

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Petition No.7790 of 2019

Date: 05.09.2019

Between:

T.Sambasiva Rao

..Petitioner

And

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

..Respondents

Counsel for the Petitioner : Smt.B.Mohana Reddy

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

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

The present Writ Petition is filed by Mr.T.Sambnasiva Rao, the brother of the detenu, Smt.Govula Janaki @ Mulla Janaki, aggrieved by the detention order passed by the 2nd respondent who by exercising the powers conferred under Section 3(2) of 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, 1986 (in short, hereinafter referred to as 'the Act'), vide proceedings SB(I) No.296/PD-5/HYD/2018, dated 26.11.2018, and confirmed by the 1st respondent vide G.O.Rt.No.365, General Administration (Spl.(Law & Order) Department, dated 06.02.2019.

2. The brief facts of the case are that allegedly the detenu has committed seven offences in the recent past; allegedly the detenu is a habitual offender, and is creating panic among the general public especially the women folk. According to the respondents, it is necessary to pass the detention order. The respondent No.2 while passing the order of detention has taken into consideration the ground that the accused has moved bail petitions in all the criminal cases. If she were released from jail, there is an imminent possibility of her

committing similar offences, unless prevented from doing so, by an appropriate order of detention.

3. Heard the learned Counsel for the parties, and perused the impugned order.

4. Learned counsel for the petitioner has raised the following contentions before this Court:

Firstly, relying only upon the seven recent cases registered against the detenu during the year 2018, the detention order is passed.

Secondly, curiously, all the cases registered against the detenu in the year 2018 relate to theft of gold ornaments and cash etc., from the passengers travelling in RTC buses.

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 provisions of the 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”.

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 26.11.2018, the first respondent has not applied his mind to the facts and circumstances of the case. Instead, the confirmation order dated 06.02.2019 has been passed in a mechanical manner. Admittedly, in the present case, the bail applications moved by the petitioner in all the seven cases were allowed by the Court concerned. Therefore, even the confirmation order deserves to be set aside by this Court.

5. On the other hand, Mr.S.Sharath Kumar, the learned Special Government Pleader, submits that the nature of offences allegedly committed by the detenu is sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crimes was theft, 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.

6. 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 26.11.2018 passed by the second respondent and the confirmation order, dated 06.02.2019, passed by the first respondent, are liable to be set aside or not?”

POINT:

7. 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 normal criminal justice system. Therefore, there is no need for the detaining authority to invoke the draconian preventive detention laws against an individual. Further 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 Apex Court, the detaining authority should be wary of invoking of immense power under the Act.

8. In the case of Ram Manohar Lohia (1 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 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.

9. 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

² (1972) 3 SCC 831

so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?

10. The Hon'ble Supreme Court as well as this Court in catena of decisions has time and again held that the preventive detention orders cannot be passed, on the sole ground that the detenu is likely to commit similar offences while on bail. The mere apprehension of the authority passing the detention order cannot be a ground for passing such orders and the detention orders cannot subvert the judicial process. It is well established principle of law that the detention orders cannot be passed in a mechanical manner only to see that the orders passed by the criminal courts are subverted, once bails have been granted to a particular accused, he cannot be detained under the guise of detention orders. One of the fundamental and most important right of a person guaranteed by the Constitution of India is the personal liberty under Article 21 of the Constitution of India and the same cannot be curtailed upon by the authorities. The Hon'ble Supreme Court in *STATE OF MAHARASHTRA v. BHANURAO PUNJABRAO GAWANDE* (2008) 3 SCC 613) held as under:

23. ... Personal liberty is a precious right. So did the Founding fathers believe because, while their first object was to give unto the people a Constitution whereby a Government was established, their second object, equally important, was to protect the people against the Government. That is why, while conferring extensive powers on the Government like power to declare an emergency, the power to suspend the enforcement of fundamental rights or the power to issue ordinances, they assured to the people a Bill of Rights by Part III of the

Constitution, protecting against executive and legislative despotism those human rights which they regarded as 'fundamental'. The imperative necessity to protect those rights is a lesson taught by all history and all human experience. Our Constitution-makers had lived through bitter years and seen an alien Government trample upon human rights which the country had fought hard to preserve. They believed like Jefferson that 'an elective despotism was not the Government we fought for'. And, therefore, while arming the Government with large powers to prevent anarchy from within and conquest from without, they took care to ensure that those powers were not abused to mutilate the liberties of the people.

11. Article 22(3)(b) of the Constitution of India cannot be read in isolation, but must be read along with Articles 19 and 21 of the Constitution of India.

12. Grave as the offences may be, they relate to theft. So, no inference of disturbance of public order can be drawn. 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. Hence, there was no need for the detaining authority to pass the detention order. Therefore, the impugned orders are legally unsustainable.

13. Even while passing the confirmation order, dated 06.02.2019, the Chief Secretary, General Administration (L&O) Department, the 1st respondent herein, passed the order in a mechanical manner without application of mind.

14. In view of the above stated reasons, the impugned detention order dated 26.11.2018, passed by respondent No.2, and the confirmation order dated 06.02.2019, passed by

respondent No.1 are set aside. The respondents are directed to set the detenu, namely Smt.Govula Janaki @ Mulla Janaki, w/o.Govula Ramesh, at liberty forthwith, if she is no longer detained in judicial custody in the criminal cases, which have been so far registered against her.

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

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHI SHEK REDDY, J

5th September, 2019
smr

