

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.71 of 2019

Date: 04.07.2019

Between:

Shaik Sandhya

...Petitioner

And

The State of Telangana,
Rep.by the Principal Secretary,
General Administration (Spl. (Law & Order) Department,
Secretariat Building, at Hyderabad, and others.

..Respondents

Counsel for the petitioner : Sri B. Raju

Counsel for the respondents: Sri S. Sarath
Special Government Pleader
The Advocate General

The Court made the following:

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

Smt. Shaik Sandhya, the wife of the detenu, Mr. Shaik Ghouse, has filed the present Habeas Corpus Petition, *inter alia*, on the ground that for the offences of attempt to murder, robbery, wrongful restraint and simple hurt, in which the detenu is allegedly involved, the Commissioner of Police, Cyberabad Police Commissionerate, the respondent No.2, has passed a preventive detention order on 28.11.2018. The said order was subsequently confirmed by the order, dated 05.02.2019, passed by the Principal Secretary to Government, (General Administration (Spl. Law and Order) Department, Government of Telangana, the respondent No.1.

Heard the learned counsel for the parties, and perused the impugned orders.

The petitioner submits that on 28.11.2018, the respondent No.2 had passed the impugned detention order ostensibly on the ground that the detenu was involved in three cases falling under Sections 307, 341, 324, 397, 398 & 506 read with 34 of IPC, which were registered against him in the year 2018. Subsequently, the said detention order was confirmed by the order, dated 05.02.2019, by the respondent No.1. Hence, the present petition before this Court.

Mr. B.Raju, the learned counsel for the petitioner, has vehemently contended that a distinction has to be made between "law and order" and "disturbance of public order". The detenu is alleged to have committed offences of attempt to murder, robbery, wrongful restraint and simple hurt. However, the detenu is so poor that he has not even managed to submit the sureties despite the fact

that bail was granted by the Court concerned in Crime No.696 of 2018 of Pet Basheerabad Police Station. Therefore, according to the learned counsel, individual cases of offences of attempt to murder, robbery, wrongful restraint and simple hurt would fall within the ambit of 'law and order problem', as such cases can be dealt with easily under the normal criminal justice system. In order to deal with these cases, the draconian preventive detention laws need not be invoked. Therefore, the invoking of the provisions of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act is an abuse of the process of law, and the action smacks of colourable exercise of power.

Secondly, it is a classic case where the defenseless and voiceless persons may have been arrested, and may have been falsely implicated by the Police in order to claim that it has "cracked a large number of cases".

Lastly, that such indiscriminating use of the preventive detention laws are in violation of right to life and personal liberty, which is guaranteed by the Article 21 of the Constitution of India. Hence, both the impugned orders deserve to be set aside by this Court.

On the other hand, Mr. S.Sharath, the learned Special Government Pleader, submits that even a series of offences of attempt to murder, robbery, wrongful restraint and simple hurt are likely to cause panic and insecurity in the minds of the people. Since these three cases of offences of attempt to murder, robbery, wrongful restraint and simple hurt were committed by the detenu during the

year 2018, the detaining authority was legally justified in passing the impugned orders. Hence, the learned Counsel has supported the impugned orders.

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

“Whether the detention order, dated 28.11.2018, passed by the respondent No.2 and the confirmation order, dated 05.02.2019, passed by the respondent No.1 are liable to be set aside?”

Point:-

In the case of Ram Manohar Lohia v. State of Bihar¹, the Hon'ble Supreme Court has, in fact, deprecated the invoking of the preventive law in order to tackle a law and order problem. The Hon'ble Supreme Court has observed 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

¹ AIR 1966 SC 740

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 it 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.”

In the case of *Kanu Biswas v. State of West Bengal*², the Supreme Court has opined as under:

“The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call ‘order publique’ and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?”

² (1972) 3 SCC 831

In the present case, the detenu is allegedly involved in three criminal cases in Crime Nos.115/2018, 696/2018 and 697/2018, during the year 2018. We shall present in a tabular column the date of occurrence, the date of registration of FIRs, the offence 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
115/2018 of Pet Basheerabad PS	18.02.2018	19.02.2018	Section 307 r/w 34 of IPC	Cognizable/ Non-Bailable
696/2018 of Pet Basheerabad PS	09.10.2018	09.10.2018	Sections 341, 324, 506 r/w 34 of IPC	Section 341: Cognizable/ Bailable Section 324 : Cognizable/ Non-Bailable Section 506 : Non-Cognizable/ Bailable
697/2018 of Pet Basheerabad PS	09.10.2018	09.10.2018	Sections 397 & 398 of IPC	Non-bailable/ Cognizable

There are two glaring facets of this case which have drawn the attention of this Court: firstly, the detenu was arrested on 21.02.2018 in Crime No.115/2018 and remanded to judicial custody. Subsequently, he moved bail petition in the said crime before the Court concerned and he was granted bail by the Court concerned, vide order, dated 07.04.2018, passed in CrI.M.P.No.1144/2018. After release on bail, he is alleged to have committed two more offences, i.e., Crime Nos.696/2018 and 697/2018 and was again arrested on 10.10.2018. Then he moved bail petition in Crime No.696/2018 and the Court concerned granted him bail, vide order, dated 12.10.2018, passed in CrI.M.P.No.1116/2018. Despite of the fact that the detenu was granted bail in Crime No.696/2018 by the Court concerned, he could not be released on the bail, as he was unable to furnish the

sureties required. Thus, the detenu happens to be an extremely poor person, who could not be set at liberty, only because of his poverty. Instances are not lacking where the voiceless and defenseless persons are rounded up by Police, and are forced “to confess” their involvement in crime. According to criminal psychology, due to fear and coercion, even the innocent men and women are likely to confess to a crime, although such crimes may not have been committed by them. Such “confessions” are merely a means to escape the torture to which they are subjected. At times, the Police use certain means, which although are illegal, but help the Police in “cracking a case” and in claiming that they have “solved the crime”. Therefore, *prima facie*, a grave possibility does exist that the detenu has been forced to confess to his involvement in cases of the year 2018.

Even otherwise, the cases of attempt to murder, robbery, wrongful restraint and simple hurt can easily be dealt within the ambit and scope of the general criminal justice administration. In catena of cases the Apex Court had already opined that the draconian power of preventive detention, which instantly deprives a person of his personal liberty, forces a person to be kept in custody without a fair trial and, that too, only on presumptions and suppositions, such powers should be exercised with great care and caution. Since the alleged criminal cases are against particular individuals, clearly such cases fall within the ambit of “law and order problem”. Therefore, the respondent No.2 was unjustified in issuing the preventive detention order, dated 28.11.2018.

Even while passing the confirmation order, dated 05.02.2019, the respondent No.1 has failed to notice that the detenu continues to

languish as an under-trial in the jail, as he could not furnish the sureties asked for in the bail order. Once the detenu was already confined, the question of confirming the detention order would not even arise.

In the result, the Writ Petition is allowed. The impugned detention order dated 28.11.2018, passed by respondent No.2, and the confirmation order dated 05.02.2019, passed by respondent No.1 are set aside. The respondents are directed to set the detenu, namely, Mr. Shaik Ghouse, S/o. Shaik Shadulla, at liberty forthwith, if he is no longer detained in judicial custody in the criminal cases, which have been so far registered against him.

The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

04th July, 2019
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