

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.9438 of 2019

Date: 27.06.2019

Between:

M.Gowri

...Petitioner

And

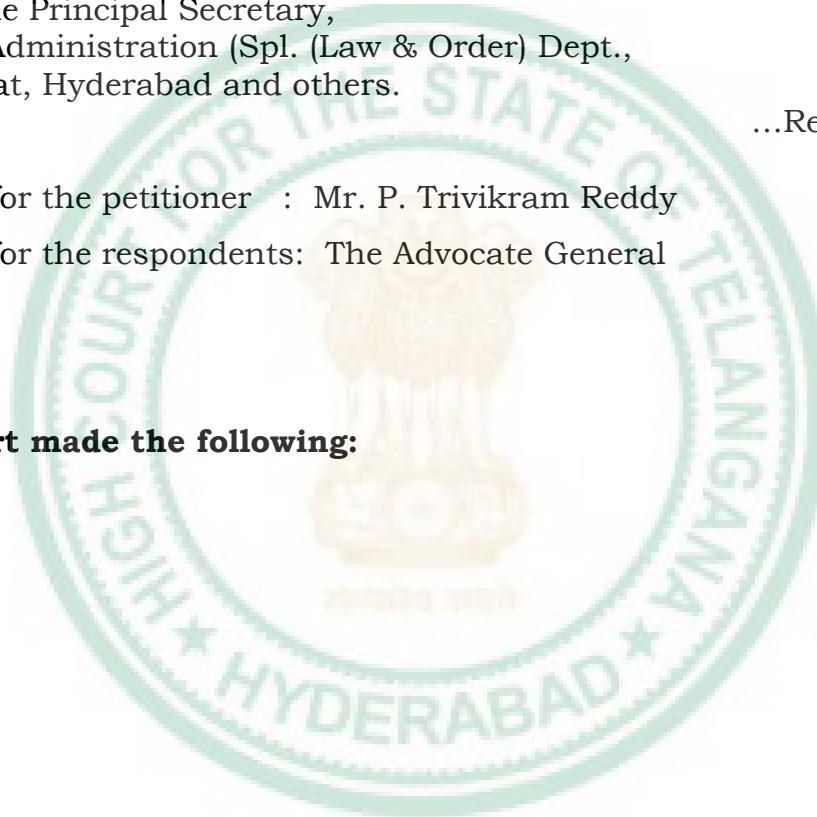
The State of Telangana,
Rep.by the Principal Secretary,
General Administration (Spl. (Law & Order) Dept.,
Secretariat, Hyderabad and others.

...Respondents

Counsel for the petitioner : Mr. P. Trivikram Reddy

Counsel for the respondents: The Advocate General

The Court made the following:



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

Alleging that her son, Mr. Anoj Kumar @ Rahul @ Raghav, S/o. Shaitan Singh @ M.Pradeep, aged 20 years, is involved in five crimes of theft of two wheeler vehicles and mobile phones in the limits of Hyderabad Police Commissionerate registered in the year 2018, her son is being preventively detained by order dated 04.01.2019 passed by the Commissioner of Police, Hyderabad City, the respondent No.2, and confirmed by order dated 02.03.2019 by the Principal Secretary to Government (POLL), the respondent No.1, the unfortunate mother, M.Gowri, 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 the five recent criminal cases registered against the detenu in the year 2018 with respect to theft of two wheeler vehicles and mobile phones within the limits of Hyderabad Police Commissionerate in quick succession, the Commissioner of Police, Hyderabad, the respondent No.2, passed the detention order dated 04.01.2019. According to the respondent No.2, since the detenu was a 'Goonda' and has been committing theft of two wheeler vehicles and mobile phones in the limits of Hyderabad Police Commissionerate along with his associates in an organized manner and thus, acting in a manner which is prejudicial to the maintenance of public order, the detention order was passed.

Subsequently, by order dated 02.03.2019, the detention order was confirmed by the respondent No.1. Hence, this petition before this Court.

Mr. P. Trivikram Reddy, the learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, relying only on the five recent cases registered against the detenu, the impugned detention order is passed.

Secondly, curiously, all the cases registered in 2018 relate to the offence of theft, under Section 379 of IPC.

Thirdly, such petty 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

¹ AIR 1966 SC 740

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 petty cases have created a panic and have “disturbed the public order”.

Fourthly, youngmen, like the detenu, are randomly picked up by the police, and falsely implicated. Therefore, 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 04.01.2019, by order dated 02.03.2019, 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. In the detention order, it is categorically mentioned that the accused filed bail application in Crime No.242 of 2018 and the same is pending consideration by the Court concerned and that there is every possibility of the detenu filing bail petitions in the other four cases and in case the detenu is released on bail, there is an imminent possible threat of his committing similar offences again, which are detrimental to the public order, unless he is prevented from doing so by an order of detention. Thus, it is clear

that 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 been indulging in the cases of theft of two wheeler vehicles and mobile phones, in an organized manner, within the limits of Hyderabad Police Commissionerate. Therefore, the cases of theft of two wheeler vehicles and mobile phones committed by the detenu have 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 04.01.2019, passed by the respondent No.2 and the confirmation order, dated 02.03.2019, passed by the respondent No.1, are liable to be set aside?

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

² (1972) 3 SCC 831

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 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 detenu is allegedly involved in five criminal cases in Crime Nos.339/2018, 384/2018, 396/2018, 242/2018 and 239/2018. We shall present 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.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
339/2018 of Uppal PS	09.04.2018	10.04.2018	Section 379 of IPC	Non-bailable/ cognizable
384/2018 of Uppal PS	22.04.2018	24.04.2018	Section 379 of IPC	Non-bailable/ cognizable
396/2018 of Uppal PS	26.04.2018	27.04.2018	Section 379 of IPC	Non-bailable/ cognizable
242/2018 of Abid Road PS	02.10.2018	05.10.2018	Section 379 of IPC	Non-bailable/ cognizable
239/2018 of Abid Road PS	03.10.2018	03.10.2018	Section 380 of IPC	Non-bailable/ cognizable

A perusal of the impugned detention order reveals that the detaining authority has taken only five cases, which were registered against the detenu in the year 2018 as the basis for preventively detaining him. But, four cases are for offence under Section 379 of IPC and one is for the offence under Section 380 of

IPC. Since these are petty cases, the detenu 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 04.01.2019, 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 04.01.2019, passed by respondent No.2, and the confirmation order dated 02.03.2019, passed by

respondent No.1 are set aside. The respondents are directed to set the detenu, namely, Mr. Anoj Kumar @ Rahul @ Raghav, S/o Shaitan Singh @ M. Pradeep, 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

27.06.2019
Bvv

