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.7504 of 2019

Date: 11.07.2019

Between:

Y. Balraj Goud

...Petitioner

And

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

...Respondents

Counsel for the Petitioner : Sri B. Mohana Reddy

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

The Advocate General

The Court made the following:

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

Sri Y. Balraj Goud, the petitioner, has filed this present petition on behalf of his son-Yellagoni Uday Bhasker Goud, the detenu, challenging the detention order dated 09.02.2019 passed by the Commissioner of Police, Rachakonda Police Commissionerate, the respondent No.2, and the confirmation order dated 19.03.2019 passed by the Principal Secretary to Government (POLL), General Administration (Spl (Law and 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 four recent cases registered against the detenu during the years 2018 and 2019, the Commissioner of Police, Rachakonda Police Commissionerate, the respondent No.2, passed the detention order dated 09.02.2019. According to the respondent No.2, the detenu was involved in as many as five cases of murder, criminal conspiracy, wrongful confinement, cheating and criminal intimidation in the limits of various police stations under Rachakonda Police Commissionerate. But, merely relying on the four recent cases registered against the detenu during the years 2018 and 2019, the detention order was passed. Subsequently, by order dated 19.03.2019, the detention order was confirmed by the Principal Secretary to Government (POLL), General Administration (Spl (Law and Order) Department, Government of Telangana, respondent No.1. Hence, this writ petition before this Court.

Sri B. Mohana Reddy, the learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, relying only on the four recent cases registered against the detenu during the years 2018 and 2019, the detention order is passed.

Secondly, curiously, all the cases registered in the years 2018 and 2019 relate to the offences of murder, wrongful confinement, cheating, criminal breach of trust and criminal intimidation.

Thirdly, such cases can easily be tackled by the criminal justice system by holding a criminal trial. Therefore, all these cases 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 cases 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 these cases have created a panic and have "disturbed the public order".

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[1] AIR 1966 SC 740

Fourthly, the detaining authority 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 09.02.2019, the respondent No.1 has not applied his mind to the facts and circumstances of the case. Instead, the confirmation order dated 19.03.2019 has been passed in a mechanical manner. Admittedly, in the present case, the bail application moved by the petitioner in Crime No.900/2018 is pending consideration before 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.S.Sharath, the learned Special Government Pleader, submits that the nature of offences allegedly committed by him is sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crimes were murder, wrongful confinement, cheating, criminal breach of trust and criminal intimidation, it had 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 09.02.2019, passed by the respondent No.2 and the confirmation order, dated 19.03.2019, passed by the respondent No.1, 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 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[2], 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

[2] AIR 1966 SC 740

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 case of Kanu Biswas v. State of West Bengal[3], 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

[3] (1972) 3 SCC 831

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 allegedly involved in four criminal cases vide Crime Nos.850/2018, 900/2018, 31/2019 and 65/2019. 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.

Sl. No.	Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
1.	850/2018 of Madhapur (Guttala) PS	17.10.2018	17.10.2018	Sections 342, 323, 506 r/w 34 of IPC	Sections 323 & 506 : Non-Cognizable/ Bailable Section 342 : Cognizable/ Bailable
2.	900/2018 of Medipally PS	21.11.2018	21.11.2018	Sections 302, 120B, 109, 212, 148 of IPC and Section 25(B)(1) of Indian Arms Act	Section 302 : Cognizable/ Non-Bailable Section 212 & 148 : Cognizable/ Bailable Section 120B : Non-cognizable/ Bailable
3.	31/2019 of Kukatpally PS	Prior to 18.01.2019	18.01.2019	Sections 406, 420 & 506 of IPC	Sections 406 & 420 : Cognizable/ Non-Bailable Section 506 : Non-cognizable/ Bailable
4.	65/2019 of Madhapur (Guttala) PS	Prior to 19.01.2019	19.01.2019	Sections 406, 420 & 506 of IPC	Sections 406 & 420 : Cognizable/ Non-Bailable Section 506 : Non-cognizable/ Bailable

A bare perusal of the detention order clearly reveals that the bail application filed by the detenu in Crime No.900/2018 is pending consideration before the Court below. However, the apprehension of the detaining authority that there is every likelihood of the detenu coming out on bail in the said crime and also moving bail applications in the other cases and in the event of his release on bail, there is imminent possibility of resorting to similar prejudicial activities, 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 concerned Court. However, it is the Police that has to take required measures to inform the Public Prosecutor about the criminal history of the offender and appraise the Court about the criminal tendency of the offender to deny the bail.

Grave as the offences may be, they relate to murder, wrongful confinement, cheating, criminal breach of trust and criminal intimidation. 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, the impugned orders are legally unsustainable.

Even while passing the confirmation order dated 19.03.2019, the Principal Secretary to Government (POLL), General Administration (Spl

(Law and Order) Department, Government of Telangana, the respondent No.1, has failed to notice that the detenu continues to languish as under-trial in the jail. Once the detenu was already confined, the question of confirming the detention order would not even arise.

For the reasons stated above, the Writ Petition is hereby allowed. The impugned detention order dated 09.02.2019 and the confirmation order dated 19.03.2019 are hereby set aside. The respondents are directed to set the detenu, namely, Yellagoni Uday Bhasker Goud, S/o. Y. Balraj, at liberty forthwith, if he is no longer detained in the judicial custody in the criminal cases, which have been registered so far against him.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

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RAGHVENDRA SINGH CHAUHAN, HCJ

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Dr. SHAMEEM AKTHER, J

11th July, 2019
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