

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.9746 of 2019

Date: 25.07.2019

Between:

Smt. Rajkumari

..Petitioner

And

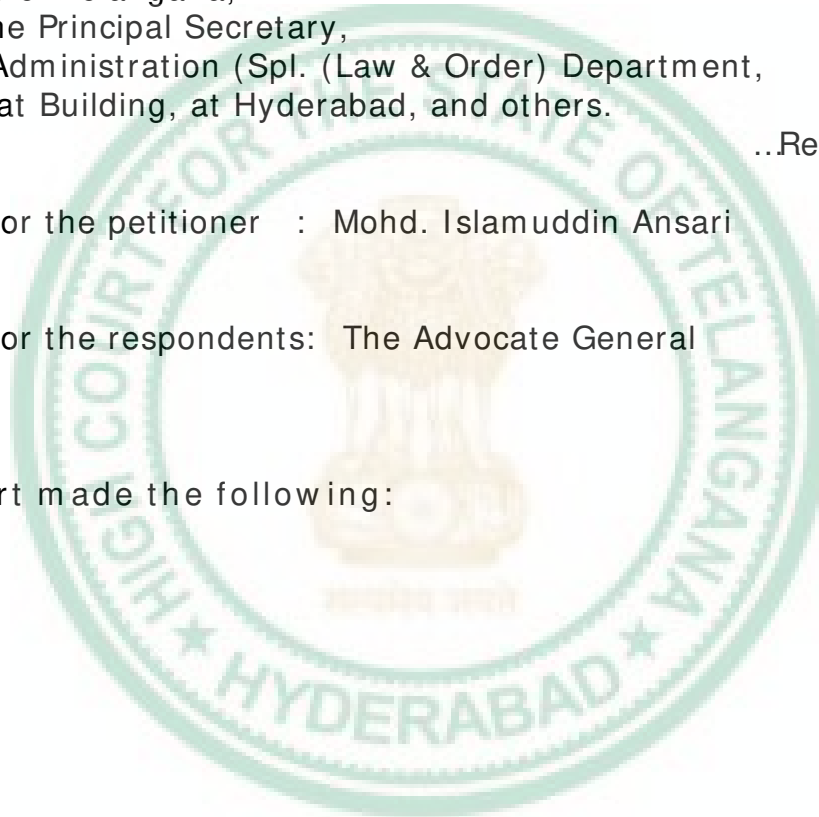
The State of Telangana,
Rep.by the Principal Secretary,
General Administration (Spl. (Law & Order) Department,
Secretariat Building, at Hyderabad, and others.

..Respondents

Counsel for the petitioner : Mohd. Islamuddin Ansari

Counsel for the respondents: The Advocate General

The Court made the following:



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

Smt. Rajkumari, the wife of the detenu-Mr. Chokha, S/o. Gangasaran, has filed the present Habeas Corpus Petition, challenging the detention order, dated 04.04.2019, passed by the Commissioner of Police, Hyderabad City, the respondent No.2, whereby, the detenu is preventively detained relying on the six criminal cases of robbery and attempt to commit robbery, in which he is allegedly involved, registered in the year 2018.

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

Briefly, the facts of the case are that by relying on the six recent cases registered against the detenu in the year 2018, the Commissioner of Police, Hyderabad City, the respondent No.2, passed the detention order dated 04.04.2019. According to the respondent No.2, the detenu is involved as many as twelve criminal cases of robbery and attempt to commit robbery in the limits of various police stations under the Rachakonda Police Commissionerate. But, merely relying on the six recent cases registered against the detenu in the year 2018, the detention order was passed. Hence, this writ petition before this Court.

Mr. Mohd. Islamuddin Ansari, learned counsel for the petitioner, has vehemently contended that a distinction has to be made between "law and order" and "disturbance of public order". The detenu is alleged to have committed offences of robbery and attempt to commit robbery. However, the detenu is so poor that he has not

even managed to submit the sureties, despite the fact that bail was granted by the Court concerned in Crime No.1499/2018 of L.B.Nagar Police Station (considered as ground for detention) and Crime No.1497/2018 of L.B.Nagar Police Station (shown as antecedent criminal history of the detenu). Therefore, according to the learned counsel, individual cases of offences of robbery and attempt to commit robbery would fall within the ambit of 'law and order problem', as such cases can be dealt with easily under the normal criminal justice system. In order to deal with these cases, the draconian preventive detention laws need not be invoked. Therefore, the invoking of the provisions of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act is an abuse of the process of law, and the action smacks of colourable exercise of power.

Secondly, it is a classic case where the defenseless and voiceless persons may have been arrested, and may have been falsely implicated by the Police in order to claim that it has "cracked a large number of cases".

Lastly, that such indiscriminating use of the preventive detention laws are in violation of right to life and personal liberty, which is guaranteed by the Article 21 of the Constitution of India. Hence, the impugned order deserves to be set aside by this Court.

On the other hand, Mr. S.Sharath, the learned Special Government Pleader, submits that even a series of offences of robbery and attempt to commit robbery are likely to cause panic and

insecurity in the minds of the people. Since the six cases of robbery and attempt to commit robbery relied upon by the detaining authority were committed by the detenu during the year 2018, the detaining authority was legally justified in passing the impugned order. Hence, the learned Counsel has supported the impugned order.

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 04.04.2019, passed by the Commissioner of Police, Hyderabad City, the respondent No.2, is liable to be set aside?”

Point:-

In the case of Ram Manohar Lohia v. State of Bihar¹, 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

¹ AIR 1966 SC 740

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*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

² (1972) 3 SCC 831

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 detaining authority relied on six criminal cases registered against the detenu for preventively detaining him vide Crime Nos.1499/2018, 740/2018, 1054/2018, 1056/2018, 885/2018 and 886/2018. We shall present in a tabular column 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.	1499/2018 of L.B.Nagar (L&O) PS	26.12.2018	26.12.2018	Section 393 of IPC	Cognizable/ Non-Bailable
2.	740/2018 of Chaitanyapuri PS	27.12.2018	27.12.2018	Section 392 of IPC	Cognizable/ Non-Bailable
3.	1054/2018 of Vanasthalipuram PS	26.12.2018	26.12.2018	Section 392 of IPC	Cognizable/ Non-Bailable
4.	1056/2018 of Vanasthalipuram PS	27.12.2018	27.12.2018	Section 392 of IPC	Cognizable/ Non-Bailable
5.	885/2018 of Hayathnagar PS	27.12.2018	27.12.2018	Section 392 of IPC	Cognizable/ Non-Bailable
6.	886/2018 of Hayathnagar PS	27.12.2018	27.12.2018	Section 392 of IPC	Cognizable/ Non-Bailable

A perusal of the impugned detention order reveals that the detenu moved three bail petitions in Crime No.1499/2018 of L.B.Nagar Police Station (considered as a ground for detention), Crime No.1497/2018 of L.B.Nagar Police Station (shown as the antecedent criminal history) and the detenu was granted bail by the Courts concerned in Crime Nos.1499/2018 and 1497/2018. Despite of the fact that the detenu was granted bail in Crime No.1499/2018 and 1497/2018 by the Courts concerned, he could not be released on

the bail, as he was unable to furnish the sureties required. Thus, the detenu happens to be an extremely poor person, who could not be set at liberty, only because of his poverty. However, the apprehension of the detaining authority that the detenu may furnish sureties in the two cases in which he was granted bail and may move bail applications in the other cases and in the event of his release from the prison on bail, there is an imminent possibility of his committing similar offences, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. It is the bounden duty of the police concerned to hand over the entire material record available to the Public Prosecutor/Assistant Public Prosecutor to defeat the bail application/s of the detenu. If the Police were vigilant enough to collect the data relating to 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 have to take required measures to inform the Public Prosecutor about the criminal history of the offender. For the inaction of the Police, the detaining authority cannot be permitted to invoke the preventive detention laws, in order to breach the liberty of an individual.

Grave as the offences may be, they relate to robbery and attempt to commit robbery. 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, for the reasons stated above, the impugned order is legally unsustainable.

In the result, the Writ Petition is allowed. The impugned detention order, dated 04.04.2019, passed by the respondent No.2 and the confirmation order, dated 02.05.2019, passed by the respondent No.1, are hereby set aside. The respondents are directed to set the *detenu*, namely, Mr. Chokha, S/o. Gangasaran, 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

25th July, 2019
Bvv