

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.8878 OF 2019

Date : 19.09.2019

Between :

Pathlavath Juman

... Petitioner

and

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

... Respondents

Counsel for the petitioner: Ms.Ravula Sowmya 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)

Smt.Pathlavath Jumani, the mother of the detenu, Pathlavath Naresh, has filed the present Writ Petition, challenging 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, 'the Act'), vide proceedings No.06/PD/CCRB/CYB/2019, dated 05.02.2019, and confirmed by the 1st respondent vide G.O.Rt.No.866, General Administration (Spl. (Law & Order) Department dated 23.03.2019, alleging that Pathlavath Naresh has been habitually engaging himself in unlawful acts, and indulging in sexual offences and creating panic and fear in the minds of public, which are prejudicial to the maintenance of public order. The ground on which the impugned detention order is passed by the 2nd respondent is that in the year 2018, the detenu was involved in two similar offences viz., (1) crime No.300/2018 of RGIA Police Station registered for the offence under Section 354-D IPC and Section 9 (f) read with 10 of Protection of Children from Sexual Offences Act, 2012, and (2) crime No.558/2018 of RGIA Police Station registered for the offence under Section 376 (2) (i) IPC and

Section 5 (m) read with 6 of Protection of Children from Sexual Offences Act, 2012.

2) It is the case of the petitioner that the detenu was falsely implicated in the above referred two cases. Even though, the detenu got bail in both the above referred cases, he continued to be in judicial custody due to passing of the impugned detention order and the same is passed only to see that the detenu does not come out of the jail. Hence, the present writ petition.

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

4) Ms.Ravula Sowmya Reddy, learned counsel appearing for the petitioner, submits that relying only on two cases registered against the detenu, that too in the year 2018, the impugned detention order is passed. She further submits that the alleged cases do not amount 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 Indian Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned order tantamounts to the colourable exercise power. Thus, the impugned orders are legally unsustainable.

5) On the other hand, Mr.S.Sharath Kumar, the learned Special Government Pleader, pleads that in both the cases registered against the detenu, he obtained bail from the concerned Court. The series of crimes allegedly committed by him were

sufficient to cause a feeling of insecurity and fear in the minds of the people at large. Since the *modus* of crime is committing sexual offence on minor girls taking advantage of absence of their parents in the house, it has created sufficient panic and fear in the minds of the general public. Therefore, the detaining authority was legally justified in passing the impugned detention order. Hence, the learned Special Government Pleader has supported the impugned orders.

6) In view of the submissions made by both the sides, the point that rises for determination in this Writ Petition is:

“Whether the detention order, dated 05.02.2019, passed by the 2nd respondent, and the confirmation Order, dated 23.03.2019, passed by the 1st respondent, are liable to be set aside or not?”

POINT:

7) In the instant case, the detaining authority relied on two cases registered against the detenu for preventively detaining him. The below tabular form shows the date of occurrence, the date of registration of FIRs, the offence 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.	300/2018 of RGIA PS	26.05.2018	28.05.2018	Sec.354-D IPC and Section 9 (f) read with 10 of POCSO Act, 2012	Cognizable/ Non-Bailable
2.	558/2018 of RGIA PS	14.10.2018	15.10.2018	Sec.376 (2) (i) IPC and Section 5 (m) read with 6 of POCSO Act, 2012	Cognizable/ Non-Bailable

8) A perusal of the impugned detention order reveals that the detenu moved bail petitions in both the above crimes, and he was

granted bail in crime No.300/2018 by the concerned Court and released on bail on 29.06.2018. Subsequently, on 16.10.2018, he was arrested in crime No.558/2018 and since then he is in judicial custody. The first bail application moved by the detenu in crime No.558/2018 before the concerned Court was dismissed on 17.12.2018. The apprehension of the detaining authority that the detenu may be granted bail and in the event of his release from the prison on bail, there is imminent possibility of his committing similar offences, unless he is prevented from doing so by an appropriate order of detention, is perfectly justified.

9) In **Haradhan Saha v. State of W.B.**¹, a Constitution Bench has held that even if a person is liable to be tried in a criminal Court for commission of criminal offence or is actually been so tried that does not debar the authorities from passing a detention order under the preventive detention law.

10) In **Arun Ghosh** (supra), the Hon'ble Supreme Court has clearly opined that *what in a given situation may be a matter covered by law and order, on account of its impact on the society may really turn out to be one of 'public order'*. It has further observed as under:

"Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools

¹ (1975) 3 SCC 198

are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies.”

11) In the case of **Madhu Limaye v. Sub-Divisional Magistrate**², the Apex Court had clearly opined that *acts which disturb public tranquility or are breaches of the peace should not be given a narrow meaning, but should be given a liberal interpretation. For the expression ‘in the interest of public order’ is very wide amplitude.*

12) The offences committed by the detenu are very grave in nature and relate to sexual offences committing rape on minor children. If the detenu is released, there is every likelihood of his committing the crime again and while on bail he may tamper with the evidence or threaten the witness including the victims.

13) Therefore, for the reasons stated above, the impugned detention order is legally sustainable. This Court does not find any merit in the present writ petition.

14) In the result, the Writ Petition is dismissed. No costs. It is needless to observe that the Trial Court shall deal with the bail

² (1970) 3 SCC 746

application filed by the detenu/accused independently on its own merits uninfluenced by any observations made in this order.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

Date : 19.09.2019
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