

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.1839 of 2019

Date: 04.07.2019

Between:

Sri Kethavath Basya

..Petitioner

And

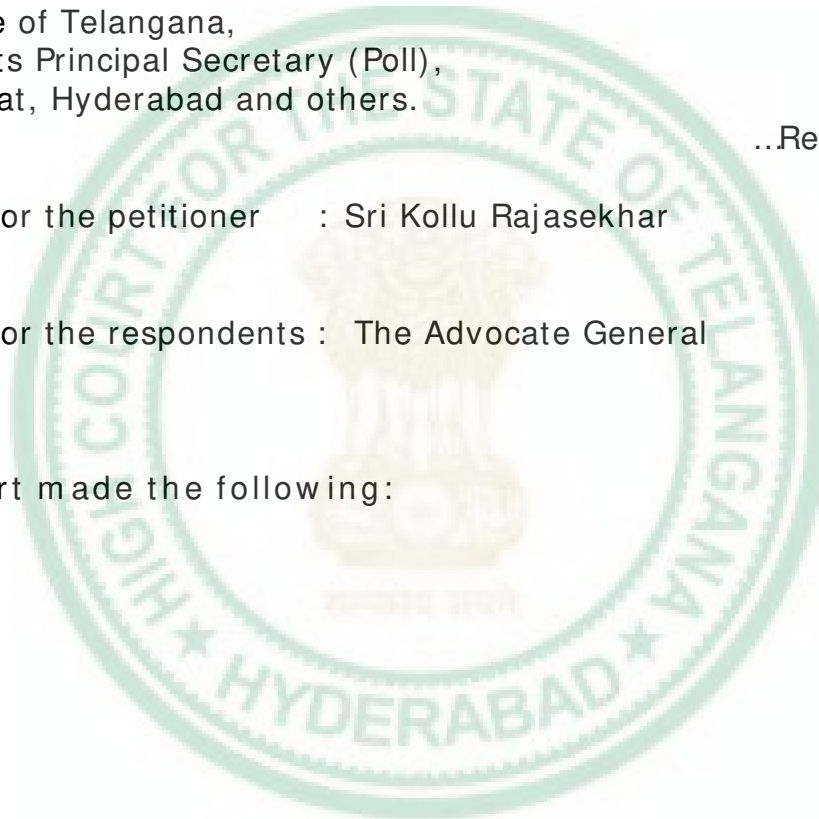
The State of Telangana,
Rep. by its Principal Secretary (Poll),
Secretariat, Hyderabad and others.

..Respondents

Counsel for the petitioner : Sri Kollu Rajasekhar

Counsel for the respondents : The Advocate General

The Court made the following:



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

Alleging that his son, Mr. Kethavath Heeralal, S/o. Basya, aged 23 years, is involved in a crime of peddling Narcotic Drugs among innocent people in the limits of Hyderabad Police Commissionerate, registered in the year 2018, his son is being preventively detained by order dated 26.07.2018 passed by the Commissioner of Police, Hyderabad City, the respondent No.2, and confirmed by order dated 16.10.2018 by the Principal Secretary to Government, General Administration (Spl. (Law and order) Department, Government of Telangana, the respondent No.1, the unfortunate father, Kethavath Basya, has approached this Court.

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

Briefly, the facts of the case are that by relying on one criminal case registered against the detenu in the year 2018 (Crime No.98 of 2018 of Malakpet Police Station, for the offence punishable under Section 8(c) read with 20(b)(ii)(c) of NDPS Act, 1985) with respect to peddling of Narcotic Drugs among innocent people in the limits of Hyderabad Police Commissionerate and endangering the lives of youth and innocent people and causing irreparable damage to the body parts including central nervous system and thereby crippling the mental and physical health of people addicted to drugs, the Commissioner of Police, Hyderabad City, the respondent No.2, passed the detention order dated 26.07.2018. Subsequently, by order dated 16.10.2018, the detention order was confirmed by the respondent No.1. Hence, this petition before this Court.

Mr. Kollu Rajasekhar, the learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, relying only on one case registered against the detenu in the year 2018, the impugned detention order is passed.

Secondly, such case can easily be tackled by the criminal justice system by holding a criminal trial. Therefore, the alleged case, basing on which the detention order was passed, would fall within the ambit of “law and order problem”. Relying on the case of *Ram Manohar Lohia v. State of Bihar*¹, learned counsel has pleaded that a distinction has to be maintained between “a law and order problem” and “a public order problem”. Since the case narrated by the detaining authority do not fall within the ambit of “disturbance of public order”, the detaining authority is unjustified in invoking the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act. Therefore, the detention of the detenu is patently illegal. Hence, the detaining authority is unjustified in claiming that the alleged crime has created a panic and have “disturbed the public order”.

Thirdly, youngmen, like the detenu, are randomly picked up by the police, and falsely implicated. Therefore, the detaining authority

¹ AIR 1966 SC 740

is not justified in invoking a draconian power under the preventive detention laws. According to the learned counsel, the detaining authority has to be extremely careful while passing a detention order. For detention *ipso facto* adversely affects the fundamental right of personal liberty enjoyed by the people under Article 21 of the Constitution of India.

Lastly, even while confirming the detention order dated 26.07.2018, by order dated 16.10.2018, the respondent No.1 has not applied his mind to the facts and circumstances of the case. Instead, the confirmation order has been passed in a mechanical manner. Admittedly, in the alleged crime relied by the respondent No.2, the detenu had moved three bail applications and all the three bail applications were dismissed by the Court concerned. Thus, the detenu continues to be in judicial custody. Despite the fact that the detenu is in custody, still the preventive detention order has been passed against the detenu. Therefore, even the confirmation order deserves to be set aside by this Court.

On the other hand, Mr. Sharath, learned Special Government Pleader, has vehemently pleaded that the detenu has indulged in peddling narcotic drugs in the limits of Hyderabad Police Commissionerate, duly endangering the lives of youth and innocent people and causing irreparable loss to the mental and physical health of the people addicted to drugs. Therefore, the crime alleged committed by the detenu has created a sense of insecurity and panic in the minds of the people. Hence, the case falls within the ambit of “public order”. Therefore, the detaining authority was certainly

justified in passing the impugned orders. Thus, the learned counsel has supported both 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 26.07.2018, passed by the respondent No.2 and the confirmation order, dated 16.10.2018, passed by the respondent No.1, are liable to be set aside?

Point:

In the case of Kanu Biswas v. State of West Bengal², 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 Ram Manohar Lohia’s case (supra) 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

² (1972) 3 SCC 831

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 maintenance of law and order under ordinary circumstances."

In the present case, the respondent No.2 had relied on only one case registered in the year 2018 for preventively detaining the detenu. We shall present in a tabular column the date of occurrence,

the date of registration of FIR, 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
98/2018 of Malakpet PS	21.05.2018	21.05.2018	Section 8(c) r/w 20(b)(ii)(c) of NDPS 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 perusal of the impugned detention order reveals that the detenu is involved in only one criminal case registered against him (Crime No.98 of 2018 of Malakpet Police Station) and the detaining authority has taken the same as the basis for preventively detaining him. The detenu moved first bail petition in the subject crime on 30.05.2018 and the same was dismissed by the Court concerned, vide order, dated 23.06.2018, passed in CrI.M.P.No.1674/2018. The detenu moved second bail petition on 26.06.2018 and the same was dismissed by the Court concerned, vide order, dated 04.07.2018, passed in CrI.M.P.No.1924/2018. The detenu moved third bail petition on 10.07.2018 and the same was dismissed by the Court concerned, vide order, dated 25.07.2018, passed in

³ (1984) 3 SCC 14

CrI.M.P.No.2108/2018. Thus, the detenu continues to be in judicial custody. The crime allegedly committed by the detenu is for the offence punishable under Section 8(c) read with 20(b)(ii)(c) of the NDPS Act, 1985. These type of cases can certainly be tried under the normal criminal justice system. And, if convicted, can certainly be punished by the Court of law. Thus, the case does not fall within the ambit of the words “public order”. Instead, it falls within the scope of the words “law and order”.

It is, indeed, trite to state that preventive laws are draconian in nature, as they adversely affect the personal liberty of an individual. Therefore, in catena of cases, the Hon'ble Supreme Court has repeatedly opined that preventive detention laws should be used sparingly, rather than being used frequently. It is only when it is a case of “disturbance of public order” that the detaining authority would be legally justified in invoking and in using the powerful weapon of the preventive laws. But, the preventive laws cannot be used in order to control petty offences. In case the use of preventive detention laws were permitted to be invoked for tackling petty offences, it will make the normal criminal justice system redundant.

A perusal of the order, dated 26.07.2018, passed by the respondent No.2 reveals that the said order has been passed in a mechanical manner. For neither the facts, nor the circumstances have been discussed to any extent. Therefore, neither of the two orders are legally sustainable.

In the result, the Writ Petition is allowed. The impugned detention order dated 26.07.2018, passed by respondent No.2, and the confirmation order dated 16.10.2018, passed by respondent No.1

are set aside. The respondents are directed to set the detenu, namely, Mr. Kethavath Heeralal, S/o. Basya, 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

