

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.12926 of 2019

Date: 08.08.2019

Between:

Sri K. Sandeep

...Petitioner

And

The State of Telangana,
Rep. by its Principal Secretary,
General Administration Department (Poll)
Secretariat, Hyderabad,
and others.

...Respondents

Counsel for the Petitioner : Sri A. Prabhakar Rao

Counsel for the respondents : The Advocate General

The Court made the following:

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

Sri K. Sandeep, the petitioner, has filed this present Habeas Corpus petition on behalf of his father-Kakkerla @ Mekala Ramesh, S/o. Shankaraiah, aged 53 years, the detenu, challenging the detention order, dated 30.04.2019, passed by the Commissioner of Police, Karimnagar Police Commissionerate, the respondent No.2, and the confirmation order, dated 04.06.2019, passed by the Special Chief Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana.

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 case registered against the detenu during the year 2019 (Crime No.118/2019 of Huzurabad Police Station), the Commissioner of Police, Karimnagar Police Commissionerate, the respondent No.2, passed the detention order dated 30.04.2019. According to the respondent No.2, the detenu is involved in three (03) cases of peddling of narcotic drugs. But relying on a single case registered against him in the year 2019, the impugned detention order is passed. According to respondent No.2, the detenu is a 'Drug Offender' and has been habitually indulging in peddling of prohibited Ganja, which is a narcotic drug, and thereby endangering the lives of youth and innocent people by causing irreparable damage to their body organs, including central nervous system and thereby crippling the mental and physical

health of the people addicted to drugs. Subsequently, by order dated 04.06.2019, the detention order was confirmed by the Special Chief Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana. Hence, this writ petition before this Court.

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

Firstly, relying only on a single case registered against the detenu in the year 2019, the detention order is passed.

Secondly, such case can easily be tackled by the criminal justice system by holding a criminal trial. Therefore, this case falls 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 case narrated by the detaining authority does 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 Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act. Therefore, the detention of the detenu is patently

¹ AIR 1966 SC 740

illegal. Hence, the detaining authority is unjustified in claiming that this case has created a panic and has “disturbed the public order”.

Thirdly, 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, the detaining authority has not applied its mind to the facts and circumstances of the case while passing the detention order. In the impugned detention order, the detaining authority stated that the bail petition moved by the detenu in the crime relied upon by it is pending for consideration before the Court concerned. In fact, the said bail petition was dismissed by the Court concerned on 17.05.2019. Thus, 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, the detention order deserves to be set aside by this Court.

On the other hand, Mr.S.Sharath, the learned Special Government Pleader, submits that the nature of offences allegedly committed by the detenu is sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crimes was peddling of narcotic drugs, it had created sufficient panic in the minds of the general public.

Therefore, the detaining authority was legally justified in passing the impugned order. Hence, the learned Government Pleader 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 30.04.2019, passed by the respondent No.2, and the confirmation order, dated 04.06.2019, passed by the Special Chief Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana, 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, the conduct of a person is 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 Bihar**², 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

² AIR 1966 SC 740

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**³, 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 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 a single case registered in the year 2019 for preventively detaining the detenu, vide Crime No.118/2019 of Huzurabad 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.	118/2019 of Huzurabad PS	11.03.2019	11.03.2019	Section 8(c) and 20(B) of NDPS Act	Cognizable

³ (1972) 3 SCC 831

It is evident from the record submitted before this Court that the detenu was arrested in connection with Crime No.118/2019 of Huzurabad Police Station, on 11.03.2019 and remanded to judicial custody. In the impugned detention order, it is mentioned that the detenu moved bail petition on 25.04.2019 vide CrI.M.P.No.197/2019 before the Court concerned and the same is pending for consideration by the Court concerned. In the sworn affidavit filed in support of this writ petition, the petitioner stated that the said bail petition was dismissed by the Court concerned on 17.05.2019. Thus, it is evident that as on the date of the passing of the detention order, i.e., 30.04.2019, the bail petition of the detenu was pending consideration before the Court concerned and subsequently, the said bail petition was dismissed on 17.05.2019. Hence, the factual matrix of the case is that since the bail petition of the detenu was dismissed by the Court concerned, he continues to be in judicial custody. Under these circumstances, the apprehension of the detaining authority that since the bail petition filed by the detenu is pending consideration before the Court concerned, there is every possibility of his release on bail in the due course of time and in the event of his release on bail, there is imminent possibility of indulging in similar prejudicial activities, which are detrimental to the public order and wide spread danger to public health, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. In such an event, 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 are supposed to be 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 application/s of the detenu. When the detenu has not been released from the judicial custody, the apprehension of his coming out from the prison and committing similar offences is misplaced. It is appropriate to refer to the decision of the Apex Court in **Rekha Vs. State of Tamil Nadu**⁴, wherein it is held as follows:

“Where a detention order is served on a person already in jail, there should be a real possibility of release of a person on bail who is already in custody, provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence, the detention order will be illegal.”

Grave as the offences may be, they relate to peddling of narcotic drugs. So, no inference of disturbance of public order can be drawn. These type of cases can certainly be tried under the special law. And, if convicted, can certainly be punished by the Court of law. Thus, these cases do not fall within the ambit of the words “public order”. Instead, they fall within the scope of the words “law and order”. 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.

⁴ (2011) 5 SCC 244

Accordingly, the Writ Petition is hereby allowed. The impugned detention order, dated 30.04.2019, passed by the respondent No.2, and the confirmation order, dated 06.04.2019, passed by the Special Chief Secretary to Government, General Administration (Spl. (Law and Order) Department, Government of Telangana, are hereby set aside. The respondents are directed to set the detenu, namely, Kakkerla @ Mekala Ramesh, S/o. Shankaraiah, at liberty forthwith, if he is no longer detained in the judicial custody in the criminal cases, which have been registered so far against him.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

08th August, 2019
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