HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.18340 of 2020

Date: 22.12.2020

Between :

Muchannapally Rajaiah, s/o. Rajaiah,
Aged about 53 years, caste: madiga,
Occu: Gram Panchayat worker,
R/o. H.No.1-6, Harijana Basti,
Bibipet village and mandal,
Kamareddy district.

..... Petitioner

and

The State of Telangana,
Rep. by its Principal Secretary,
Home Department, Secretariat,
Hyderabad and others.

.... Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.18340 of 2020

ORDER:

Heard learned counsel Mr. Rapolu Bhaskar for the petitioner and learned Assistant Government Pleader for Home.

2. In the writ petition, petitioner seeks to grant the following relief:

> "to issue a Writ order or direction more particularly one in the nature of Writ of Mandamus by declaring the in action of the Respondent Nos.2 and 3 in not registering the crime against the Respondent Nos.4 and 5 we unanimously approached the respondent Nos.2 and 3 and requested to impose PD Act against the respondent Nos.4 and 5 the respondents 2 and 3 did not initiated to impose PD Act against the respondent Nos.4 and 5 basing on my representation dated 15.07.2020 as illegal arbitrary and against the principles of natural justice and violative of Articles 14, 19 and 21 of Constitution of India and consequently to direct the respondent Nos.2 and 3 to impose PD Act against the Respondent Nos.4 and 5 who are habitant offenders cheaters land grabbers and also used to cheat the innocent people by saying they provide the jobs in Gulf Countries (Like Beharan, Dubai, Oman) and also used to collect the money crores of rupees from the innocent people and threatening them with dire consequences basing on my representation dated 15.07.2020 and pass such other orders as may deem fit and proper in the circumstances of the case.

3. Petitioner claims to be a Worker in Bibipet Gram Panchayat. Petitioner alleges that respondents 4 and 5 harassed and abused him by using filthy language and on the caste name, detained and confined him in Gram Panchayat Office by locking the doors of Gram Panchayat Office for about 3½ hours. Further, illegalities

confinement) and 506 IPC (punishment for criminal intimidation), and Section 3(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act, 1989) in Bibipet Police Station. Crime No.63 of 2020 was registered on the same day under Sections 504 IPC (intentional insult with intent to provoke breach of the peace) and 506 IPC and Section 3 (1) (r) (s) of the Act, 1989 in Bibipet Police Station. Petitioner alleges that respondents 4 and 5 are habitual offenders. They have cheated many innocent people. They also grabbed land by creating fake documents. They have also indulged in extracting money from the innocent people. Petitioner alleges that Rs.20,00,000/- was collected from person, by name Chetkuri Tirupati with an assurance to provide a job in Beharan country, but no job was provided to him. Crime No.48 of 2012 was registered under Section 420 IPC (cheating and dishonestly inducing delivery of property) on 15.07.2012. He further alleges that respondents 4 and 5 misappropriated the funds of partnership firm and cheated the person, by name, Sukka Venkatesh Goud. Mr. Venkatesh Goud was also tortured. They have threatened his family members and employees with dire consequences demanding huge money. Vexed with their attitude, Mr. Venkatesh Goud lodged complaint, which was registered as Crime No.49 of 2017 under Sections 406 IPC (punishment for criminal breach of trust), and 506 IPC on 20.01.2017 in Meerpet Police Station. Petitioner highlights similar such complaints lodged by other victims and contends that

He, therefore, alleges that they are the habitual offenders and by their conduct, there is a serious threat to the right, liberty and personal safety of many people.

4. According to learned Assistant Government Pleader, the ground position do not warrant resort to preventive detention. Resorting to preventive detention is an extreme measure. Such course is adopted only in cases of grave nature, where circumstances warrant and on due consideration of gravity of the issue, and not as a matter of course. He further submits that as held by this Court time and again, provisions of the Preventive Detention Act can be invoked by the police only when crimes under Sections 302 IPC (punishment for murder), 376 IPC (punishment for rape), 380 IPC (theft in dwelling house), and under Narcotic Drugs and Psychotropic Substances Act are registered and not in cases of this nature.

5. This Court is flooded with litigation against State resorting to preventive detention. Wherever, a challenge is made by a person against his detention by resorting to power under 'The A.P.Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986' (Act 1 of 1986), Court tests such decision, within a well laid down parameters of judicial review, with stand point of right of person to life, liberty and privacy. This is a converse case. The citizen complains that the law enforcing agency

6. Issue for consideration is whether petitioner qualifies to issue writ of mandamus and whether facts of the case warrant Court to issue mandamus compelling respondents to invoke powers under the Act 1 of 1986 ?

7. Two competing aspects throw up whenever an issue of preventive detention comes up. On the one side is the right of the individual citizen to protect his life, liberty and privacy, which are sacrosanct. On the other extreme is the sacred duty of the Government to enforce law and order, peace and tranquility in the society. Whenever a crime is reported, the law enforcing agency sets in motion criminal justice system on the offences enumerated in the Indian Penal Code and various special enactments dealing with specific crimes. In the process of investigation into the crime, the accused can be arrested, detained and can be interrogated.

8. Ordinarily, no person can be arrested/detained unless crime is reported. Act 1 of 1986 makes an exception to this solitary principle. It vests extraordinary power in the Government or in its delegatee to detain a person even before a crime is committed by him. Perforce, this power of detention is not to be exercised as a matter of course. As it seeks to offend the most sacred of the rights, right to life, liberty and privacy, there are three primary requirements need to be answered by the law enforcing agency before invoking the provisions of Section 3 of the Act, 1986. Firstly, he must be a known offender and several crimes are

maintenance of the public order; and thirdly, there must be subjective satisfaction by the authority that the person is indulging/most probably indulging in such activities in future, which is likely to cause disturbance to 'public order'. It must be a well considered decision impelled by protection of 'public order'. Even then, it is an extreme measure to be resorted in extraordinary circumstances, as a last resort and in larger public interest. It being an exception, cannot subsume the character of routine police action. It should be resorted to only when the normal course of criminal justice system has failed to discipline the individual and actions and conduct of a person has caused or is likely to cause disturbance to 'public order'.

9. Section 2(a)[1] of the Act, 1986 defines what is meant by "acting in any manner prejudicial to the maintenance of public order". It means a person against whom several crimes are reported and is known as 'a boot legger', 'a dacoit', 'a goonda' , 'an immoral trafficker' and 'a land grabber' and is engaged or is making preparations for engaging, in any of his activities as such, which affected adversely, or are likely to affect adversely, the maintenance of public order. Explanation appended to this clause explains that "public order" is deemed to have been affected adversely / likely to be affected adversely, if any of the activities of a person referred to in the 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. Other clauses of Section 2 of the Act, 1986 defines various terms mentioned in Clause (a).

10. At this stage, it is expedient to dwell into the precedent decisions on when 'preventive detention' can be resorted to, what is meant by 'public order', and scope of judicial review.

10.1. In **Sudhir Kumar Saha vs. the Commissioner of Police, Calcutta**[2], the Hon'ble Supreme Court emphasized protecting the freedom of an individual citizen.

> "7. The freedom of the individual is of utmost importance in any civilized society. It is a human right. Under our Constitution it is a guaranteed right. It can be deprived of only by due process of law. ***The power to detain is an exceptional power to be used under exceptional circumstances***. It is wrong to consider the same, as the executive appears to have done in the present case, that it is a convenient substitute for the ordinary process of law. The detention of the petitioner under the circumstances of this case appears to be a gross misuse of the power conferred under the Preventive Detention Act." (emphasis supplied)

10.2. In **Khudiram Das vs. the State of West Bengal and others**[3], the Hon'ble Supreme Court dealt with the aspect of subjective to satisfaction of the detaining authority and also dealt with the scope of judicial review on the aspect of detention. Paragraph-8 reads as under:

> "8. Now it is clear on a plain reading of the language of sub-sections (1) and (2) of Section 3 that the exercise of the power of

person. The words used in sub-sections (1) and (2) of Section 3 are "if satisfied" and they clearly import subjective satisfaction on the part of the detaining authority before an order of detention can be made. And it is so provided for a valid reason which becomes apparent if we consider the nature of the power of detention and the conditions on which it can be exercised. The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. Patanjali Sastri, C.J. pointed out in *State of Madras* v. *V.G. Row* [AIR 1952 SC 196 : 1952 SCR 597] ***that preventive detention is "largely precautionary and based on suspicion"*** and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in *Rex* v. *Halliday* [1917 AC 260] namely, ***that "the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based".*** This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. ***The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (i), (ii) and (iii) of clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which by reason of its special position, experience and expertise would***

on which the satisfaction of the detaining authority is based....."

(emphasis supplied)

10.3. The same principle is reiterated by this Court in **C.Neela vs. State of Telangana**[4]. Paragraph-10 reads as under:

"10. Preventive detention of a person is an extreme measure resorted to by the State when ordinary criminal law is found not adequate to control his activities which cause disturbance to public order. Article 21 of the Constitution of India ordains that no citizen shall be deprived of his life or personal liberty except according to the procedure established by law. Under ordinary criminal laws, several safeguards are available to him such as, his arrest only in connection with cognizable/non-bailable offences and permitting him to apply for bail etc. The preventive detention laws have been conceived in order to control the activities of a person which tend to disturb public order as opposed to law and order and the procedural safeguards prescribed by the ordinary criminal laws are not available to the detenu under preventive detention laws."

10.4. In **Pushkar Mukherjee vs. State of West Bengal**[5], the Hon'ble Supreme Court held as under:

"13. ...It is manifest that every act of assault or injury to specific persons does not read (sic lead) to public disorder. ... The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. ***A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act. ..."***

(emphasis supplied)

Judge explained what is meant by 'public order' and how it is different from law and order. Paragraphs-54 and 55 reads as under:

> "54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(*b*) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.
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> 55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order

security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

10.5. In **Parolu Mahalakshmi vs. State of Telangana**[7], this Court dealt with the issue of when provisions of the Act can be invoked.

"12. Every violation of criminal law does cause a rippled in the society. But the ripples can be calmed down by use of normal Criminal Justice System. It is only when an offence strikes the society, like a tsunami, that as a weapon of the last resort, the detaining authority is justified in invoking the powers under preventive detention laws.

13. Therefore, while invoking the magical formula of preventive detention, the detaining authority is required to firstly consider whether the offences, allegedly committed by the detenu, can be dealt with within the normal course of Criminal Justice System or not ? The detaining authority should also examine whether the release of the detenu can be prevented by opposing his bail applications or not ? If bail were granted, whether an application for cancellation of bail can be filed or not ? Whether his detention under judicial custody can be ensured or not ? It is only after assessing these circumstances, and after being satisfied that the answer of all these issues is in the negative, that the detaining authority may be justified in passing the detention order."

11. Guided by the above enunciation of law, the issue is considered. In the case on hand, petitioner alleges that respondents 4 and 5 harassed him, detained and confined him in Gram Panchayat Office for about 3½ hours, abused him in filthy language and on caste lines and Gram Panchayat meetings are presided by the husband of the Sarpanch and illegalities are committed in the decisions of Gram Panchayat. He lodged two

people; they created forged documents; they extracted huge money from the innocent people with false assurance to provide employment; harassed many people and threatened him with dire consequences if they do not comply with their demands. The victims have lodged several complaints against the respondents 4 and 5. He therefore requested the Police to invoke the provisions of the Act and to detain them, so that they can be prevented from committing more crimes. It is the case of the petitioner that unless such power is exercised, petitioner and innocent persons would continue to suffer in their hands. In other words, according to the petitioner, respondents 4 and 5 are habitual offenders and they should be detained.

12. To attract the provision in Section 2 (a) of the Act 1 of 1986, a person must be acting in a manner prejudicial to the maintenance of public order. Maintenance of 'public order' means a person called as a land-grabber/a dacoit/a drug-offender/a goonda/an immoral traffic offender/or a land grabber, and such a person is engaged or is making preparations for engaging in any of his activities. In other words, the person must be already known to be a land-grabber/a dacoit/a drug-offender/a goonda/an immoral traffic offender/or a land grabber and is engaging him or attempted to engage in repeating such acts.

13. To assess the contentions urged by the petitioner with

complaint in Crime No.62 of 2020, it is seen that said utterance of the accused are with reference to the employment of the petitioner in Gram Panchayat and attending to duties of sanitization having regard to the prevailing pandemic. Petitioner alleges that even though he had some health problems while attending to sanitization, was hospitalized and took treatment, respondents 4 and 5 did not believe his statement and abused him in filthy language. From the allegations recorded in Crime No.63 of 2020, it is seen that petitioner alleges that in Grama Sabha conducted in the village, husband of the Sarpanch i.e., 4th respondent preceded over the function. Similarly in Gram Panchayat meetings also he preceded over the functions and passed resolutions regarding development activities in the village illegally and without following provisions of law. He ignored the objections filed by the Ward Members and abused them.

From various complaints stated to have been lodged by other victims, the nature of the allegations leveled ranged from creation of fake documents, extracting money from the innocent people with false assurance to provide employment in another country, involving in partnership firm matters by abusing the partners and threatening the family members and employees and demanding higher money, and taking loans, not repaying the borrowed amount and threatening the persons who gave the money with dire consequences etc. Thus, the contents and allegations leveled

thread and to bring them within the purview of the Act 1 of 1986. The crimes reported by the victims are pending at the stage of investigation. At this stage, it is not expedient to this Court to express its opinion on the nature of crimes reported against respondents 4 and 5. What is observed herein above is only for the purpose of assessing the claim of the petitioner.

14. Perforce, as noticed above, resorting to preventive detention is an extreme measure and not to be resorted as a matter of course or merely because some one assumes that he has a grievance against respondents 4 and 5 and his grievance can be resolved if they are detained by the Police. By such claim, he seeks to affect the right, liberty and privacy of a person, that are sacrosanct. Assuming that what is contended by the petitioner is true and by their actions, respondents 4 and 5 created law and order situation, it has to be seen whether the offences alleged against the respondents 4 and 5 would require exercise of power under Section 3 of the Act. Every law and order problem need not result in disturbance to public order. Thus, the competent authority has to have subjective satisfaction that unless extreme measures are taken the illegal activities of respondents 4 and 5 may result in affecting 'public order'. The satisfaction of the competent authority must be based on intelligence inputs on the movements, activities and the possibility of committing further crimes, which may cause harm/danger/alarm/feeling of insecurity among the

to exercise that power. Law enforcing agencies and administrative authorities at the district and state level are the best persons to assess the situation and to take all measures as required to enforce law and order more particularly public order, peace and tranquility. In the process and if so required they may resort to preventive detention.

15. Writ Court should not trench into areas which require consideration of intelligence inputs and assessment of law and order and in such matters, officers in law enforcing agencies are the best persons to make an assessment. In exercise of power of judicial review the writ Court cannot mandate the authority to exercise such power merely because the petitioner asks. Power of judicial review is available as and when power under the Act 1 of 1986 is invoked. At that stage, the writ Court may test whether such assessment of the competent authority meets the parameters to protect larger public interest so to affect an individual's right to life, liberty and privacy.

16. At this stage, it is to be noted that on the complaint lodged by the petitioner, two crimes were registered against the respondents 4 and 5 and the Police are investigating into the said crimes. Those crimes relate to petitioner's employment in the Gram Panchayat and the activities in the Gram Panchayat. It is not the case of petitioner in this writ petition that there is delay in

and 5, it cannot be assumed that they automatically qualify to be described as land-grabber/dacoit/ drug-offender/goonda/an immoral traffic offender/or land grabber and/or to be declared as persons indulging in any manner prejudicial to the maintenance of 'public order'.

17. It is not a case where the criminal justice system failed to discipline the respondents 4 and 5, they are indulging in repeated crimes, creating panic situation, affecting 'public order' and, therefore, the draconian law to be enforced.

18. Be that as it may, as consistently held by the constitutional Courts, it is for the competent authority to assess the situation and take a decision. This Court can not mandate the authority to do a particular act, in a particular manner because petitioner thinks that such course has to be adopted. It is not for the individual citizen to assess how the law enforcing agency should act but it is for that agency to come to subjective satisfaction of the need to resort to preventive detention. That satisfaction is also conditioned by the requirement of disturbance to 'public order', not 'law and order'.

19. Further, this is not a pro-bono litigation. This writ petition is instituted in his individual capacity alleging that respondents 4 and 5 have harassed him, detained and confined him in Gram Panchayat office and abused him in filthy language and on caste

and 5. As noticed above, prima facie, there is no common thread in the crimes so far reported against respondents 4 and 5. Therefore, even assuming that the police have miserably failed in assessing the gravity of the situation, he does not qualify to seek mandamus from this Court.

20. For the aforesaid reasons, I do not see any merit in the Writ Petition and is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE P.NAVEEN RAO

Date:22.12.2020
kkm/tvk

HONOURABLE SRI JUSTICE P.NAVEEN RAO