A SAMA ARUNA

v.

STATE OF TELANGANA AND ANR.

(Criminal Appeal No. 885 of 2017)

B MAY 03, 2017

**[S. A. BOBDE AND L. NAGESWARA RAO, JJ.]**

*Preventive Detention:*

*Detention under s.3(2) of Telangana Prevention of* C *Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 – Propriety of – Held: 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 – The power to detain under 1986 Act can be exercised only for preventing a person from* D *engaging in, or pursuing or taking some action which adversely affects or is likely to affect the maintenance of public order – Though the conduct and activities of the detenu in the past must be taken into account, but only those activities so far back can be considered which furnish a cause for preventive detention in the present – In* E *the present case, detention order was passed on the grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained – Detention order is set aside.*

*Judicial Review:*

F *Review of detention order – Scope of – Held: While reviewing detention order, Court does not substitute its judgment for the decision of the executive – But the Court has a duty to enquire that the decision of the executive is made upon matters laid down by the statute as relevant for reaching such decision.*

G **Allowing the appeal, the Court**

**HELD: 1.1. The detention order mentions six cases. Two incidents are about three to two years before the detention order dated 23.11.2016. The other incidents are about 9 to 14 years before the detention order. Peculiarly, though the first two**

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**incidents are mentioned, the detaining authority has not relied on them as grounds of detention. The detaining authority has relied on the four other cases as grounds of detention. The report in these cases was apparently lodged in the year 2016 for some reason best known to the police. However, that is not of much consequence since the FIR is in respect of incidents which are old, 9 to 14 years old. [Paras 7, 8] [58-B-C; 59-A-B]**

**1.2. The detaining authority has pointedly referred to only four offences of criminal conspiracy, cheating, kidnapping and extortion. In three out of these four cases he has been granted bail. The State accepted these orders. Each of them are beyond 9 years, up to 14 years, before the detention orders. The detaining authority has then gone to consider those grounds, to arrive at the satisfaction that the detenu needs to be detained in 2016. These grounds are so stale and mildewed that the exercise of the power of detention based on them appears *mala fide* in law. [Paras 9, 10 and 11] [59-C-F]**

**1.3. The four cases which are old and therefore, stale, pertain to the period from 2002 to 2007. They pertain to land grabbing and hence, the Court is not inclined to consider the impact of those cases on public order etc. They ought to have been excluded from consideration on the ground that they are stale and could not have been used to detain the detenu in the year 2016 under the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 which empowers the detaining authority to do so with a view to prevent a person from acting in any manner prejudicial to the maintenance of public order. [Para 12] [59-G-H]**

**1.4. Mere reference to two other cases which are 2-3 years old cannot be considered as relevant and proximate grounds of detention. The detaining authority itself has not done so. Every statement in the detention order must be taken to have been made responsibly. Where the detaining authority has detailed 4 cases and stated that these have been considered as the grounds of detention, it must be considered as true-speaking. Moreover, those incidents appeared to be cases of ordinary criminal trespass**

A which would not, in any way, be of much significance since they do not deal with the disruption of any public order which is relevant under the law dealing with preventive detention. [Para 13] [60-B-C]

1.5. The power to detain, under the Act of 1986 can be B exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to C the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far D back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such E activities. [Para 15] [61-C-D]

*Golam Hussain alias Gama v. Commissioner of Police, Calcutta and Ors.* [1974] 3 SCR 613 : 1974 (4) SCC 530 – relied on.

F 1.6. Therefore, detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in the light of the surrounding circumstances. G 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 H 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. [Para 16] [62-B-D]**

*G. Reddeiah v. Government of Andhra Pradesh and Anr.* **[2011] 12 SCR 454 : 2012 (2) SCC 389**; and *P.U. Iqbal v. Union of India and Ors.* **[1991] 3 Suppl. SCR 515 : 1992 (1) SCC 434 – relied on.**

**2.1. While reviewing a detention order, a court does not substitute its judgment for the decision of the executive. Nonetheless, the Court has a duty to enquire that the decision of the executive is made upon matters laid down by the statute as relevant for reaching such a decision. For what is at stake, is the personal liberty of a citizen guaranteed to him by the Constitution and of which he cannot be deprived, except for reasons laid down by the law and for a purpose sanctioned by law. [Para 17][62-E-F]**

*Machinder Shivaji v. The King* **AIR 1950 FC 129**; *Khudiram Das v. The State of West Bengal and Others* **[1975] 2 SCR 832 : 1975 (2) SCC 81 – relied on.**

**2.2. In the present case, the authority has come to a conclusion so unreasonable that no reasonable authority could ever reach. A detaining authority must be taken to know both, the purpose and the procedure of law. It is no answer to say that the authority was satisfied. Where the authority takes into account stale incidents which have gone by, to seed it would be safe to infer that the satisfaction of the authority is not a genuine one. [Para 21] [65-H; 66-A-B]**

*T.A. Abdul Rahman v. State of Kerela and Ors.* **[1989] 3 SCR 945 : 1989 (4) SCC 741 – relied on.**

**2.3. The extent of staleness of grounds in the present case compels the Court to examine the aspect of malice in law. It is not necessary to say that there was an actual malicious intent in making a wrong detention order. [Para 21] [66-B-C]**

*Smt. S.R. Venkataraman v. Union of India and Anr.* **[1979] 2 SCR 202 : 1979 (2) SCC 491– relied on.**

*Shearer v. Shields* **(1914) AC 808 – referred to.**

**2.4. The influence of the stale incidents in the detention order is too pernicious to be ignored, and the order must therefore go; both on account of being vitiated due to malice in law and for taking into account matters which ought not to have been taken into account. [Para 23] [67-C]**

**2.5. There is another reason why the detention order is unjustified. It was passed when the accused was in jail. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. [Para 24] [67-D]**

*Ramesh Yadav v. District Magistrate, Etah and Ors.* (1985) 4 SCC 232 – **relied on.**

**Case Law Reference**

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|---|---|---|
| [1974] 3 SCR 613 | relied on | Para 15 |
| [2011] 12 SCR 454 | relied on | Para 16 |
| [1991] 3 Suppl. SCR 515 | relied on | Para 16 |
| AIR 1950 FC 129 | relied on | Para 17 |
| [1975] 2 SCR 832 | relied on | Para 18 |
| [1989] 3 SCR 945 | relied on | Para 21 |
| [1979] 2 SCR 202 | relied on | Para 21 |
| (1914) AC 808 | referred to | Para 21 |
| (1985) 4 SCC 232 | relied on | Para 24 |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 885 of 2017.

From the Judgment and Order dated 22.03.2017 of the High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh in Writ Petition No. 43671 of 2016.

Vikas Singh, Vedula Venkata Ramana, Sr. Advs, Anupam Lal Das, Anirudh Singh, Krishanu Barua, Advs. for the Appellant.

Harin P. Raval, Sr. Adv, H. Venugopal, S. Udaya Kumar Sagar, Mrityunjai Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

**S. A. BOBDE, J.** 1. The appellant - the wife of the detenu, has preferred this appeal against the impugned judgment and order dated 22.03.2017 passed by the High Court of Hyderabad in Writ Petition No.43671 of 2016, whereby the High Court dismissed the writ petition challenging the order of detention dated 23.11.2016, issued against the detenu by Respondent No.2–Commissioner of Police, Rachakonda Commissionerate, Rangareddy District, Telangana.

2. The detenu has been charged for various offences which he had allegedly committed during the years 2002-2007. Four FIR's were registered for the said offences. He was admitted to bail in three FIR's. In the fourth FIR Crime No. 221 of 2016, he was arrested on 05.09.2016. To prevent him from seeking bail, while in judicial custody he was detained under the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, the 'Act of 1986').

3. The Respondent No.2 - Commissioner of Police, Rachakonda Commissionerate, Rangareddy District, Telangana, passed an order of detention against the detenu on 23.11.2016 under section 3(2) of the Act of 1986, for a unspecified period, from the date of service of the order on the detenu, and further directed that the detenu be lodged in Central Prison, Chenchalguda, Hyderabad.

4. The aforesaid detention order was accompanied by grounds for detention of the same date. The grounds in the detention order carried a statement informing the detenu of his right to represent against the order of detention to (i) the detaining authority i.e. Commissioner of Police, Rachakonda, (ii) the Chief Secretary to Government of Telangana State, Hyderabad, (iii) the Advisory Board.

5. The Respondent No.1 – State approved the aforesaid detention order on 01.12.2016 under section 3(3) of the Act of 1986. The Advisory Board reviewed the case on 02.01.2017 and opined that "there is sufficient cause for the detention of Sama Sanjeeva Reddy". After the report of the Advisory Board, the respondent-State confirmed the detention order on 15.02.2017. Being aggrieved, the appellant- the wife approached the High Court by filing a writ petition which was dismissed. Hence, this appeal.

A 6. The main contention of Mr. Vikas Singh, learned Senior Counsel appearing for the appellant, is that the grounds of detention are stale. They are based on the incidents which are said to have occurred between the period from 2002 to 2007 and are relied on by the detaining authority while forming its opinion and recording its satisfaction that the detenu needs to be detained on 23.11.2016.

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7. The aforesaid contention of Mr. Singh, learned Senior Counsel for the appellant, may be examined with reference to the detention order. The detention order mentions six cases as follows:

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| Sl. No. | Case No. | Date of Incident | Date of Reporting the incident | Offences under IPC |
|---|---|---|---|---|
| 1. | Crime No.554/2013 | 26.9.2013 | 21.11.2013 | 447, 427, 506 |
| 2. | Crime No.8/2014 | 21.11.2014 | 23.11.2015 | 447, 427 |
| 3. | Crime No.361/2016 | 2007 | 13.08.2016 | 363, 384, 420, 120B, Section 4 of AP LG Act and 25 1(B) of the Arms Act. |
| 4. | Crime No.362/2016 | 2007 | 13.08.2016 | 363, 384, 420, 120B, Section 4 of AP LG Act and 25 1(B) of the Arms Act. |
| 5. | Crime No.367/2016 | 2005 | 17.08.2016 | 363, 384, 420, 120B, Section 4 of AP LG Act and 25 1(B) of the Arms Act. |
| 6. | Crime No.221/2016 | 2002-03 | 05.09.2016 | 419, 420, 468, 363, 452, 323, 342, 386, 505 r/w 120B, Section 4 of AP LG Act and 25 1(B) of the Arms Act. |

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8. The first two incidents are about three to two years before the detention order dated 23.11.2016. The other incidents are about 9 to 14 years before the detention order. Peculiarly, though the first two incidents are mentioned, the detaining authority has not relied on them as grounds of detention. The detaining authority has relied on the four other cases which are item nos.3 to 6 as grounds of detention. The report in these cases was apparently lodged in the year 2016 for some reason best known to the police. However, that is not of much consequence since the FIR is in respect of incidents which are old, 9 to 14 years old. It is their relevance to a grossly belated order of detention which we have to consider.

9. The detaining authority has pointedly referred to only four offences of criminal conspiracy, cheating, kidnapping and extortion, in the limits of Pahadishareef Police Station and Adibatla Police Station of Rachakonda Commissionerate. In three out of these four cases he has been granted bail. The State accepted these orders.

10. Each of them are beyond 9 years, up to 14 years, before the detention orders. They have been considered under a sub-heading which is as follows:

> "THE FOLLOWING FACTS OF THE (4) CASES CONSIDERED AS GROUNDS FOR DETENTION WHICH WERE COMMITTED BY YOU IN THE RECENT PAST, WOULD PROVE YOUR ACTIVITY PREJUDICIAL TO THE MAINTENANCE OF PUBLIC ORDER."

11. The detaining authority has then gone to consider those grounds, to arrive at the satisfaction that the detenu needs to be detained in 2016. These grounds are so stale and mildewed that the exercise of the power of detention based on them appears mala fide in law.

12. The four cases which are old and therefore, stale, pertain to the period from 2002 to 2007. They pertain to land grabbing and hence, we are not inclined to consider the impact of those cases on public order etc. We are satisfied that they ought to have been excluded from consideration on the ground that they are stale and could not have been used to detain the detenu in the year 2016 under the Act of 1986 which empowers the detaining authority to do so with a view to prevent a person from acting in any manner prejudicial to the maintenance of public order.

A 13. We are not inclined to accept the justification offered by Mr. Harin P. Raval, learned Senior Counsel appearing on behalf of the respondents, that the mere reference to two other cases which are 2-3 years old should be considered as relevant and proximate grounds of detention, though the detaining authority itself has not done so. Every statement in the detention order must be taken to have been made B responsibly. Where the detaining authority has detailed 4 cases and stated that these have been considered as the grounds of detention it must be considered as true-speaking. Moreover, those incidents appeared to be cases of ordinary criminal trespass which would not, in any way, be of much significance since they do not deal with the disruption of any public C order which is relevant under the law dealing with preventive detention.

**14.** Section 3(1) confers the power of detention in the following terms:-

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

The purpose for which a detention order may be passed is confined E to 'preventing him from acting in any manner prejudicial to the maintenance of public order'.

The term "acting in any manner prejudicial to the maintenance of public order" is further defined as follows:-

F "*2. In this Act, unless the context otherwise requires,-*

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

*Explanation:- For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause*

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*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 wide spread danger to life or public health:"*

A person may be detained under the Act of 1986 with a view to prevent him from engaging in, or making preparations for engaging, in any such activities.

15. Obviously, therefore, the power to detain, under the Act of 1986 can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In Golam Hussain alias Gama v. Commissioner of Police, Calcutta and Ors.[1], this Court observed as follows:-

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

[1] (1974) 4 SCC 530

A Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.

16. We are, therefore, satisfied that the aforesaid detention order B was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior 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 C 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 D punish him for something he has done but to prevent him from doing it. *See G. Reddeiah v. Government of Andhra Pradesh and Anr.*[2], and *P.U. Iqbal v. Union of India and Ors.*[3]

**THE SCOPE OF JUDICIAL REVIEW**

17. While reviewing a detention order, a court does not substitute E its judgment for the decision of the executive. Nonetheless, the Court has a duty to enquire that the decision of the executive is made upon matters laid down by the statute as relevant for reaching such a decision. For what is at stake, is the personal liberty of a citizen guaranteed to him by the Constitution and of which he cannot be deprived, except for reasons laid down by the law and for a purpose sanctioned by law. As F early as in Machinder Shivaji v. The King[4], this Court observed:-

> "..... *and it would be a serious derogation from that responsibility if the Court were to substitute its judgment for the satisfaction of the executive authority and, to that end, undertake an investigation of the sufficiency of the materials* G *on which such satisfaction was grounded.*
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> *The Court can, however, examine the grounds disclosed by the Government to see if they are relevant to the object*

[2] (2012) 2 SCC 389
[3] (1992) 1 SCC 434
H [4] AIR 1950 FC 129

*which the legislation has in view, namely, the prevention of acts prejudicial to public safety and tranquility, for "satisfaction" in this connection must be grounded on material which is of rationally probative value."*

Later, in the case of *Khudiram Das vs. The State of West Bengal and Others*[5], while considering the judicial reviewability of the subjective satisfaction of the detaining authority, the Court surveyed the area within which the validity of the subjective satisfaction can be subjected to judicial scrutiny in the following paragraphs:-

*"9. ..... There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. Emperor v. Shibnath Banerji is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose: such a case would also negative the existence of satisfaction on the part of the authority. The existence of 'Improper purpose', that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if in exercising the power, the authority has acted under the dictation of another body as the Commissioner of Police did in Commissioner of Police v. Gordhandas Bhanji and the officer of the Ministry of Labour and National Service did in Simms Motor Units Ltd. v. Minister of Labour and National Service, the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the*

[5] (1975) 2 SCC 81

A *thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded 'on materials which are of rationally probative value'. Machinder v. King. The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad."*

18. This Court then dealt with the review of administrative findings which are not supported with substantial evidence in the following paragraphs of Khudiram Das (supra):-

D *"10. ..... But in England and in India, the courts stop-short at merely inquiring whether the grounds on which the authority has reached its subjective satisfaction are such that any reasonable person could possibly arrive at such satisfaction. "If", to use the words of Lord Greene, M. R., in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation words which have found approval of the House of Lords in Smith v. Rest Eller Rural District Council and Fawcett Properties Ltd. v. Buckingham County Council – 'the authority has come to a conclusion so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere". In such a case, a legitimate inference may fairly be drawn either that the authority "did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts'.....*

G *11. This discussion is sufficient to show that there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion. "Law has reached its finest moments", said Justice Douglas, "when it has freed man from the unlimited discretion of some ruler, some...official,*

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*some bureaucrat.... Absolute discretion is a ruthless master. It is more destructive of freedom then any of man's other inventions". United States v. Wunderlich and this is much more so in a case where personal liberty is involved. That is why the courts have devised various methods of judicial control so that power in the hands of an individual officer or authority is not misused or abused or exercised arbitrarily or without any justifiable grounds."*

19. Incidents which are old and stale and in which the detenu has been granted bail, cannot be said to have any relevance for detaining a citizen and depriving him of his liberty without a trial. This Court observed the following in the case of *Khudiram Das* (*Supra*):

*"The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Partap Singh v. State of Punjab. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to them, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider."*

20. We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute.

21. In this case, we find the authority has come to a conclusion so unreasonable that no reasonable authority could ever reach. A detaining

A authority must be taken to know both, the purpose and the procedure of law. It is no answer to say that the authority was satisfied. In *T.A. Abdul Rahman v. State of Kerela and Ors.*[6], this Court observed, where the authority takes into account stale incidents which have gone by to seed it would be safe to infer that the satisfaction of the authority is not a genuine one.

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The extent of staleness of grounds in this case compel us to examine the aspect of malice in law. It is not necessary to say that there was an actual malicious intent in making a wrong detention order. In *Smt. S.R. Venkataraman v. Union of India and Anr.*[7], this Court cited *Shearer v. Shields*[8], where Viscount Haldane observed as follows:-

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> *"A person who inflicts an injury upon another person in contravention of law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he* D *acts ignorantly and in that sense innocently."*

22. This Court then went on to observe in *Smt. S.R. Venkataraman (supra)* as follows:-

> "6. *It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a* E *discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard. C.J. in Pilling v. Abergele. Urban District Council where a duty to determine a question is conferred on an authority which state their reasons for the decision,*
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> *and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate* G *on the matter.*
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> *7. The principle which is applicable in such cases has thus*

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[6] (1989) 4 SCC 741
[7] (1979) 2 SCC 491
H [8] (1914) AC 808

*been stated by Lord Esher, M.R. in The Queen on the Prosecution of Richard Westbrook v. The Vestry of St. Pancras:* A

*"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."* B

*This view has been followed in Sadler v. Sheffield Corporation."*

23. The influence of the stale incidents in the detention order is too pernicious to be ignored, and the order must therefore go; both on account of being vitiated due to malice in law and for taking into account matters which ought not to have been taken into account. C

24. There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No. 221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In *Ramesh Yadav v. District Magistrate, Etah and Ors.*[9], this Court observed as follows:- D E

*"6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed."* F G

25. Therefore, in the facts and circumstances of this case, we allow this appeal, and set aside the aforesaid detention order dated

[9] (1985) 4 SCC 232 H

A 23.11.2016 passed by the Respondent No.2 – Commissioner of Police, Rachakonda Commissionerate, Rangareddy District, Telangana, as also the impugned judgment and order dated 22.03.2017 passed by the High Court of Judicature at Hyderabad in Writ Petition No.43671 of 2016.

B Kalpana K. Tripathy. Appeal allowed.