

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.2177 of 2019

Date: 04.07.2019

Between:

Ayesha Begum

...Petitioner

And

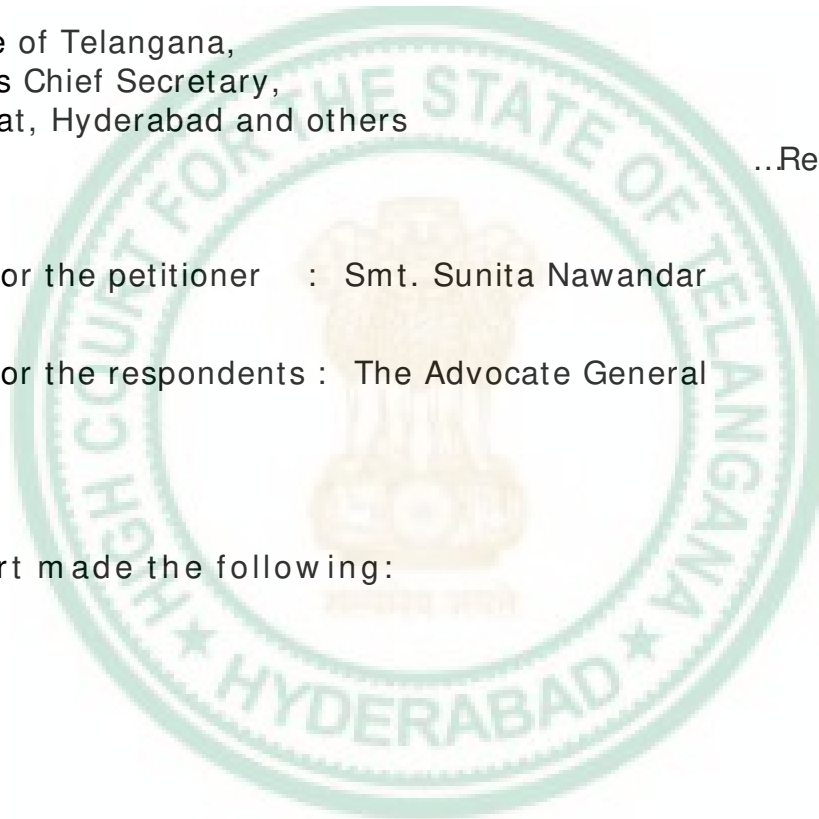
The State of Telangana,
Rep by its Chief Secretary,
Secretariat, Hyderabad and others

...Respondents

Counsel for the petitioner : Smt. Sunita Nawandar

Counsel for the respondents : The Advocate General

The Court made the following:



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

Smt. Ayesha Begum, the petitioner, has filed this present petition on behalf of her husband, Niyaz Mohammed Khan, the detenu, in order to challenge the detention order, dated 18.12.2018, passed by the Commissioner of Police, Cyberabad Police Commissionerate, and the confirmation order dated 11.02.2019 passed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana.

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

Briefly, the facts of the case are that by relying on the six recent cases registered against the detenu, the Commissioner of Police, Cyberabad Police Commissionerate, passed the detention order dated 18.12.2018. According to the detaining authority, the detenu is a 'Goonda' and has been engaging himself in property offences in an organized way in the limits of Cyberabad Police Commissionerate. Subsequently, by order dated 11.02.2019, the detention order was confirmed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana. Hence, this writ petition before this Court.

Smt. Sunita Nawandar, learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, that relying only on the six cases registered against the detenu in the year 2018, the detention order is passed.

Secondly, 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 all the cases registered against the detenu, he managed to get bail from the Court concerned. The series of crimes allegedly committed by him were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crime was property theft, 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 18.12.2018, passed by the Commissioner of Police, Cyberabad Police Commissionerate, and the confirmation order, dated 11.02.2019, passed by the Principal Secretary to Government, General Administration (Spl (Law & Order) Department, 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 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 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

¹ AIR 1966 SC 740

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 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 'ordre 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

² (1972) 3 SCC 831

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 allegedly involved in six criminal cases in Crime Nos.862/2018, 735/2018, 1587/2018, 1588/2018, 362/2018 and 350/2018. We shall present them 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
862/2018 of Mailardevpally PS	22.10.2018	22.10.2018	Sections 120B, 420, 379, 468 & 471 of IPC	Section 120B : Non-Cognizable/ Bailable Sections 420, 379, 468 : Cognizable/ Non-bailable Section 471 : Cognizable/ Bailable
735/2018 of Narsingi PS	22.10.2018	22.10.2018	Sections 379 & 420 of IPC	Non-bailable/ cognizable
1587/2018 of Rajendranagar PS	22.10.2018	22.10.2018	Sections 379 & 420 of IPC	Non-bailable/ cognizable
1588/2018 of Rajendranagar PS	22.10.2018	22.10.2018	Sections 379 & 420 of IPC	Non-bailable/ cognizable
362/2018 of Shamshabad PS	22.10.2018	22.10.2018	Sections 379 & 420 of IPC	Non-bailable/ cognizable
350/2018 of Pahadisharif PS	22.10.2018	22.10.2018	Sections 379 & 420 of IPC	Non-bailable/ cognizable

A bare perusal of the detention order clearly reveals that the detaining authority is concerned by the fact that in all the cases relied upon by the detaining authority, the detenu was granted bail by the Court concerned. However, the apprehension of the detaining

authority that even in future the *detenu* would indulge in similar prejudicial activities unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. 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 concerned Court. However, it is the Police that have to take required measures to inform the Public Prosecutor about the criminal history of the offender. For the inaction of the Police, the detaining authority cannot be permitted to invoke the preventive detention laws, in order to breach the liberty of an individual.

Grave as the offences may be, they are property thefts. 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.

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 18.12.2018 and the confirmation order dated 11.02.2019 are hereby set aside. The respondents are directed to set the *detenu*, namely Niyaz Mohammed Khan, S/o. Abdul Majid Khan, 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
Bvv

