirmed the order of detention for a period of one year.

3. A detailed counter-affidavit has been filed denying the various allegations made by the petitioner. It is stated that the two incidents referred to in detention order, satisfy the expression of ''goonda'' as defined in Section 2(g) and ''land-grabber'' u/s 2(j) of the Act. The ingredients of detention are fully satisfied. A rowdy-sheet is being maintained against the detenu under Police Standing Orders and the same discloses the involvement of the detenu for offences relating to murder, attempt to murder, rioting and arson. Simply, the two incidents referred to in the grounds of detention do not relate to murder, that itself does not mean that the detenu cannot be called as a ''goonda'' for the purposes of the Act. The offences referred to fall under Chapters XVII and XXII of the Indian-Penal Code and this itself is enough to show that the detenu was a rowdy-sheeter and a goonda. Further, the allegation that detenu was not supplied with any material as required u/s 8 of the Act and as such, he could not make effective representation was not correct. All the material relied upon, both in English and vernacular language, were served on the detenu on 19-7-2003 and an acknowledgment to that effect was obtained from detenu and as such, no prejudice is caused to the detenu in making an effective representation and there is no infringement of Section 8 of the Act. In regard to the non-supply of material as to the matters set out in the preamble, the decision of the Supreme Court in Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, , is a complete answer. It is further stated that no mechanical test can be laid down as to the proximity of the incidents and the allegation that there was no proximity of the incidents, but they are remote is not correct. Further, there is no impediment as to placing reliance on incidents ended in acquittal while passing order of detention. The detenu is a known rowdy-sheeter and his activities are disturbing the life of the people in the locality and maintenance of public order. The detenu is a resident of Amberpet within the jurisdiction of detaining authority and he had also committed several offences within the jurisdiction of Hyderabad City Police.

4. Sri C. Padmanabha Reddy, learned senior Counsel appearing for the petitioner, contended that the order of detention as well as the grounds of detention start with a preamble that the detenu is habitually engaged in unlawful activities, such as, murders, attempts to murder, riotings, arson, criminal intimidation, extortions, land grabbing etc., whereas the grounds of detention refer to only two incidents, which were not even registered for offences relating to murder, attempt to murder, rioting and arson. Therefore, the detaining authority has taken into consideration extraneous material for passing the detention order. Further, the detenu was not supplied with the material relating to those offences and as such, he could not make any effective representation in respect of the allegations. The first incident was dated 6-5-2002, which was about 14 months prior to the order of detention and, therefore, it is remote incident, which cannot be taken into consideration for passing detention order. Even according to the grounds of detention, the first

incident ended in compromise in the Lok Adalat on 15-3-2003. The effect of compromise is acquittal of the charges framed against the detenu. The incident ended in acquittal cannot form the basis for passing the order of detention. Thus, it is a non-existing ground. Insofar as second incident dated 9-1-2003 is concerned, the charge-sheet was filed on 10-5-2003 and the incident took place more than six months prior to passing of detention order. Thus, there was no immediate necessity or reason for passing detention order, as no incident occurred after 9-1-2003. Further, there is a gap of more than six months between first and second incident. Therefore, there was no proximity between the first and second incidents and the order of detention. It is not the case of the detaining authority that the detenu has been indulging in such activities day in and day out. The detaining authority has not properly applied its mind and the subjective satisfaction is vitiated by arbitrariness and bias. Further, to attract the definition of ''Goonda'', there must be habitual commission of offence, which is totally lacking in this case, ft can never be said, by reason of these two incidents, public order was affected. Further, in the charge-sheet filed in these cases, there was no allegation that the activities are causing a feeling of insecurity and fear in the public and/or prejudicial to the maintenance of public order. A vague allegation is made deliberately against the detenu to invoke the provisions of the Act. The detenu was taken into custody at 7.00 p.m. on 15-7-2003 and the grounds of detention were served only on 21-7-2003 i.e., after five days of detention. This is in violation of Section 8 of the Act, which is held to be mandatory and on this ground alone, the detention order is liable to be quashed.

5. Learned Government Pleader appearing for the respondents reiterated the stand taken in the counter-affidavit and supported the order of detention.

6. We have perused the entire material on record and given our anxious consideration to the contentions raised by both sides.

7. The preliminary ground raised by the petitioner that the grounds on which the detention order has been passed were not served on the detenu within five days from the date of detention as required u/s 8 of the Act, seems to be incorrect. The order of detention was passed on 15-7-2003 and the material relied upon by the detaining authority were served on the detenu on 19-7-2003, which satisfies the requirements of Section 8 of the Act.

8. The contention of the petitioner that the detaining authority has no jurisdiction to pass such an order, since two incidents upon which the detention order was passed, arose in Ranga Reddy District, may not be correct, for the reason that the detenu is a resident within the limits of Amberpet Police Station, which is within the jurisdiction of detaining authority.

9. The further contention of the petitioner is that since the preamble of the order of detention refers to many illegal activities and further says that the detenu is

habitually engaged in all such activities without there being any reference to such activities, the order of detention is illegal. Merely because there was reference to some activities of various nature and since they are not referred in the detention order, that itself may not vitiate the order of detention. In this connection, learned Government Pleader rightly relied upon the decision of the apex Court in Dhananjoy Das Vs. District Magistrate, Darrang and Another, , wherein it was held as follows:

"The Grounds of Detention read as a whole leave no room for doubt that paragraph (1) of the Grounds of Detention was only by way of introduction or as a preamble. In substance, it only indicates the modus operandi adopted by the various organizations to the current agitation on foreigners issue in Assam. The second and third paragraphs of the Grounds of Detention allege a specific part played by the appellant in that agitation. On a perusal of Grounds of Detention as a whole we are satisfied that the view taken by the High Court that the first paragraph of the Grounds of Detention was only a preamble, prelude, or introductory para is correct. If this be the position then the vagueness in the first paragraph cannot be made a ground of attack on the impugned order."

10. Now the only question that remains to be examined is whether the alleged activities of the detenu had resulted in causing any prejudice to the maintenance of public order as contemplated u/s 3(1) read with Section 2(a) of the Act ?

11. For deciding the said question, it is relevant to extract the said Sections.

"3. Power to make orders detaining certain persons :--(1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

"2(a) "acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order.

Explanation :--For the purpose of this clause 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 persons referred to in this 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 of widespread danger to life or public health."

12. Learned senior Counsel appearing for the petitioner submitted that in view of the settled legal position, the grounds of detention do not satisfy the requirements of law in passing detention order u/s 3 of the Act and the said grounds and incidents

mentioned therein refer to crime against individuals. Further, out of them one ended in compromise before the Lok Adalat and the other is still pending trial. Both the crimes are nothing to do with the maintenance of public order.

13. In this regard, we have also looked into the copy of the rowdy-sheet furnished by the respondents, since the learned Government Pleader submitted that these are all the material furnished to the detenu in support of his detention. Of course, none of the cases, excepting the said two incidents, mentioned in the rowdy-sheet form part of the grounds of detention. A close examination of the rowdy-sheet shows that detenu seems to have involved in some petty cases here and there and in all those cases either he was discharged or acquitted or were closed u/s 116(6) of the Code of Criminal Procedure. Such a material neither can be relied upon nor can be said to be any way relevant to hold that the same is acting in a manner prejudicial to the maintenance of public order. The incidents referred to in the order of detention relate to the years 2002 and 2003. They may be proximate to the detention order dated 15-7-2003. May be, the detenu can be called to be a goonda or a land-grabber, but it is the grounds of detention, which should satisfy the criteria that the activities of the detenu were resulting in prejudice to the maintenance of public order.

14. We are of the considered opinion that the grounds of detention, on a plain reading, do not satisfy the criteria ''resulted in the maintenance of public order''. Except this, there is no other material attributable to the detenu''s activities, which resulted in prejudice to the maintenance of public order. We need not go into the fact whether the detenu was a habitual offender or a goonda or involved in any crime, which resulted in law and order.

15. May be in a given case, a person, who is in the habit of committing certain offences repeatedly said to be an habitual offender, may be a goonda. But, what is to be seen is whether the same resulted in prejudice to the maintenance of public order. In this regard, Sri C.Padmanabha Reddy, learned senior Counsel, relied upon a judgment of the Supreme Court reported in Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, , in which it was held:

".....The report lodged by the complainant Mohd. Hussain himself on 24-4-1993, a copy of which has been placed on record, goes to show that a day earlier, that is on 23-4-1993 at about 9.30 p.m. there was a quarrel between Amjad Khan, the younger brother of the complainant Mohd. Hussain and the petitioner upon sounding the scooter horn in the gali of the house of the petitioner and it was in that connection that next day i.e., on 24-4-1993 the alleged incident of assault by the petitioner and his associates on the complainant Mohd. Hussain took place. From the narration of facts in the said complaint it is abundantly clear that the criminal activity was directed against an individual and from the nature of the incident it is difficult to assume that it gave rise to public order disturbing the tranquility of the locality. At the most it was a criminal act directed only against an individual which has nothing

to do with the question of public order.....A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality...."

16. Learned senior Counsel further relied upon a decision of a Division Bench of this Court in Mohd. Ahmed Khan Vs. Government of Andhra Pradesh and Others, wherein it was held:

"32. In order to pass an order of detention under the Act against any person, the detaining authority must be satisfied that such person is a bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land-grabber. The detaining authority must also be further satisfied that an order directing such person be detained is necessary to prevent him from acting in any manner prejudicial to the maintenance of public order. A plain reading of Section 3(1) of the Act would make it clear that power to make an order detaining a person would be available only if the detaining authority, is satisfied that the detenu is one of the types of persons mentioned in Section 3(1) of the Act and in order to prevent him from acting in any manner prejudicial to the maintenance of public order. Obviously, the detaining authority cannot make an order directing the detention of any bootlegger, dacoit, drug-offender, goondas, immoral traffic offender or landgrabber unless the detaining authority comes to a conclusion that such detention is necessary in order to prevent such person from making in any manner prejudicial to the maintenance of public order. Mere fact that one is a goonda or land-grabber would not enough o detain him under the provisions of the Act unless the detaining authority is satisfied that the activities of such person are resulting in prejudice to the maintenance of public order."

17. The subjective satisfaction arrived at by the detaining authority by relying upon the said two incidents cannot be said to have rational probative value and are not

extraneous to the scope and purpose of the legislative provision under which the detention order was passed. In this regard, it may be necessary to notice the observations made in Mohd. Ahmed Khan''s case (supra), which read as under:

"27. There cannot be any dispute whatsoever that the Court cannot substitute its own opinion for that of the detaining authority. But, at the same time, the Court cannot dispense with the requirement in law that the grounds of detention must be precise, pertinent, proximate and relevant. Vagueness and staleness would vitiate the grounds of detention as held by the Supreme Court in various decisions and there is no need, in detail, to refer them since by this time the law is too well settled. There is absolutely no difficulty whatsoever to agree with the learned Advocate General that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot go into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu as is required under the provisions of the Act. It is true that the sufficiency of the grounds upon which such satisfaction purports to be based cannot be gone into by this Court as long as the grounds have a rational probative value and are not extraneous to the scope of purpose of the legislative provision under which the detention order has been passed." (emphasis is ours)

18. From the above, it is clear that the order of detention passed does not satisfy the ingredients of Section 3 read with Section 2(a) of the Act and the same is arbitrary and illegal and liable to be set aside.

19. The writ petition is allowed and the order dated 15-7-2003 passed by the 1st respondent as approved by the Government in G.O. Rt. No. 3392, dated 22-7-2003 and confirmed by the 3rd respondent-Advisory Board by Proceedings dated 25-8-2003, is quashed. The detenu shall be set at liberty forthwith.