

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**AND**

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION No.22768 of 2020**

**ORDER:** (Per the Hon'ble Dr. Justice Shameem Akther)

Smt. Donthula Anitha, the petitioner, has filed this Habeas Corpus petition on behalf of her husband, Donthula Srinivas, S/o. Ramaiah, Aged about 45 years, the detenu, challenging the detention order, vide C.No.22/PDCELL/CCRB/RGM/2020, dated 08.10.2020, passed by the respondent No.2-Commissioner of Police, Ramagundam, 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 & White Collar or Financial Offenders Act, 1986 (for short "P.D. Act") and the consequential confirmation order, dated 15.12.2020, vide G.O.Rt.No.1948, General Administration (Spl. (Law & Order)) Department, passed by the respondent No.1.

**2.** We have heard the submissions of Smt. Sujatha Kurapati, learned counsel for the petitioner, Sri G.Malla Reddy, learned Assistant Government Pleader for Home appearing on behalf of

learned Additional Advocate General for the respondents and perused the record.

**3.** Learned counsel for the petitioner has vehemently contended that the impugned detention order is illegal, arbitrary, unconstitutional, improper, against the principles of natural justice and has been passed in a mechanical manner basing upon vague, irrelevant and non-existing grounds. Already criminal law was set into motion against the detenu. Hence, there is no need for the respondents to invoke draconian preventive detention laws against him. The allegation against the detenu is that he had indulged in a series of offences such as dishonestly cheating more than 75 farmers by purchasing the paddy and cotton from them and avoiding payments by issuing simple receipts and misappropriated huge amount of Rs.86,59,698/- for his personal use and lavish life and thus acted in a manner, which is prejudicial to the maintenance of public order, apart from disturbing peace and tranquility in the society. In any event, the said allegation would not satisfy the word 'White Collar Offender'. The detenu is doing paddy business and he has not cheated the public as alleged. Due to lockdown, the detenu was not able to collect the amounts from his purchasers and pay to the farmers. Moreover, only two or three farmers have given complaint. In Crime Nos.113/2020 and 114/2020, the detenu was granted bail by the Courts concerned. In the impugned detention order, the detaining authority observed that since the detenu was granted bail in the aforesaid two crimes relied by the detaining authority, there is

every likelihood of his release on bail in the remaining cases and committing similar offences. Every accused has the right to move the Court for bail when he/she is arrested under ordinary criminal law. He cannot be interdicted from moving the Court seeking bail by clamping an order of preventive detention. Further, the subjective satisfaction recorded by the detaining authority is illegal and tainted. Further, the offences alleged against the detenu do not add up to "disturbing the public order". They are confined within the ambit and scope of the word "law and order". Since the detenu is alleged to be a 'White Collar Offender', he can certainly be tried and convicted under the Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned detention order tantamounts to colourable exercise of power. The detaining authority has to be extremely careful while passing the detention order, since the detention *ipso facto* adversely affects the fundamental right of personal liberty enjoyed by the detenu under Article 21 of the Constitution of India. The detention order is legally unsustainable and ultimately, prayed to set aside the same and allow the writ petition as prayed for.

4. On the other hand, Sri G.Malla Reddy, learned Assistant Government Pleader for Home, would contend that the detenu is a 'White Collar Offender'. The detenu committed series of offences such as dishonestly cheating the farmers by purchasing the paddy and cotton from them and avoiding payments and amassed huge amount for his personal use and lavish life.

Though the detenu is involved in as many as eight criminal cases, only three cases viz., Crime Nos.112/2020, 113/2020 and 114/2020, were relied upon for preventively detaining the detenu. In Crime No.112/2020, the amount involved is Rs.26,77,500/-, in Crime No.113/2020, the amount involved is Rs.9,23,270/- and in Crime No.114/2020, the amount involved is Rs.4,13,808/-. The series of crimes allegedly committed by the detenu were sufficient to affect the even tempo of the society and create a feeling of insecurity in the minds of the people at large, especially poor farmers. Further, the detenu committed the three crimes relied upon by the detaining authority in quick succession, i.e., within a span of three months. The impugned detention order was passed basing on valid grounds and material placed before the respondents. All the mandatory provisions and the safeguards envisaged under the Constitution of India were strictly followed while passing the impugned detention order and hence, the impugned detention order does not suffer from illegality or impropriety. In Crime Nos.113/2020 and 114/2020, the detenu was granted statutory bail, since the police did not file final report within the statutory period. As on the date of passing of the impugned detention order, the detenu was in judicial custody and the detaining authority was well aware of the said fact. Further, there is no bar in passing an order of detention on a person who is in judicial custody. Preventive detention is different from punitive detention. Preventive detention is a precautionary measure basing on reasonable anticipation and it does not overlap with

the prosecution. Further, the Advisory Board in its review meeting, upon hearing the detenu and the concerned investigating officials and upon considering the entire material placed before it, rendered its opinion that there is sufficient cause for detention of the detenu. On considering the opinion of the Advisory Board and upon considering the entire material independently, the Government confirmed the impugned detention order, vide G.O.Rt.No.1948, General Administration (Spl. L& O) Department, dated 15.12.2020. Therefore, the detaining authority was legally justified in passing the impugned detention order. There are no grounds to grant the relief sought by the petitioner and ultimately, prayed to dismiss the writ petition.

5. In view of the submissions made by both sides, the point that arises for determination in this Writ Petition is:

***“Whether the impugned detention order, dated 08.10.2020, passed by the respondent No.2- Commissioner of Police, Ramagundam, and the consequential confirmation order, dated 15.12.2020, passed by the respondent No.1, are liable to be set aside?”***

**POINT:**

6. Briefly, the facts of the case are that by relying on three criminal cases registered against the detenu in the year 2020, i.e., Crime Nos.112/2020, 113/2020, 114/2020, within the limits of Ramagundam Police Commissionerate, the respondent No.2- Commissioner of Police, Ramagundam, passed the impugned

detention order, dated 08.10.2020. According to the respondent No.2, the detenu is a 'White Collar Offender' as he has been indulging in a series of offences, such as dishonestly cheating the farmers by purchasing paddy and cotton from them and avoiding payments by issuing simple receipts and misappropriated huge amounts for his personal use and lavish life. The detenu dishonestly cheated more than 75 farmers and amassed an amount of Rs.86,59,698/-. The illegal activities of the detenu are creating large scale fear and insecurity among the general public, especially poor farmers, which is prejudicial to the maintenance of public order. As per the counter filed by respondent No.2, out of the three crimes relied by the detaining authority for preventively detaining the detenu, the detenu got bail in two cases from the Court concerned. Since there is every likelihood of the detenu getting bail in the remaining crime(s) and with a view to prevent him from further indulging in similar illegal activities which are detrimental to maintenance of public order, the impugned detention order, dated 08.10.2020, was passed, which was confirmed by the Government by order, dated 15.12.2020.

**7.** The material placed on record reveals that the detenu- Donthula Srinivas, S/o. Ramaiah, aged about 45 years, has been habitually engaging himself in unlawful acts and committed several offences of cheating the innocent farmers in the limits of Ramagundam Police Commissionerate. His illegal activities are detrimental to the maintenance of public order and created panic among the general public, especially innocent farmers.

The detenu dishonestly cheated the innocent farmers by purchasing paddy and cotton from them and avoiding the payments. The detaining authority relied on three cases for preventively detaining the detenu. We shall present them in a tabular column, the date of occurrence, the date of registration of FIR, the offences complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
112/2020 of Kasipet Police Station	02.03.2020	02.07.2020	420 IPC	Section 420 IPC : Cognizable / Non Bailable
113/2020 of Kasipet Police Station	02.03.2020	03.07.2020	420 IPC	Section 420 IPC : Cognizable / Non Bailable
114/2020 of Kasipet Police Station	20.05.2020	03.07.2020	420 IPC	Section 420 IPC : Cognizable / Non Bailable

**8.** The material placed on record further reveals that the detenu had been indulging in series of offences such as dishonestly cheating the farmers by purchasing paddy and cotton and avoiding the payments by issuing simple receipts and misappropriated huge amounts for his personal use and lavish life. He dishonestly cheated more than 75 farmers in an organized fashion in the limits of Ramagundam Police Commissionerate and amassed a huge amount of Rs.86,59,698/- The detaining authority had relied on three cases for preventively detaining the detenu, viz., Crime Nos.112/2020, 113/2020 and 114/2020 of Kasipet Police Station. In the first crime (Crime No.112/2020), the detenu purchased 23 quintals of cotton @ Rs.4,800/- per quintal (total value Rs.1,10,160/-) from the complainant therein by promising that he would pay the

amount after one month, but he failed to keep up his promise and thus dishonestly cheated the complainant therein. In the said crime, it is also alleged that the detenu purchased cotton and paddy from other farmers of a total value of Rs.26,77,500/- by promising them that he would pay the amount after one month, but failed to pay the said amounts to the farmers. In the second crime (Crime No.113/2020), the detenu purchased 262 quintals of paddy @ Rs.1,500/- per quintal (total value Rs.3,93,000/-) from the complainant therein by promising that he would pay the amount after one month. In the said crime, it is also alleged that the detenu purchased paddy from other farmers of a total value of Rs.9,23,270/- by promising them that he would pay the amount after one month and failed to pay the said amounts to the farmers. In the third crime (Crime No.114/2020), the detenu purchased 89 quintals and 76 Kgs. of paddy @ Rs.1,550/- per quintal (total value Rs.1,39,000/-) from the complainant therein by promising that he will pay the amount after one month, but failed to pay the same. In the same crime, it is also alleged that the detenu purchased paddy from other farmers, total value of Rs.4,13,808/- by promising them that he will pay the amount after one month, but failed to pay the said amounts to the farmers. The detenu was arrested on 08.07.2020. During the course of enquiry, one Pata Balakrishna, who had agro industry business and who purchased paddy from the detenu, stated that he had paid Rs.15.00 lakhs to the detenu and transferred an amount of Rs.30.00 lakhs to the bank account of the wife of the detenu. Thus, it appears

that the detenu, with a dishonest and fraudulent intention, duped the innocent farmers by knocking away their agricultural produce, with false promises and amassed huge amount for his personal use and lavish life.

**9.** It is apt to state that these instances are increasing day by day in our country. Since majority of the population of rural India depend upon agriculture and its allied activities, it is high time that all the law enforcing agencies shall show sensitivity towards the farmers whose agricultural produce is being purchased by third persons/middlemen and payments are not being made. Majority of the farmers in our country are illiterate/rustic and have no resources and cannot afford indulging into litigation and they shall not loose their agricultural produce in such a manner. This inability of farmers is being used by the persons like the detenu to dupe them and make money on their hard earned agricultural produce, which the farmers get after working hard in the fields, sustaining all kinds of weather and hardship. In other words, knocking away the hard earned agricultural produce of the farmers by taking advantage of their innocence and thereby duping them, in any event, is not acceptable; and, any leniency shown towards the persons indulging in such acts would put the country's agricultural economy to peril.

**10.** Further, it is apt to state that white collar offences can have a large impact on the society. It is also called as a socio-economic crime, because it has a direct impact on the society at

large, particularly over the living conditions of poor farmers, which is far more costly than the ordinary crime. These white collar crimes, by nature, are such that injury and damage is caused to the farmers at large. Notwithstanding stringent legislations made to curb this evil, it has not been possible to eradicate the same. Therefore, any leniency in economic offence will send a wrong signal to the society at large. On the contrary, a message must reach to such offenders that there shall not be any leniency shown with respect to such activities/offences and the same shall be dealt with Iron hand. In **State of Gujarat Vs. Mohanlal Jitamalji Porwal**<sup>1</sup>, a Division Bench of Hon'ble Supreme Court of India, speaking through M.P.Thakkar, J (as His Lordship then was) observed as under:-

*"The entire community is aggrieved, if the economic offenders, who ruin the economy of the State, are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design, with an eye on personal profit, regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters, which view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest."*

11. Further, the Hon'ble Apex Court, in the decision reported in **Subrahmaniah Vs. State of Tamilnadu**<sup>2</sup>, held that the subjective satisfaction reached by the detaining authority, cannot be interfered with by this court, except in exceptional and extremely limited grounds and that this Court cannot substitute

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<sup>1</sup> (1987) 2 SCC 364

<sup>2</sup>(2012) 4 SCC 699

its own opinion with that of the detaining authority and that the sufficiency or otherwise of the grounds is not for this court to determine and it is for the detaining authority to form subjective satisfaction.

**12.** In another decision in **State of Punjab Vs. Sukhpal Singh**<sup>3</sup>, the Hon'ble Apex Court expressed similar view. It was held as follows:

"Preventive order is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from so doing. The justification of such detention is suspicious or reasonable probability and not criminal conviction which can only be warranted by legal evidence. Thus, any preventive measures, even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State...When power is given to an authority to act on certain facts and if that authority acts on relevant facts and arrives at a decision, which cannot be described as either irrational or unreasonable, then the order is not bad and the Court cannot substitute the decision or opinion in place of the decision of the authority concerned on the necessity of passing the order."

**13.** Further, a perusal of the material placed on record reveals that out of three crimes relied upon by the detaining authority, the detenu was granted bail in two crimes by the Court concerned. It is the case of the respondents that the impugned detention order was passed as there is every likelihood of the detenu getting bail in the other crime and again indulging in similar prejudicial activities, which are detrimental to the public order. Under these circumstances, the contention of the respondents that the illegal activities of the detenu would disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order and there is

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<sup>3</sup>(1990) 1 SCC 35

imminent possibility of the detenu again indulging in similar prejudicial activities, cannot be brushed aside.

**14.** Here, it is apt to state that the essential concept of preventive detention is not to punish a person for something he has done, but to prevent him from doing it. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel in between prosecution in a Court of law and a detention order under the P.D.Act. One is a punitive action and the other is a preventive act. 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 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.

**15.** In the instant case, having regard to the *modus operandi* of the detenu and the three crimes registered against him in quick succession, the respondent No.2, in our considered view, has rightly held that detenu is a 'white collar offender' under clause (x) of Section 2 of Act 1 of 1986, and recorded his

satisfaction that the activities of the detenu are prejudicial to the maintenance of public order, and that ordinary law may not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities. The material relied upon and circumstances show that the subjective satisfaction of the detaining authority is not tainted or illegal on any account. Under these circumstances, the detaining authority is justified in passing the impugned detention order. We do not see any merit in this Writ Petition and as such, it is liable to be dismissed.

**16.** Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

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

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**A. RAJASHEKER REDDY, J**

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**Dr. SHAMEEM AKTHER, J**

29<sup>th</sup> June, 2021  
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