

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.1231 of 2019

Date: 27.06.2019

Between:

P. Krishna.

...Petitioner

And

The State of Telangana,
Rep. by its Principal Secretary (Poll),
Secretariat, Hyderabad and others.

...Respondents

Counsel for the petitioner : Sri M.A.K. Mukheed

Counsel for the respondents : Sri S. Sharath Kumar
Special Government Pleader

The Court made the following:

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

Mr.P.Krishna, son of the detenue-Smt.Pakanati Padmamma @ Padma, has filed the present Habeas Corpus Petition, *inter alia*, on the ground that the detenue is allegedly running brothel house by securing girls and forcibly trapping them into prostitution, the Commissioner of Police, Rachakonda Commissionerate, the respondent No.2, has passed a preventive detention order on 06.10.2018. The said order was subsequently confirmed by the order, dated 21.12.2018, passed by the Principal Secretary to Government (POLL), Government of Telangana.

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

The petitioner submits that on 06.10.2018, the respondent No.2 had passed the impugned detention order ostensibly on the ground that his mother was indulged in running brothel house by securing the girls and forcibly trapping them into prostitution and case in Crime No.240/2018 for the offences under Sections 365, 366(A), 368, 370(1)(D), 372, 373, 376 r/w 114 IPC, Sec.17 of the Protection of Children from Sexual Offences Act (for short "POCSO Act"), Sections 75 and 81 of Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "J.J Act") and Sections 3, 4, 5, 6 and 7 of Immoral Traffic (Prevention) Act, 1956 (for short "PITA") was registered against the detenue during the year 2018. Subsequently, the said detention order was confirmed by the

order, dated 21.12.2018. Hence, the present petition before this Court.

Mr. M.A.K.Mukheed, 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 detainee is alleged to have committed human trafficking for the purpose of prostitution. The bail application filed by the detainee was dismissed and the detainee continued to be in judicial custody. Therefore, there is absolutely no necessity to pass the order of detention against a person who is in judicial custody. Therefore, according to the learned counsel, the case under human trafficking for the purpose of prostitution would fall within the ambit of law and order problem and such case can be dealt with easily under the normal criminal justice system. In order to deal with such case, 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.

Finally, 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 the nature of offences allegedly committed by her 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 human trafficking for the purpose of prostitution, 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 06.10.2018, passed by the respondent No.2 and the confirmation order dated 21.12.2018, 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, the conduct of a person is 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 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

¹ AIR 1966 SC 740

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?”

In the present case, the detainee is said to be involved in Crime No.240 of 2018 of Abdullapurmet PS and the detaining authority relying upon the said crime, passed the detention order. 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.

² (1972) 3 SCC 831

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
Cr.No.240/2018 of Abdullapurmet PS	prior to 09.08.2018	09.08.2018	Sections 365, 366(A), 368, 370(1)(D), 372, 373, 376 r/w 114 IPC, Sec.17 of POCSO Act, 2012, Sec.75 & 81 of JJ Act, 2015 and Sec.3,4,5,6 and 7 of Immoral Traffic (Prevention) Act	Non-bailable/ cognizable

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 order clearly reveals that bail application filed by the detainee was dismissed. However, the apprehension of the detaining authority that even in future the detainee is 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 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

³ (1984) 3 SCC 14

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 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 order.

Even while passing the confirmation order dated 21.12.2018, the Principal Secretary to Government (POLL), Government of Telangana, has failed to notice that the detainee continues to languish as under-trial in the jail. Once the detainee was already confined, the question of confirming the detention order would not even arise.

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

In the result, the Writ Petition allowed. The impugned detention order dated 06.10.2018, passed by respondent No.2, and the confirmation order, dated 21.12.2018, passed by the respondent No.1, are set aside. The respondents are directed to set the detainee, namely Smt. Pakanati Padmamma @ Padma W/o.

Late Bixapati, at liberty forthwith, if she is no longer required in any other criminal case.

The miscellaneous petitions pending, 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

