

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 Nos.1118 and 1684 of 2019

Date: 27.06.2019

Writ Petition No.1118 of 2019:

Between:

Benod Varma.

...Petitioner

And

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

...Respondents

Counsel for the petitioner : Sri Pasham Trivikram Reddy

Counsel for the respondent : Sri S. Sharath Kumar,
Special Government Pleader
The Advocate General

Writ Petition No.1684 of 2019:

Between:

Shaik Nielufa W/o. Benod Varma.

...Petitioner

And

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

...Respondents

Counsel for the petitioner : Sri Pasham Trivikram Reddy

Counsel for the respondent : Sri S. Sharath Kumar,
Special Government Pleader
The Advocate General

The Court made the following:

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

Though the petitioners in these writ petitions are different, as the issue in the impugned orders of even date is same, they are being taken up together and disposed of by way of this common order.

Writ Petition No.1118 of 2019 is filed by Benod Varma and Writ Petition No.1684 of 2019 is filed by Shaik Nielufa. The petitioners herein are the detenus and they filed the present Habeas Corpus petitions, *inter alia*, on the ground that they were allegedly involved in human trafficking for the purpose of prostitution, the Commissioner of Police, Rachakonda Commissionerate, the respondent No.2, has passed preventive detention orders separately of even date dated 11.09.2018. The said orders were subsequently confirmed by separate Government orders of even date dated 15.11.2018, by the Principal Secretary to Government (POLL), Government of Telangana.

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

The petitioners herein submit that on 11.09.2018, the respondent No.2 had passed the impugned detention orders ostensibly on the ground that they were allegedly involved in human trafficking for the purpose of prostitution, registered for the offences under Sections 370A(2), 366-B of IPC and Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 during the year 2018. Subsequently, the said detention orders were confirmed by

the separate Government orders of even date dated 15.11.2018. Hence, the present petitions before this Court.

Mr. Pasham Trivikram Reddy, learned counsel for the petitioners, has raised the following contentions before this Court:

Firstly, relying only on the sole crime registered against the detenus that have allegedly committed the offence of human trafficking for the purpose of prostitution, the detention orders are passed. There is no iota of evidence about the alleged case registered against the detenus. The alleged case does 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 and Immoral Traffic (Prevention) Act, the detenus can certainly be tried and convicted for those offences. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned orders tantamount to the colourable exercise of power. Hence, both the detention orders and the confirmation orders are legally unsustainable and they deserve to be set aside by this Court.

On the other hand, Mr. S. Sharath, the learned Special Government Pleader, pleads that the nature of offence allegedly committed by them is sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crime was indulging in trafficking of woman for the purpose of prostitution from different areas, 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 these Writ Petitions are:

“Whether the detention orders of even date dated 11.09.2018, passed by the respondent No.2 and the confirmation orders of even date dated 15.11.2018, passed by the Principal Secretary to Government (POLL), Government of Telangana, are liable to be set aside?”

POINT:

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 affects the fundamental right of personal liberty which is protected and promoted by Article 21 of the Constitution of India. Hence, according to the Hon’ble 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 entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of

¹ AIR 1966 SC 740

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 detenus are said to be involved in Crime No.498 of 2018 of Neredmet PS, Rachakonda and the detaining authority relying upon the said crime, passed the detention orders. We shall present it 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
Crime No. 498/2018 of Neredmet PS	17.08.2018	17.08.2018	Sec.370(A)(2), 366(B) IPC, Sec.3,4 & 5 of Immoral Traffic (Prevention) Act	Non-bailable/ cognizable

² (1972) 3 SCC 831

It is appropriate to refer the decision rendered by the Hon'ble Apex Court in ***Vijay Narain Singh v. State of Bihar***³, wherein it was held that a single act or omission cannot be characterized as a habitual act or omission because the idea of 'habit' involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omission in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them, they cannot be treated as habitual ones.

A bare perusal of the detention orders clearly reveals that the detaining authority is concerned by the fact that the bail applications filed by the detenus were pending before the Court concerned. However, the apprehension of the detaining authority that the detenus are likely to get bail, 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 any 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 Court concerned. However, it is the Police that has to take required measures to deny bail to the accused by giving suitable instructions to Public Prosecutor/Assistant Public Prosecutor, as the case may be. For the inaction of the Police, the respondent

³ (1984) 3 SCC 14

No.2 cannot be permitted to invoke the preventive detention laws in order to breach the liberty of an individual.

Grave as the offence may be, it has been committed against particular individuals. So, no inference of disturbance of public order can be drawn. The instant case can be tried under the normal criminal law. Hence, there was no need for the detaining authority to pass the detention orders.

Even while passing the confirmation orders, dated 15.11.2018, the Principal Secretary to Government (POLL), Government of Telangana, has failed to notice that the detenus continues to languish as under-trials in the jail. Once the detenus were already confined, the question of confirming the detention orders would not even arise.

Therefore, for the reasons stated above, the impugned orders are legally unsustainable.

In the result, the Writ Petition Nos.1184 and 1684 of 2019 are allowed. The impugned detention orders of even date dated 11.09.2018, passed by respondent No.2, and the confirmation Government orders of even date dated 15.11.2018, passed by the respondent No.1, are set aside. The respondents are directed to set the *detenus*, namely Mr. Benod Varma @ Shaik Mejan S/o.Mustafa @ Jagannath Varma and Mrs. Shaik Nielufa W/o. Benod Varma, at liberty forthwith, if they are no longer required in any other criminal case.

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

27th June, 2019
scs

