IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF TELANGANA

****

WRIT PETITION No.35503 of 2021

Between:

Dheeru Singh, s/o Ganesh Singh
Aged 60 years, Occ: Business,
r/o 14-1-557/2, Manghanhat,
Hyderabad.

.... Petitioner

AND

1. The State of Telangana,
   Rep. by its Principal Secretary,
   General Administration (Spl.Law & Order) Department,
   Secretariat Buildings,
   Hyderabad and 7 others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 21.03.2022

HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE DR JUSTICE G.RADHA RANI

1. Whether Reporters of Local Newspapers may be allowed to see the Judgments ? : No

2. Whether the copies of judgment may be marked to Law Reporters/Journals : **Yes**

3. Whether Their Lordship wish to see the fair copy of the Judgment ? : No

*** HON'BLE SRI JUSTICE P.NAVEEN RAO**
&
HON'BLE DR JUSTICE G.RADHA RANI

+ **WRIT PETITION NO.35503 OF 2021**

% 21.03.2022

Dheeru Singh, s/o Ganesh Singh
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.... Petitioner

Vs.

$ The State of Telangana,
rep. by its Principal Secretary,
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Secretariat Buildings,
Hyderabad and 7 others

.... Respondents

!Counsel for the petitioner : Sri P.Vishnuvardhana Reddy
Counsel for the Respondents : Government Pleader for Home

<Gist :

>Head Note:

? Cases referred:

(2020) 13 SCC 632; W.P.No.29162 of 2021 dated 23.02.2022; (2017) 14 SCC 577; AIR 1986 SC 740; 1969(1) SCC 10; 1970(1) SCC 98; (1995) 3 SCC 237; (2004) 8 SCC 591; 1970 (3) SCC 746; 2017(2) ALD (Crl.) 760; (2008) 9 SCC 89; 1969 (1) SCC 273; 1970(1) SCC 149; (1975) 1 SCC 415; 1970 (1) SCC 219; (2011) 10 SCC 781; (1991) 1 SCC 476; (2013) 4 SCC 435; (2015) 16 SCC 177; (1980) 2 SCC 338; (2012) 2 SCC 386; AIR 1975 SC 134; AIR 1953 SC 318; (2011) 5 SCC 244; (1973) 4 SCC 43; (1987) 4 SCC 302; 1998(3) ALD 86 (DB); Crl.Bail Appln.No.102 of 2020 dt.5.5.2021; W.P.No.1706 of 2021 dt 13.12.2021; (1981) 4 SCC 647; (1988) 1 SCC 296; (1974) 4 SCC 530; (2018) 12 SCC 150; (1995) 3 SCC 198; (2003) 8 SCC 342; WP 502 of 2020 dt 5.3.2020; WP 1826 of 2021 dt 10.8.2021; W.P.No.102 of 2021 dt 22.4.2021; and W.P.No.19054 of 2020, dt 15.3.2021

HONOURABLE SRI JUSTICE P.NAVEEN RAO
AND
HONOURABLE DR. JUSTICE G.RADHA RANI

WRIT PETITION No.35503 of 2021

ORDER: *(per Hon'ble Sri Justice P.Naveen Rao)*

This writ petition is filed by brother-in-law of the *detenue*-Smt. Kalapathi Nithu Bai challenging the order of detention dated 01.10.2021, passed by respondent No.2/Collector & District Magistrate.

2. Heard Sri P.Vishnuvardhana Reddy, learned counsel for the petitioner, and learned Government Pleader for Home appearing for the respondents.

3. The detention order was passed as a result of registration of three crimes against the *detenue*.

> "First crime *viz.*, Crime No.6 of 2021 was registered on 10.03.2021 on the file of the Prohibition & Excise Station, Serilingampally, Rangareddy District, alleging recovery of 690 grams of Ganja from the house of the *detenue*. The *detenue* was arrayed as accused No.3 therein.
>
> Second crime *viz.*, Crime No.24 of 2021 was registered on 01.09.2021 on the file of the Prohibition & Excise Station, Serilingampally, Rangareddy District, alleging that 1.67 kgs of dry ganja was recovered from the residence of the *detenue*. The *detenue* was arrayed as accused No.3 therein.
>
> Third crime *viz.*, Crime No.26 of 2021 was registered on 06.09.2021 on the file of the Prohibition & Excise Station, Serilingampally, Ranga Reddy District, alleging recovery of 580 grams of dry ganja from the house of the *detenue*. The *detenue* was arrayed as accused No.1 therein. "

4. In connection with the above three crimes, the *detenue* was arrested on 06.09.2021. The detaining authority observed that even though several applications filed to grant bail were dismissed, there is every likelihood of *detenue* moving fresh bail applications securing bail. It is further observed that in the event of securing bail, it is possible that the *detenue* would resort to unlawful activities of peddling of ganja, its ill effects on public health, particularly, the youth and its impact on the society. Therefore, respondent No.2 opined that it desirable to preventively detain the *detenue.*

4.1. According to leaned counsel for petitioner, the order of detention is *ex facie* illegal as no ganja was recovered from the possession of the *detenue* and that the *detenue* was not even present, when the alleged ganja was recovered from a house.

4.2. He would submit that the alleged recovery of Ganja from the house numbers mentioned in the impugned order of detention is in smaller quantities in separate instances, which cannot be termed as commercial quantity and therefore, the alleged offence being a bailable offence, the detention order was illegal.

4.3. He would further contend that it is illegal to refer to involvement of the *detenue* in crimes registered against her between the years 2017 to 2020. As held by the Hon'ble Supreme Court in **Khaja Bilal Ahmed v.**

State of Telangana and others[1], it is not permissible to refer to previous history of crime and the order of detention can be resorted to only on crimes registered proximate to the decision to detain. Even reference to the involvement in crimes itself would vitiate the order of detention as held by the Hon'ble Supreme Court. He would submit that this very issue was considered by this Court in a recent decision in **Kaushal v. State of Telangana**[2].

4.4. Learned counsel further submitted that the subject crimes were registered *suo motu* by the excise police and the *detenue* was implicated based on a confessional statement by the accused. Confession made before the Police is not admissible in law and therefore, based on such confession, registering crimes against the *detenue* itself being illegal, the detention order is not valid.

4.5. He would submit that as on the date of detention order, all the bail applications were dismissed and no bail application was pending and therefore, resorting to preventive detention, when no bail application was pending, amounts to illegal exercise of power and authority as held by the Hon'ble Supreme Court in **V.Shantha v. State of Telangana**[3].

4.6. Learned counsel would further submitted that though bail was granted on 20.10.2021 she is not released from custody due to the

[1] (2020) 13 Supreme Court Cases 632
[2] **W.P.No.29162 of 2021 dated 23.02.2022**
[3] (2017) 14 SCC 577

detention order. While granting bail also, stringent conditions were imposed and therefore, the prosecution has enough safeguards. Even assuming that the bail was erroneously granted, nothing prevents the prosecution from filing application to cancel the bail. Thus, at any rate, there is no justification in detaining the *detenue* on offences, which are not punishable with sentence of more than seven years.

4.7. According to learned counsel for the petitioner, Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') is a self-contained code, that prescribes special procedure and provides the mechanism to prosecute persons alleged to have committed crimes mentioned thereof and on conviction to sentence them. Therefore, no reference can be made to any other provision of law on matters covered by the provisions of the NDPS Act and there is no justification to take recourse to Act 1 of 1986.

4.8. Learned counsel placed reliance on following decisions:

Ram Manohar Lohia v State of Bihar and Anr[4]; Pushkar Mukherjee and Ors. v. The State of West Bengal[5]; Arun Ghosh v. State of West Bengal[6]; Ustakmiya Jabbarmiya Shaikh vs. M.M.Mehta, Commissioner of Police and Ors[7]; State of UP and anr. V. Sanjai Pratap Gupta @ Pagpu and Ors[8]; Madhu Limaye v. Sub-Divisoinal Magistrate, Monghyr and ors[9]; C.Neela v. State of Telangana and ors[10]; K.K.Sarvana Babu v. State of Tamil Nadu and anr[11]; In RE, Sushanta

[4] AIR 1986 SC 740
[5] 1969(1) SCC 10
[6] 1970(1) SCC 98
[7] (1995) 3 SCC 237
[8] (2004) 8 SCC 591
[9] 1970 (3) SCC 746
[10] 2017(2) ALD (Crl.) 760

Goswami & Ors[12]; Sudhir Kumar Saha v. The Commissioner of Police, Calcutta and Anr[13]; Magan Gope v. The State of West Bengal[14]; Jayanarayan Sukul v. State of West Bengal[15]; Ummu Sabeena v. State of Kerala and ors[16]; K.M.Abdulla Khuni & B.L.Abdul Khader v. UOI and Ors. State of Karnataka & Ors[17]; Abdul Nasar Adam Ismail v. State of Maharashtra & Ors[18]; Golam Biswas v. Union of India & anr[19]; Pabitra N. Rana v. Union of India & Ors[20]; Munagala Yadamma v. State of A.P. and Ors[21]; V.Shantha v. State of Telangana and Ors (supra)**; Dwarika Prasad Sahu v. State of Bihar and ors[22]; DR. Ram Krishan Bharadwaj v. The State of Delhi and ors[23]; Rekha v. State of Tamil Nadu through Secretary to Govt. and anr[24]; Dipak Bose @ Naripada vs. State of West Bengal[25]; Gulab Mehra v. State of U.P[26]; K.Ramanamma v. Govt. of A.P[27]; Abdul Mohammed Shaikh v. Union of India[28] and Konala Anasuya v. State of Telangana and ors[29].**

5. *Per contra,* learned Government Pleader for Home would submit that even when the *detenue* is in judicial custody, the detaining authority can take note of possibility of the *detenue* securing the bail and preventively detain the *detenue* in anticipation of securing bail. In support of the said contention, learned Government Pleader placed reliance on the decision of this Court in **C.Neela** (supra) and the decision of Supreme Court in **Arun Ghosh v. State of West Bengal** (supra).

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[11] (2008) 9 SCC 89
[12] 1969 (1) SCC 273
[13] 1970(1) SCC 149
[14] (1975) 1 SCC 415
[15] 1970 (1) SCC 219
[16] (2011) 10 SCC 781
[17] (1991) 1 SCC 476
[18] (2013) 4 SCC 435
[19] (2015) 16 SCC 177
[20] (1980) 2 SCC 338
[21] (2012) 2 SCC 386
[22] AIR 1975 SC 134
[23] AIR 1953 SC 318
[24] (2011) 5 SCC 244
[25] (1973) 4 SCC 43
[26] (1987) 4 SCC 302
[27] 1998(3) ALD 86 (DB)
[28] Crl.Bail Appln.No.102 of 2020 dt.05.05.2021
[29] W.P.No.1706 of 2021 dt 13.12.2021

5.1. He would submit that as held by the Hon'ble Supreme Court in **Hemlata Kantilal Shah v. State of Maharashtra**[30], it is permissible for the detaining authority to take note of the past history of the *detenue* for the purpose of assessing the criminal conduct and mind set of the *detenue* though order of detention has to be based on the crime proximate to the decision to detain.

5.2. He further submitted that depending on the nature of crime even a single offence can be the basis to resort to preventive detention. This Court has been consistently holding that even when the person is claimed to have been involved in one crime, depending on the nature of crime involved, it is permissible to resort to preventive detention. He relied on the decision of this Court in W.P.No.502 of 2021.

5.3. By placing reliance on the judgment of the Hon'ble Supreme Court in **Smt. Aruna Kumari v. Government of Andhra Pradesh and Ors**[31], he would contend that confession of co-accused can be considered to detain a person.

5.4. He would submit that the order of detention was passed after due application of mind, on due consideration of the criminal background of the *detenue* and her involvement in three crimes in the recent past, with reference to sale of narcotic drugs. As narcotic drugs affect the health of youth stringent action is taken by the police administration and the

[30] (1981) 4 SCC 647
[31] **(1988) 1 SCC 296**

detention order is made only to ensure that the *detenue* will not be able to resort to such crimes in future.

6. He would submit that as held by the Hon'ble Supreme Court in **Rekha v. State of Tamil Nadu** (supra), preventive detention is an extreme measure and not to be resorted unless the ordinary law enforcement measures do not deal with the contingency and likely to result in affecting the public order. In the case on hand, as only small quantity of narcotic drugs were recovered from the house of the petitioner, it cannot be said that such quantity would adversely impact the public order.

7. It is not in dispute that excise officials raided two houses bearing municipal Nos.1-24/4 and 1-24/5, on 10.3.2021, 1.9.2021 and 6.9.2021 and recovered ganja on three occasions. In connection therewith they have arrested Sri Kalpathi Goutham Singh (son of the detenue) and Sri Dheeru Singh (husband of the detenue). The detenue was not present when the raid took place. Based on the confession of son, the detenue was also implicated in the crime and was arrested. By the time the competent authority took decision to preventively detain the detenue, her bail applications were rejected and no bail application was pending. However, on 20.10.2021 and 2.11.2021 bail was granted in all the three crimes. In terms thereof, she would have been released from custody but for the detention order. While granting bail, the criminal Court imposed conditions. The detention order also refers to

previous involvement of the detenue in crimes, though reason for detention was on three crimes recently instituted against her.

8. We have carefully considered the submissions made by learned counsel for petitioner and learned Government Pleader for Home and the decisions cited across the bar.

9. Learned counsel for the petitioner and learned Government Pleader made elaborate submissions for and against consideration of the history of involvement in crimes to resort to detention. Having regard to submissions made, it is necessary to travel in time on precedent decisions to appreciate the submissions.

9.1. In **Golam Hussain Vs. Commissioner of Police[32],** one of the issues considered by the Hon'ble Supreme Court was with reference to consideration of previous crimes as a basis for detention. The Hon'ble Supreme Court held as under:

> "5. ..... It is true that there must be a live link between the grounds of criminal activity alleged by the detaining authority and the purpose of detention, namely, inhibition of prejudicial activity of the species specified in the statute. This credible chain is snapped if there is too long and unexplained an interval between the offending acts and the order of detention. Such is the ratio of proximity in Lakshman Khatik. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only

[32] (1974) 4 SCC 530

> in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.

9.2. In **Hemlata Kantilal Shah** (supra)**,** Hon'ble Supreme Court held,

> "24**.** The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of supplies and services essential to the community or his act of violation of foreign exchange regulations and his smuggling activities are likely to have deleterious effect on the national economy."

9.3. In **Sama Aruna vs State of Telangana**[33] :, this issue was again considered by the Supreme Court. Hon'ble Supreme Court held that ***"the conduct or activities in the past must be taken into account for coming to a conclusion that he is going to engage in or make preparation for engaging in such activity, for many such persons follow a pattern of criminal activities."*** The Hon'ble Supreme Court next considered on how far a detaining authority can go? Supreme Court answered by holding that ***"only activities so far back can be considered as furnished a cause for preventive detention in the present that is, only those activities so far back in the past which lead to a conclusion that he is likely to engage or prepare to engage in such activity in the immediate future can be taken into account***" (Paragraph-16). Having said so, Hon'ble Supreme Court also cautioned that while resorting to detention, stale instances of crimes alleged to have been committed should not be considered. Hon'ble Supreme Court held,

[33] (2018) 12 SCC 150

> "17. .....The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it".

9.4. The Hon'ble Supreme Court also cautioned that while exercising the power of judicial review the Court should not substitute its judgment for the decision of the executive.

10. From the precedent decisions, it can be culled out that to assess the conduct of a person in the present and to detain him by exercising powers under Act 1 of 1986, it is permissible for the detaining authority to look back into the past criminal record of the person. However, while doing so stale crimes should not be considered and the previous crimes must have co-relation/ connection to present crimes to assess his previous conduct and weigh the option of resorting to detain him. Therefore, reference to past criminal record *per se* does not vitiate the detention order. This issue requires consideration on the facts of a given case.

11. In **Khaja Bilal Ahmed** (supra), Hon'ble Supreme Court considered the very issue in detail and held as under:

> "23. In the present case, the order of detention states that the fourteen cases were referred to demonstrate the "antecedent criminal history and conduct of the appellant". The order of detention records that a "rowdy sheet" is being maintained at PS Rain Bazar of Hyderabad City

> and the appellant "could not mend his criminal way of life" and continued to indulge in similar offences after being released on bail. In the counter-affidavit filed before the High Court, the detaining authority recorded that these cases were "referred by way of his criminal background … (and) are not relied upon". The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 "are not at all considered for passing the detention order" and were "referred by way of his criminal background only". This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act, 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. ***The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future."***
>
> (emphasis supplied)

12. On a careful reading of the view expressed by the Hon'ble Supreme Court in **Khaja Bilal Ahmed** (supra), it is clearly discernible that Hon'ble Supreme Court emphasized the need to apply mind in looking into previous crime record. If the detaining authority opines that ***'the previous criminal activities indicate tendency or inclination to act in a manner prejudicial to the maintenance of public order that may have a***

bearing on the subjective satisfaction' he can take note of past crimes. It is further held that if there is '***a clear indication of a causal connection***' the past criminal record can be the basis for detention under the Act 1 of 1986. The Hon'ble Supreme Court observed that previous crimes must have casual connection/have direct nexus or link to immediate need to detain.

13. In W.P.No.29162 of 2021, it was contended that the three crimes registered against the detenue arose, out of inter-se dispute and do not warrant detention. It was further contended that referring to previous crimes in the order of detention, even if they were not relied upon, is illegal. Learned counsel for petitioner relied on the decision of the Hon'ble Supreme Court in **Khaja Bilal Ahmed** (supra). On going through the record, it was found that stale cases and cases not having a link to the present crimes were also referred to note the previous criminal background. Therefore, this Court held that the order of detention was not sustainable. The said decision is distinguishable on facts and do not come to the aid of the denenue.

14. In the case on hand, the detaining authority referred to seven crimes registered between 2017 to 2020. All these offences were registered under the NDPS Act. Those crimes have direct nexus with the immediate need to detain. They indicate the tendency of the detenue to involve in similar crimes and to act in a manner prejudicial to the

maintenance of public order. Therefore, the order of detention is not vitiated on this ground.

15. It is next contended that on the date of detention order, the detenue was in custody and no bail application was pending and therefore the decision amounts to arbitrary exercise of power and authority. It is settled principle of law that there is no bar to pass an order of detention under Act 1 of 1986 merely because the detenue was in custody. It is also appropriate to note that within three weeks of order of detention, bail was granted to the detenue. Further, as order of detention was made prior to Court granting bail, whether bail order imposed conditions has no relevance to this case.

15.1. A constitution bench of Hon'ble Supreme Court dwelt into various aspects of preventive detention in ***Haradhan Saha v. State of W.B.,***[34]**.** The Hon'ble Supreme Court held:

> "32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.
>
> 33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In

[34] (1995) 3 SCC 198

preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

34. The recent decisions of this Court on this subject are many. The decisions in *Borjahan Gorey* v. *State of W.B.* [(1972) 2 SCC 550 : 1972 SCC (Cri) 888] , *Ashim Kumar Ray* v. *State of W.B.* [(1973) 4 SCC 76 : 1973 SCC (Cri) 723] ; *Abdul Aziz* v. *District Magistrate, Burdwan* : [(1973) 1 SCC 301 : 1973 SCC (Cri) 321] and *Debu Mahato* v. *State of W.B.* [(1974) 4 SCC 135 : 1974 SCC (Cri) 274] correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in *Biram Chand* v. *State of U.P.* [(1974) 4 SCC 573 : 1974 SCC (Cri) 609] which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. ***The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."***

(emphasis supplied)

15.2. In **Union of India Vs Paul Manikam** (supra) the Hon'ble Supreme Court held that subsisting custody of the detenue by itself does not invalidate order of preventive detention but the detaining authority must show its awareness to the fact of subsisting custody and only if he is reasonably satisfied with cogent material that there is likelihood of his release from custody, and by considering antecedent activities which are proximate in point of time, decision taken to detain him is valid. (paragraph 14).

15.3. Following the earlier decision in **Union of India Vs Paul Manickam**[35]**,** in **Rekha Vs State of Tamil Nadu** (supra) the Hon'ble Supreme Court held:

> "26. It was held in *Union of India* v. *Paul Manickam* [(2003) 8 SCC 342: 2004 SCC (Cri) 239] that if the detaining authority is aware of the fact that the detenu is in custody and the detaining authority is reasonably satisfied with cogent material that there is likelihood of his release and in view of his antecedent activities he must be detained to prevent him from indulging in such prejudicial activities, the detention order can validly be made."

16. Preventive detention is different from prosecution in a crime. On the charge of committing crime, the prosecution has to lead cogent and unimpeachable evidence during the course of trial. Thus, no weightage is given to an alleged confession before investigating officer to hold an accused guilty unless the charge is proved in the trial. Whereas, while taking recourse to power under Act 1 of 1986, the detaining authority only looks into the nature of crime alleged to have been committed, seriousness of the charge and previous crime record to assess whether the individual would likely to commit similar crimes, if he is let loose and such crimes would disturb public order. It is intended to prevent from a possible committing of further crimes to ensure public order. In the process of making an assessment to detain, the authority can look into any material, including confession of the person or co-accused recorded during the course of investigation into a crime.

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[35] (2003) 8 SCC 342

17. This issue need not detain any further in view of the decision of the Hon'ble Supreme Court in **Smt K.Aruna Kumari (supra):** The Hon'ble Supreme Court held,

> "8. ....The point now urged on the basis of the brand of cement was taken on behalf of the petitioner belatedly as mentioned earlier. Besides, the detenu accepted the allegations against himself in his statement recorded under Section 161 of the Code of Criminal Procedure. It is true that it may not be a legally recorded confession which can be used as substantive evidence against the accused in the criminal case, but it cannot be completely brushed aside on that ground for the purpose of his preventive detention. "

18. The prohibited drugs and psychotropic substances are in wide circulation. The drug lords have well connected network all over the world. They make available through well organized supply chain to the youth. These drugs and psychotropic substances attract youth and they get addicted to them leading to severe health concerns and also impacting their psychological profile. Youth are the bedrock of our society and India has the credit to itself presence of high percentage of youth in the population. Central and State Governments are seriously concerned about the spread of narcotic drugs and psychotropic substances adversely impacting the youth. In order to consolidate the existing enactments made during pre-independence era and developments in the field of illicit drug traffic and drug abuse at National and International level, the Indian Parliament brought out Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985). On review of its performance and bottlenecks faced in enforcement of the provisions of the Act 61 of 1985, from time to time,

amendments are carried out. As of now, it is a comprehensive enactment dealing with various aspects of Narcotic Drugs and Psychotropic Substances. It has made stringent provisions and tightened the law enforcement mechanism. It is relevant to note that the ganja was recovered from the house of detenue on two occasions and she was present on third occasion. As per the provisions of the Act 61 of 1985, it is not necessary that the prohibited drug should be recovered from the person.

19. Act 1 of 1986 is primarily made at preventing disturbance to the public order on account of frequent involvement of a person in crimes which have an impact on the public at large, resulting in disturbance to public order, which again is the concern of the State administration. Act 1 of 1986 intends to empower the competent authority to detain a person preventively to ensure that he does not resort to disturbing the public order. However, since, any detention would impact individual's right to life, liberty and freedom, which are sacrosanct, the Act 1 of 1986 also provides enough safeguards.

20. These two enactments operate in two different fields but larger objective of both enactments is same i.e., to ensure peace and tranquility in the society and systematic development of various aspects of the society. These two enactments intend to ensure that an individual for his personal gain and with short sightedness to earn quick and loads of money by any means, should not indulge in activities

affecting the health and welfare of the public, more particularly youth, and disturb the public order. Act 61 of 1985 is intended to prosecute and sentence the accused on a crime already committed. Whereas, Act 1 of 1986 only intend to prevent such person from indulging in similar crimes affecting public order. Court cannot be oblivious to the recent increase in these crimes and increase in its spread and consumption. Drug abuse is the biggest threat to the social fiber.

21. Therefore, they operate in two independent fields. Thus, merely because prosecution is launched under Act 61 of 1985, does not preclude the detaining authority to exercise powers under Act 1 of 1986 to detain a person alleged to have been involved in crimes registered under Act 61 of 1985 and his conduct and behaviour likely to result in disturbance to public order. As held by the Hon'ble Supreme Court in **Haradhan Saha** (supra), the power of preventive detention is qualitatively different from punitive detention, is a precautionary power and need not relate to an offence and that it does not overlap.

22. On perusal of Crime No.6/2021 dated 10.03.2021, it is seen that 69 sachets of dry ganja, each weighing 10 grams, total 690 grams was alleged to be seized from one Kalapathi Gowtam Singh, son of detenue, from the house bearing No.1-24/5, Lodhabasthi, Nanakramguda, Serilingampally, Ranga Reddy District and on enquiry he confessed about the purchase of ganja by the detenue from Dhoolpet and that

they were preparing the said sachets of 10 grams of ganja each for selling the same to the needy customers and earning easy money.

23. In the second case pertaining to Crime No.24/2021, dated 01.09.2021, the Excise Officials seized 1.67 kgs., of dry ganja along with liquor/beer bottles from the house bearing No.1-24/5, Lodhabasthi, Nanakramguda from the possession of one Kalpathi Munna Singh (husband of detenue). On questioning, he confessed that the detenue brought the ganja from Dhoolpet and that they were preparing the same into small packets of 5 grams each and were selling the same to the needy customers to earn easy money.

24. In Crime No.26/2021, on 06.09.2021, the Prohibition and Excise Officials raided House bearing No.1-24/4, Lodhabasthi, Nanakramguda and on search of the house, they found 580 grams of dry ganja along with liquor/beer bottles and found the present detenue in the said house and on enquiry, she confessed about purchasing of ganja from Dhoolpet and making it into small packets of 10 grams each and selling the same to the needy people who were addicted to ganja.

25. As held by Hon'ble Supreme Court in **Haradhan Shah** (supra), preventive detention is a precautionary measure and need not relate to an offence. In the case on hand, as can be seen from the above paragraphs, though quantity recovered from the houses of the accused is not commercial quantity, it does not *per se* dilute the nature of offence. The quantity recovered from the raid put into circulation, is

good enough to impact and create havoc in the youth. Even a very small quantity of ganja can impact health and mental faculties of a person. Further, detaining authority noticed that the detenue was involved in similar crimes on seven occasions and recently in three crimes and, therefore, opines that it is desirable to preventively detain her to ensure public order.

26. This Court consistently upheld the preventive detention of persons involved in offences under NDPS Act, 1985. At this stage, it is expedient to consider the opinion expressed by this Court in the following cases arising under NDPS Act, 1985.

26.1. In **Naresh Singh vs State of Telangana[36],** two cases were filed against the detenu Manmohan Singh by the Police under the NDPS act and he was thereby detained by the Police on 30.12.2019. In this case, the detenu was caught peddling Ganja in two different instances. He was caught with 22 Kgs of Ganja once and 2 kgs in another instance. He was granted bail in both cases. However, to prevent the detenu from indulging in such activities further and disturb the public order, the preventive detention order was passed. The Court held that after he was granted bail in earlier crimes the detenu resorted to the peddling of Ganja and was caught with a higher quantity of the drug than before which clearly shows his conduct leaning towards committing the same crimes again and again and upheld the decisions of the detaining

[36] WP No.502 of 2020, dt. 5.3.2020

authority to detain the detenu so that he doesn't cause harm to the public order.

26.2. In **Sneha Singh vs State of Telangana[37],** two criminal cases were registered against the detenu Pavan Singh who was caught peddling Ganja. He was caught on two different occasions, the first being on 1.11.2019 with an amount of 1.1 kgs of Ganja, in which case he was granted conditional bail on 4.12.2019, and the second being on 16.06.2020 with a quantity of 44 kgs of ganja. In the second crime, he was granted conditional bail on 8.10.2020. The Court held that even though the detenu was caught in the first crime and was released on conditional bail, he still resorted to the same activity and got involved for the second time with a huge quantity of ganja compared to the earlier incident. The fact that he admitted that his father procures the drug in large quantities weekly and money earned in this manner is spent lavishly shows that detenu is inclined to this lifestyle and has a high chance that he might resort to the same activity again if he is not detained risking the public order. Holding so the Court upheld the preventive detention order.

26.3**.** In **Sandhya Singh vs State of Telangana[38],** the detenu Raj Kumar Singh was caught peddling Ganja weighing 24 kgs on 17.08.2020. There were five cases registered against him involving murder and peddling of ganja from 2011 to 2019. He was caught transporting

[37] WP No.1826 of 2021 dt.10.8.2021
[38] WP No.102 of 2021 dt.22.4.2021

4.28 kgs of Ganja in November, 2016, and was granted conditional bail and released on 19.12.2016. In March, 2017 he was again caught with 1.5 kgs of ganja and he was again granted conditional bail and released on 02.05.2017. In September, 2019, he was again caught transporting 4 kgs of ganja and released on 13.11.2019 and recently he was again caught with 24 kgs of the drug. Having regard to his involvement in these crimes, the preventive detention order was passed against him on 24.11.2020 to prevent him from affecting the public order in the future. The Court opined that the detenu was committing multiple crimes under the NDPS Act did not change his attitude and continued to commit the same crime of peddling ganja in high quantities. Due to these repeated offences, it is justified to preventively detain the detenu to maintain public order.

26.4. In **Banothu Jagan v State of Telangana[39],** the detenu Nunavath Sudhakar was a Police Constable. In greed for money, he has indulged in the peddling of ganja with his associates. In this present case, he was caught transporting a huge amount of 81 kgs of ganja with his associates. He was earlier caught in a similar crime and was suspended from the service but continued to indulge in a similar crime. These two offences were committed in quick succession. This Court held that being in the police force and getting involved in such a crime would

[39] WP No.19054 of 2020 dt.15.3.2021

destroy the reputation of the police department. Therefore, upheld the detention order.

27. We, therefore, see no merit in the Writ Petition. For all the aforesaid reasons, the order of detention impugned herein is upheld and the Writ Petition is dismissed. Pending miscellaneous petitions if any shall stand closed.

JUSTICE P.NAVEEN RAO

DR. JUSTICE G.RADHA RANI

Date: 21.03.2022
Tvk / kkm

Note: L R Copy to be marked- Yes

HONOURABLE SRI JUSTICE P.NAVEEN RAO
AND
HONOURABLE DR. JUSTICE G.RADHA RANI

WRIT PETITION No.35503 of 2021

Date: 21-03-2022

Tvk/kkm