

*** THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND**

*** THE HON'BLE SRI JUSTICE PULLA KARTHIK**

+ WRIT PETITION No.4223 OF 2023

% Date: 06.04.2023

Between

Kuthadi Srikanth

... Petitioner

AND

**\$ The State of Telangana,
Rep. by its Principal Secretary (Political),
General Administration
(Law & Order Department),
Secretariat, Hyderabad and others.**

... Respondents

! Counsel for the petitioner : Sri K. Durga Prasad

^ Counsel for the Respondents : Additional Advocate General

< GIST :

> HEAD NOTE:

? Cases referred

1. (2021) 9 SCC 415
2. (2012) 4 SCC 699

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**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE PULLA KARTHIK**

WRIT PETITION No.4223 OF 2023

ORDER: (per AKS,J)

Sri Kuthadi Srikanth, the petitioner, has filed this Habeas Corpus petition on behalf of his father, Kuthadi Srinivas @ Yerukala Srinivas, the detenu, challenging the detention order *vide* No:08/PD-CELL/CYB/2023, dated 07.02.2023, passed by the respondent No.2-Commissioner of Police, Cyberabad Commissionerate, whereby, the detenu was detained under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Fake Document offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (for short, 'Act 1 of 1986'), and to set aside the same, as being violative of the

provisions under the Act 1 of 1986 and Article 21 of the Constitution of India and consequently, set free the detenu.

2. Heard Sri B. Adinarayana Rao, learned Senior Counsel, representing Sri K. Durga Prasad, learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents.

3. Learned Senior Counsel appearing for the petitioner had contended that the detenu was detained by the respondents under the provisions of the Act 1 of 1986 *vide* impugned detention order, dated 07.02.2023, on the alleged ground that he was involved in three crimes i.e. Crime No.762 of 2022 of Medchal Police Station, registered for the offences under Sections 447, 427, 341 and 506 I.P.C.; Crime No.788 of 2022 of Medchal Police Station, registered for the offences under Sections 447, 427 and 341 read with 34 I.P.C.; and Crime No.789 of 2022 of Medchal Police Station, registered for the offences under Sections 447, 427 and 506 I.P.C. Learned Senior Counsel further contended that the allegation in the said crimes is that the detenu has trespassed into the properties of the complainants therein and caused damage to their properties, which is purely civil in nature. Learned Senior Counsel further

contended that the detenu surrendered before the competent criminal Court on 10.10.2022 and he was granted bail by the competent criminal Court in Crime Nos.762 of 2022 and 789 of 2022 of Medchal Police Station and in Crime No.788 of 2022 of Medchal Police Station, the police, on their own, have not effected arrest of the detenu and issued notice under Section 41A (1) Cr.P.C. Learned Senior Counsel further contended that the said crimes were registered in the first week of October, 2022, and nearly after five months, the detaining authority has passed the impugned detention order, that too, without application of mind, as admittedly, the detaining authority did not consider whether the detenu was causing any public nuisance or disturbing the general public at the relevant point of time. Admittedly, from the first week of October, 2022 till the date of passing of the impugned detention order i.e. 07.02.2023, the detenu neither involved in any crime nor caused any disturbance or damage to the general public.

4. Learned Senior Counsel further contended that earlier *vide* order, dated 17.08.2015, the detenu was detained by the respondents under the provisions of the Act 1 of 1986 and the matter was referred to the Advisory Board. The Advisory Board, in

its opinion, had come to a conclusion that there are no grounds to invoke the provisions under the Act 1 of 1986 against the detenu. Based upon the recommendations of the Advisory Board, the State Government *vide* G.O.Rt.No.2707, dated 07.10.2015, revoked the detention order, dated 17.08.2015. When the Advisory Board has come to a conclusion on the earlier occasion that the offences alleged do not constitute disturbance of public order, the respondents once again invoking the provisions under the Act 1 of 1986 and detaining the detenu *vide* the impugned detention order, dated 07.02.2023, is an arbitrary exercise and therefore, the impugned detention order is liable to be set aside.

5. The learned Senior Counsel had relied upon the judgment of the Honourable Supreme Court in **Banka Sneha Sheela V. State of Telangana and others**¹ and contended that for public order to be disturbed, there must be public disorder and mere contravention of law such as indulging in cheating or criminal breach of trust, certainly affects law and order, but does not affect the public order, unless it affects the public at large. In the instant case, three individuals have given complaint against the detenu alleging that the

¹ (2021) 9 SCC 415

detenu is interfering with their properties, which itself demonstrates that the general public could not be affected and further, the allegations made by the complainants against the detenu in the said crimes are also civil in nature. When the allegations made in the said crimes are civil in nature, the police, at the first instance, could not have registered criminal cases. Therefore, appropriate orders be passed in the Writ Petition by setting aside the impugned detention order, dated 07.02.2023, which was confirmed by the State Government *vide* G.O.Rt.No.442, dated 23.03.2023, and set aside the same, as being arbitrary, illegal and violative of Article 21 of the Constitution of India and further, set free the detenu immediately.

6. On the other hand, the learned Additional Advocate General appearing for the respondents had contended that the detenu was involved in a series of land grabbing cases and therefore, the detaining authority was justified in passing the impugned detention order against the detenu by invoking the provisions under the Act 1 of 1986. The learned Additional Advocate General further contended that the complainants in the said crimes are *bona fide* purchasers of the properties therein and the detenu is interfering with their properties and therefore, in order to protect the innocent public, the

detaining authority has rightly invoked the provisions under the Act 1 of 1986 and passed the impugned detention order. Learned Additional Advocate General further contended that, no doubt, right to life is a fundamental right, but, it can be curtailed subject to the provisions of the law. Admittedly, the detenu is a notorious land grabber and his actions are causing great inconvenience to the general public and damage to their properties and hence, the detaining authority was justified in passing the impugned detention order. Therefore, there are no merits in the Writ Petition and the same is liable to be dismissed.

7. This Court, having considered the rival submissions made by the learned counsel for the parties, is of the view that a perusal of the complaints filed in the said crimes, which are filed as material papers in the Writ Petition, discloses that, nowhere, the complainants have stated that they are the *bona fide* purchasers of the properties therein, and further, the allegations made in the said complaints are civil in nature. Apart from that, the said crimes were registered in the first week of October, 2022, and the detaining authority has passed the impugned detention order in the first week of February, 2023, i.e. on 07.02.2023, and this issue was considered

by the Honourable Supreme Court in **Subramanian v. State of Tamil Nadu**², wherein the Honourable Supreme Court, in paragraph No.14, held as follows:

“It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.”

A perusal of the above extracted paragraph makes it very clear that the order of detention should be precise, pertinent, proximate and

² (2012) 4 SCC 699

relevant. Admittedly, the impugned detention order was passed nearly after five months from the date of registration of the said crimes. Further, the respondents have earlier detained the detenu *vide* order, dated 17.08.2015, and the same was referred to the Advisory Board and the Advisory Board came to a conclusion, at that relevant point of time, that the like sum allegations do not constitute any disturbance of public order, and recommended to revoke the detention order, and based upon the recommendations made by the Advisory Board, the State Government has revoked the said detention order *vide* G.O.Rt.No.2707, dated 07.10.2015, which would mean that when the respondents were trying to invoke the provisions under the Act 1 of 1986 against the detenu in the year 2015, the Advisory Board gave a finding that the allegations made therein do not constitute any disturbance of public order. We are not able to understand as to how the very same allegations can affect the public at large in the year 2023. For these reasons, this Court is of the considered view that the impugned detention order, dated 07.02.2023, and the consequential confirmation order *vide* G.O.Rt.No.442, dated 23.03.2023, are liable to be set aside.

8. In the result, the Writ Petition is allowed. The impugned detention order *vide* No.08/PD-CELL/CYB/2023, dated 07.02.2023, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.442, General Administration (Spl. (Law & Order)) Department, dated 23.03.2023, passed by the Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, are hereby set aside. The respondents are directed to set the *detenu*, namely, Kuthadi Srinivas @ Yerukala Srinivas, S/o. Narsimha, at liberty forthwith, if he is no longer required in any other criminal case. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

PULLA KARTHIK, J

Date: 06-04-2023.

Note: L.R. copy to be marked.
B/O.MD