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.11784 of 2019

Date: 01.08.2019

Between:

Smt. V. Padmavathi

..Petitioner

And

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

..Respondents

Counsel for the petitioner : Sri H. Sudhakar Rao

Counsel for the respondents : The Advocate General

The Court made the following:

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

Smt. V. Padmavathi, the petitioner herein, has filed this present Habeas Corpus Petition on behalf of the detenu-Sateeshan Palayad, S/o. Late M.Karunan, challenging the detention order, dated 31.10.2018, passed by the Commissioner of Police, Hyderabad City, the respondent No.3, and the confirmation order, dated 26.02.2019, 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 the five criminal cases registered against the detenu in the year 2018, the Commissioner of Police, Hyderabad City, the respondent No.3, passed the detention order dated 31.10.2018. According to the respondent No.3, the detenu is involved in as many as nine criminal cases of cheating in the limits of various police stations under Hyderabad and Cyberabad Police Commissionerates. But, merely relying on the five cases registered in the year 2018, the detention order is passed. Subsequently, by order dated 26.02.2019, the detention order was confirmed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana, the respondent No.1. Hence, this writ petition before this Court.

Sri H. Sudhakar Rao, learned counsel for the petitioner, has raised the following contentions before this Court:

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

Secondly, the alleged cases do 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, Mr. T. Srikanth Reddy, the learned Government Pleader for Home, appearing for the respondents, would plead that in two cases relied by the detaining authority for preventively detaining the detenu, he managed to get bail from the Courts concerned. The series of crimes allegedly committed by him were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crime was cheating and criminal breach of trust, 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 31.10.2018, passed by the respondent No.3 and the

confirmation order, dated 26.02.2019, 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 effects 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 Bihar[1], 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

[1] AIR 1966 SC 740

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 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

[2] (1972) 3 SCC 831

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 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 five cases for preventively detaining the detenu vide Crime Nos.182/2018, 189/2018, 169/2018, 605/2018 and 327/2018. We shall present them 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.

Sl. No.	Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
1.	182/2018 of Narayanaguda PS	Prior to 22.06.2018	22.06.2018	Sections 406 & 420 of IPC	Cognizable/ Non-Bailable
2.	189/2018 of Narayanaguda PS	Prior to 28.06.2018	28.06.2018	Sections 406 & 420 of IPC	Cognizable/ Non-Bailable
3.	169/2018 of Langer House PS	Prior to 26.06.2018	26.06.2018	Sections 406, 420 & 506 of IPC	Sections 406 & 420 : Cognizable/ Non-Bailable Section 506 : Non-Cognizable/ Bailable
4.	327/2018 of Sanathnagar PS	Prior to 26.06.2018	26.06.2018	Sections 406 & 420 of IPC	Cognizable/ Non-Bailable
5.	605/2018 of KPHB Colony PS	Prior to 26.06.2018	26.06.2018	Sections 406 & 420 of IPC	Cognizable/ Non-Bailable

A bare perusal of the detention order clearly reveals that the detaining authority is concerned by the fact that in two cases out of

five cases relied by it (Crime Nos.182/2018 and 189/2018), the detenu was granted bail by the Courts concerned and he was released on bail on 13.07.2018. However, the apprehension of the detaining authority that the since the detenu was released on bail in Crime Nos.182/2018 and 189/2018, there is an imminent possibility of his committing similar offences which are detrimental to 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. The police ought to have been vigilant in collecting the whole data against the detenu and to furnish the same to the Public Prosecutor/Additional Public Prosecutor to defeat the bail applications of the detenu. 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 cheating and criminal breach of trust. So, no inference of disturbance of public order can be drawn. These cases can be tried under the normal criminal law. 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 31.10.2018 and the confirmation order dated 26.02.2019 are hereby set aside. The respondents are directed to set the *detenu*, namely, Mr. Sateeshan Palayad, S/o. Late M. Karunan, 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.

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RAGHVENDRA SINGH CHAUHAN, HCJ

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Dr. SHAMEEM AKTHER, J

01st August, 2019
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