

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.12826 of 2019

Date: 11.07.2019

Between:

Naziya Parveen

..Petitioner

And

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

..Respondents

Counsel for the petitioner : Sri J. Kanakaiah

Counsel for the respondents : Sri S. Sharath Kumar
Special Government Pleader

The Advocate General

The Court made the following:

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

Smt. Naziya Parveen, the petitioner, has filed this present petition on behalf of her husband, Mohammad Shanawaz, the detenu, challenging the detention order, dated 03.02.2019, passed by the Commissioner of Police, Karimnagar Police Commissionerate, the respondent No.5, 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 the three recent cases registered against the detenu during the years 2018 and 2019, the Commissioner of Police, Karimnagar Police Commissionerate, the respondent No.5, passed the detention order dated 03.02.2019. According to the respondent No.5, the detenu was involved in four criminal cases of attempt to murder, house trespass and criminal intimidation in the limits of various Police Stations under Karimnagar Police Commissionerate. But, merely relying on the three recent cases registered against the detenu, the detention order was 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, the respondent No.1. Hence, this writ petition before this Court.

Sri J. Kanakaiah, learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, that relying only on the three cases registered against the detenu during the years 2018 and 2019, 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. S. Sharath, the learned Special Government Pleader, pleads that out of the three cases relied by the detaining authority, the detenu managed to get bail in two cases from the Court 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 attempt to murder, house trespass and criminal intimidation, 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 03.02.2019, passed by the Commissioner of Police, Karimnagar Police Commissionerate, the respondent No.5 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, 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 no doubt prevented by

¹ AIR 1966 SC 740

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 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

² (1972) 3 SCC 831

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 case on hand, the detaining authority relied on three criminal cases registered against the detenu vide Crime Nos.432/2018, 01/2019 and 06/2019. 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.	432/2018 of Karimnagar II Town PS	07.11.2018	07.11.2018	Section 307 of IPC	Cognizable/ Non-Bailable
2.	01/2019 of Karimnagar III Town PS	15.11.2018	04.01.2019	Sections 452 & 506 of IPC	Section 452 : Cognizable/ Non-Bailable Section 506 : Non-cognizable/ Bailable
3.	06/2019 of Karimnagar II Town PS	07.11.2018	05.01.2019	Sections 452 & 506 of IPC	Section 452 : Cognizable/ Non-Bailable Section 506 : Non-cognizable/ Bailable

A perusal of the detention order reveals that the anticipatory bail petition moved by the detenu in Crime No.432 of 2018 was dismissed by the Court concerned, vide order, dated 20.12.2018 passed in CrI.M.P.No.1186/2018. The detenu moved second anticipatory bail petition in the same crime, which was also dismissed

by the Court concerned, vide order, dated 05.01.2019, passed in CrI.M.P.No.15/2019. The detenu also moved bail petitions in the other two crimes (Crime Nos.01/2019 & 06/2019) and the Court concerned granted bail in both cases. However, the apprehension of the detaining authority that there is every possibility of the release of the detenu on bail in the other case (Crime No.432/2018) and indulging in similar offences, 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 on 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 attempt to murder, house trespass and criminal intimidation. So, no inference of disturbance of public order can be drawn. These cases can be tried under the normal criminal law. Hence, there was no need for the detaining authority to pass the detention order.

Even while passing the confirmation order dated 15.03.2019, the Principal Secretary to Government (POLL), General Administration (Spl (Law and Order) Department, Government of Telangana, the respondent No.1, has failed to notice that the detenu continues to languish as under-trial in the jail. Once the detenu was already

confined, the question of confirming the detention order would not even arise.

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 03.02.2019 passed by the respondent No.5 and the confirmation order dated 15.03.2019 passed by the respondent No.1 are hereby set aside. The respondents are directed to set the *detenu*, namely, Mohammad Shanawaz, S/o. Late Mohammad Nawab, 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

11th July, 2019
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