

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.1445 of 2019

Date: 27.06.2019

Between:

Shahensha Shareef

...Petitioner

And

The State of Telangana,
Rep. by its Principal Secretary (Spl (Law & Order) Dept.,
Secretariat Buildings, Hyderabad,
and others.

...Respondents

Counsel for the petitioner : Sri. P. Trivikram Reddy

Counsel for the respondents : The Advocate General

The Court made the following:

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

This Writ Petition, under Article 226 of the Constitution of India, is filed by the detenu, Mr. Shahensha Shareef, challenging the detention order dated 27.08.2018 passed by the Commissioner of Police, Rachakonda Police Commissionerate, the respondent No.2, and the confirmation order dated 06.11.2018 passed by the Principal Secretary to Government, General Administration (Spl.(Law & Order) Department, Government of Telangana, the respondent No.1.

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

Briefly, the facts of the case are that by relying on the eight offences of cheating registered against the detenu in the year 2018, the Commissioner of Police, Rachakonda Police Commissionerate, the respondent No.2, passed the detention order dated 27.08.2018. According to the respondent No.2, the detenu is involved in eight offences of cheating in the limits of police stations under Rachakonda Police Commissionerate. The detenu has his own modus to dupe the cell phone shopkeepers. He goes into the mobile shop posing himself as a rich person and purchases costly mobile phones. He transfers the amount to the shopkeeper's account through online banking mode, i.e., NEFT (National Electronic Fund Transfer) and soon after, he cancels the said transaction and leaves the shop and absconds. Relying on eight criminal cases registered in the year 2018, the

detention order was passed. Subsequently, by order dated 06.11.2018, the detention order was confirmed by the Principal Secretary to Government, General Administration (Spl. (Law & Order) Department, Government of Telangana, the respondent No.1. Hence, this writ petition before this Court.

Mr. T. Pradyumna Kumar Reddy, learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, that relying only on the eight recent cases registered against the detenu in the year 2018, the detention order is passed. The alleged cases 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 offences alleged are under the Indian Penal Code, the detenu 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 order tantamount to the colourable exercise of power. Thus, the impugned orders are legally unsustainable.

On the other hand, Mr. S. Sharath, the learned Special Government Pleader, pleads that in Crime No.154/2018 of Nacharam Police Station allegedly committed by the detenu, he managed to get bail from the Court concerned. The series of crimes allegedly committed by the detenu were sufficient to cause a feeling of insecurity in the minds of the people at large.

Since the *modus* of committing the crime was cheating, it has created sufficient panic in the minds of the general public. Therefore, the detaining authority was legally justified in passing the impugned orders. Hence, the learned Government Pleader 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 27.08.2018, passed by the respondent No.2 and the confirmation order, dated 06.11.2018, passed by the respondent No.1, are liable to be set aside?

In catena of cases, the Hon'ble Supreme Court had clearly opined that there is a vast difference between "law and order" and "public order". The offences which are committed against a particular individual fall within the ambit of "law and order". It is only when the public at large is adversely affected by the criminal activities of a person, is the conduct of a person said to disturb the public order. Moreover, individual cases can be dealt with by the criminal justice system. Therefore, there is no need for the detaining authority to invoke the draconian preventive detention laws against an individual. For the invoking of such law adversely effects the fundamental right of personal liberty which is protected and promoted by Article 21 of the Constitution of India. Hence, according to the Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

In the case of **Ram Manohar Lohia v. State of Bihar**¹, 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 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

¹ AIR 1966 SC 740

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?”

In the present case, the detenu is said to be involved in eight criminal cases in Crime Nos.324/2018, 395/2018, 587/2018, 441/2018, 218/2018, 47/2018, 109/2018 and 101/2018. We shall present in a tabular column the date of occurrence, the date of registration of FIRs, 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
324/2018 of Nacharam PS	04.03.2018	11.07.2018	Section 420 of IPC	Non-bailable/ Cognizable
395/2018 of RGI Airport PS	07.04.2018	14.07.2018	Section 420 of IPC	Non-bailable/ cognizable

² (1972) 3 SCC 831

587/2018 of Jeedimetla PS	09.03.2018	14.07.2018	Sections 420 & 380 of IPC	Non-bailable/ cognizable
441/2018 of Chandanagar PS	09.07.2018	14.07.2018	Section 420 of IPC	Non-bailable/ Cognizable
218/2018 of Shadnagar PS	08.04.2018	03.05.2018	Section 420 of IPC	Non-bailable/ Cognizable
47/2018 of Achampet PS	23.04.2018	27.04.2018	Section 420 of IPC	Non-bailable/ Cognizable
109/2018 of Chintapalli PS	18.04.2018	13.07.2018	Sections 420 & 406 of IPC	Non-bailable/ Cognizable
101/2018 of Nalgonda I Town	13.04.2018	03.05.2018	Section 420 of IPC	Non-bailable/ Cognizable

Grave as the offences may be, they have been committed against particular individuals. So, no inference of disturbance of public order can be drawn. These cases can be tried under the normal criminal law. Hence, there was no need for the detaining authority to pass the detention order.

A bare perusal of the detention order clearly reveals that the detaining authority is concerned by the fact that in Crime No.154 of 2018 of Nacharam Police Station, the detenu has been granted bail by the Court concerned. However, the apprehension of the detaining authority that even in future, there is every possibility of the detenu moving bail applications in the other remaining criminal cases pending against him is highly misplaced. Since the detaining authority is the Commissioner of Police himself, it is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of an accused and to handover the history-sheet of the accused. If the Police were vigilant enough to collect the data on the alleged offenders, and to furnish the relevant information

to the learned Public Prosecutors, the same could be placed by the learned Public Prosecutors before the learned Court. However, it is the Police that has failed to inform the learned Public Prosecutor about the criminal history of the offender. For the fault of the Police, the respondent No.2 cannot be permitted to invoke the preventive detention laws in order to breach the liberty of an individual. Therefore, for the reasons stated above, the impugned orders are legally unsustainable.

In the result, the Writ Petition is allowed. The impugned detention order dated 27-08-2018, passed by respondent No.2, and the confirmation order, dated 06-11-2018, passed by the respondent No.1 are set aside. The respondents are directed to set the *detenu*, namely Mr. Shahensha Shareef, S/o Shaik Shareef, 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

Date: 27.06.2019
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