

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.11203 of 2019

Date: 25.07.2019

Between:

Amreen Fathima

...Petitioner

And

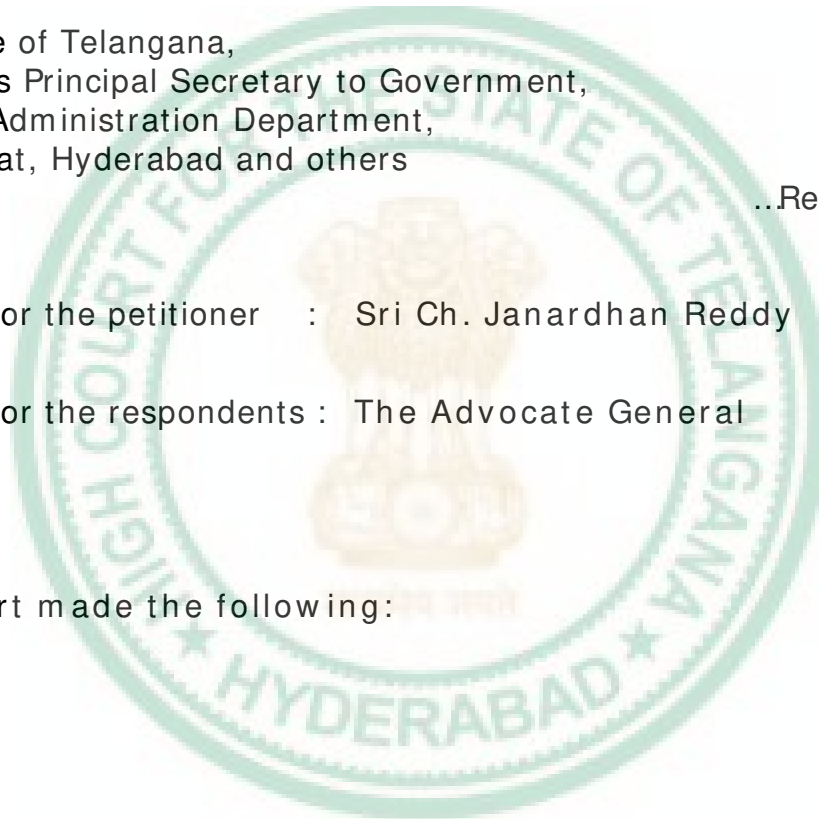
The State of Telangana,
Rep by its Principal Secretary to Government,
General Administration Department,
Secretariat, Hyderabad and others

...Respondents

Counsel for the petitioner : Sri Ch. Janardhan Reddy

Counsel for the respondents : The Advocate General

The Court made the following:



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

Smt. Amreen Fathima, the petitioner, has filed this present petition on behalf of her husband-Anwar Khan, S/o. Rasheed Khan, the detenu, challenging the detention order, dated 21.01.2019, passed by the Collector and District Magistrate, Kamareddy District, the respondent No.2, and the confirmation order dated 15.03.2019 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 a single criminal case registered against the detenu in the year 2018 (Crime No.38/2018 of Nizamsagar Police Station), the Collector and District Magistrate, Kamareddy District, the respondent No.2, passed the detention order dated 21.01.2019. According to the respondent No.2, the detenu is involved in as many as two offences of dacoity in Nizamabad and Kamareddy Districts. But, merely relying on a single criminal case registered against the detenu in the year 2018, the detention order is passed. Subsequently, by order dated 15.03.2019, the detention order was confirmed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana. Hence, this writ petition before this Court.

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

Firstly, that relying only on single case registered against the detenu in the year 2018, the detention order is passed.

Secondly, the alleged case does not add up 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 Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned order tantamount to the colourable exercise of power. Thus, the impugned orders are legally unsustainable.

On the other hand, Sri S. Sharat, learned Special Government Pleader, pleads that in the single case relied by the detaining authority for preventively detaining the detenu, he managed to get bail from the Court concerned. The crime allegedly committed by him was sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crime was dacoity, it has 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 21.01.2019, passed by the respondent No.2 and the confirmation order, dated 15.03.2019, 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, is the conduct of a person 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 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 the immense power under the Act.

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

¹ AIR 1966 SC 740

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*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 'ordre 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

² (1972) 3 SCC 831

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 a single criminal case in Crime No.38/2018 of Nizamsagar Police Station. We shall present it in a tabular column the date of occurrence, the date of registration of FIR, 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.	38/2018 of Nizamsagar Police Station	24.08.2018	29.08.2018	Sections 341, 342 & 395 of IPC	Sections 341 & 342 : Cognizable/ Bailable Section 395 : Cognizable/ Non-Bailable

A perusal of the material record reveals that in the single case relied upon by the detaining authority for preventively detaining the detenu (Crime No.38/2018), the detenu was granted statutory bail under Section 167(2) of Cr.P.C. by the Court concerned vide order, dated 11.12.2018, passed in CrI.M.P.No.1165/2018 and was released on bail on 12.12.2018. So, it appears that the investigating officer had not completed investigation within a period of ninety days. Therefore, the detenu was granted bail under Section 167(2) of Cr.P.C. It is a grave omission on the part of the investigating officer in not completing the investigation within a period of ninety days. The very purpose of enacting the provision under Section 167(2) of Cr.P.C. is to expedite the investigation, so that the valuable material evidence is not lost and can be produced before the Court. For the

laches on the part of the investigating officer, it is not appropriate to invoke draconian preventive detention laws against the detenu. Moreover, the detenu alleged to have been involved in two criminal cases. However, the detaining authority relied on only one criminal case as indicated above. Under these circumstances, the apprehension of the detaining authority that since the detenu was already granted statutory bail under Section 167(2) of Cr.P.C. and released from prison, he may commit similar offences, which are prejudicial to the maintenance of public order, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. 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 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 are wrongful restraint, wrongful confinement and dacoity. 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 orders are legally unsustainable.

In the result, the Writ Petition is allowed. The impugned detention order dated 21.01.2019 and the confirmation order dated 15.03.2019 are hereby set aside. The respondents are directed to set the *detenu*, namely, Anwar Khan, S/o. Rasheed Khan, 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