

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.14088 of 2019

Date: 22.08.2019

Between:

Smt. Badrunnisa Begum

..Petitioner

And

The State of Telangana,
Rep. by its Chief Secretary,
Telangana Secretariat, Hyderabad,
and others.

..Respondents

Counsel for the petitioner : Ms. G. Seeta Devi

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

The Advocate General

The Court made the following:

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

Smt. Badarunnisa Begum, the petitioner, has filed this Habeas Corpus petition on behalf of her son, Shaik Sayeed Bin Abdul Rahaman Bawazeer, S/o. Shaik Abdul Rahaman Bawazeer, aged about 24 years, the detenu, challenging the detention order, dated 29.10.2018, passed by the Commissioner of Police, Hyderabad City, the respondent No.2, wherein, the detenu was detained under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Fake Document offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders & White Collar or Financial Offenders Act, 1986 (for short "P.D. Act") and the confirmation order, dated 10.01.2019, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order) Department, Government of Telangana.

2) Heard the learned counsel for the parties, and perused the record.

3) Ms. G. Seeta Devi, learned counsel for the petitioner, has raised the following contentions before this Court:

The detention order is illegal, arbitrary, unconstitutional, improper and against the principles of natural justice. The detenu is falsely implicated in the two criminal cases relied upon by the

detaining authority for preventively detaining him. Admittedly, in both the cases relied upon by the detaining authority, the detenu was granted bail by the Courts concerned. But, the detenu was again sent to judicial remand by executing Non-Bailable Warrant issued in a case which was referred as his antecedent criminal history. Since the offences alleged are under the Indian Penal Code, 1890, and the Protection of Children from Sexual Offences Act, 2012, the said cases can certainly be dealt with under the Penal Code and the Special law. 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 detention order is legally unsustainable and ultimately prayed to set aside the same by allowing the writ petition.

4) On the other hand, Mr.S.Sharath, the learned Special Government Pleader, pleads that in both the cases relied upon by the detaining authority for preventively detaining the detenu, he managed to get bail from the Court/s concerned. The series of crimes allegedly committed by the detenu were sufficient to affect the even tempo of the society and create a feeling of insecurity in the minds of the people at large. Since the detenu committed heinous offence of unnatural sex with minor boys under threat, it has created sufficient panic in the minds of the general public. Therefore, the detaining authority was legally justified in passing the detention order and ultimately prayed to dismiss the writ petition.

5) In view of the submissions made by both sides, the point that arises for determination in this Writ Petition is:

“Whether the impugned detention order, dated 29.10.2018, passed by the Commissioner of Police, Hyderabad City, respondent No.2, and the confirmation order, dated 10.01.2019, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order) Department, Government of Telangana, are liable to be set aside?”

6) POINT: Briefly, the facts of the case, as alleged, are that the detenu was habitually indulging in criminal activities of performing unnatural sex with minor boys under threat in the limits of Hyderabad Police Commissionerate and that his unnatural activities are not only endangering the family system, but are also harmful to the inhabitants of the locality, especially minor boys, and creating embarrassing situation to the families living there. His illegal activities are also leading to social unrest causing wide spread health hazards, contagious and sexually transmitted diseases like HIV, Syphilis, Gonorrhea etc., duly endangering the public health at large and thereby creating large-scale fear and panic among the general public and adversely affecting the maintenance of public order. Earlier, the detenu was involved in three criminal cases of kidnap, rape, aggravated penetrative sexual assault on a minor girl, attempt to murder and criminal intimidation in the limits of Hyderabad Police Commissionerate during the years 2015 and 2017, vide Crime Nos.49/2017 under Section 363, 376, 506 r/w 34 of IPC & Section 5 (g)(h)(i) r/w 6 of POCSO Act, Crime No.64/2015 under Section 307 r/w 34 of IPC

and Crime No.248/2017 under Section 506 of IPC of Chandrayangutta PS.

7) The respondent No.2 passed the impugned detention order, dated 29.10.2018, relying upon the two crimes i.e, i) Crime No.185/2018 under Sections 377, 342, 506 of IPC, Section 5(1) r/w 6 r/w 12 r/w 15 of POCSO Act, 2012 of Chandrayangutta Police Station and ii) Crime No.192/2018 under Sections 377, 506 of IPC and Section 3 r/w 4 of POCSO Act, 2012 of Chandrayangutta Police Station, holding that the detenu is a potential threat to the maintenance of public order. The detenu was granted bail by the Courts concerned in both the cases relied upon by the detaining authority. But he was again remanded to judicial custody in a case which was referred as his antecedent criminal history. Therefore, in order to prevent the detenu from coming out on bail by moving bail petition in the said crime and commit similar offences, which are detrimental to the public order, the said preventive detention order was passed by the respondent No.2.

8) The material placed on record reveals that the detenu-Shaik Sayeed Bin Abdul Rahaman Bawazeer, S/o. Shaik Abdul Rahaman Bawazweer, who is a 'sexual offender', has been habitually indulging in unnatural sex with minor boys under threat in the limits of Hyderabad Police Commissionerate. His criminal activities have created a panic in the locality and embarrassing situation to the families living in the locality. The detaining authority, by relying on two criminal cases as mentioned below, passed the detention order, dated 29.10.2018:

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
185/2018 of Chandrayangutta PS	18.04.2018	03.07.2018	Sections 377, 342, 506 of IPC, Section 5(1) r/w 6 r/w 12 r/w 15 of POCSO Act, 2012	Cognizable/ Non-Bailable
192/2018 of Chandrayangutta PS	30.06.2018	07.07.2018	Sections 377, 506 of IPC and Section 3 r./w 4 of POCSO Act, 2012	Cognizable/ Non-Bailable

During the years 2015 and 2017, the detenu alleged to have been involved in three cases, i.e., committing rape on a minor girl (registered as Crime No.49/2017), attempt to murder on two persons (registered as Crime No.64/2015) and criminal intimidation (registered as Crime No.248/2017). The detenu had gradually improved his criminal tendencies and alleged to have involved in unnatural sex with minor boys under threat, as indicated above. The detenu was also charged with the offences punishable under Protection of Children from Sexual Offences Act, 2012, in Crime No.49 of 2017. However, the detaining authority did not rely on the aforesaid three offences alleged to have been committed by the detenu during the years 2015 to 2017. The detaining authority had relied upon the alleged offences committed by the detenu only during the short period in the year 2018. The nature of the offences and the manner in which the offences alleged to have been committed by the detenu, certainly causes panic and a feeling of insecurity among the general public.

9) It is apt to state that preventive detention is different from punitive detention. While punitive detention could be enforced under ordinary criminal law, the law of preventive detention can be

enforced against habitual offenders to prevent them from committing the further offences. The legal parameters for testing the validity of 'preventive detention' fundamentally vary from that of 'punitive detention'. Also, 'public order' is distinct from 'law and order'. While individual offences without affecting public at large could be considered as violating 'law and order', the offences that affect larger public and disturbs the even tempo of public life, fall under the category of disturbance to public order and only in the latter category of cases, the law of preventive detention must be enforced.

10) In the case of *Madhu Limaye v. Sub-Divisional Magistrate*¹, the Apex Court held as follows:

“The acts which disturb public tranquility or are breaches of the peace should not be given a narrow meaning, but should be given a liberal interpretation. For the expression ‘in the interest of public order’ is very wide amplitude.”

11) In *Commissioner of Police & Others Vs. C.Anita (Smt.)*², the Apex Court examined the issue of "public order" and "law and order" and observed as follows:

“The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree

¹ (1970) 3 SCC 746

² (2004) 7 SCC 467

and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: "Does it lead to disturbance of the current 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?" This question has to be faced in every case on its facts."

12) In *R. Kalavathi v. State of Tamil Nadu*³, the Apex Court, while dealing with the case affecting the public order observed that even a single act which has the propensity of affecting the even tempo of life and public tranquility would be sufficient for detention.

13) As per the clause (v) of Section 2 of the P.D.Act, a "sexual offender" means a person who commits or abets the commission of offences in contravention of any of the provisions under the Protection of Child from Sexual Offences Act, 2012, or the offences punishable under Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376D, 377 or 509 of the Indian Penal Code, 1980.

14) The commission of alleged offences as indicated in the above table clearly demonstrates that the detenu had been committing grave and gruesome offence of unnatural sex with minor boys

³ (2006) 6 SCC 14

under threat in the limits of Hyderabad Police Commissionerate and creating panic and fear in the minds of the general public, disturbing the public peace and tranquility. In Crime No.185/2018 relied upon by the detaining authority, the detenu forcibly performed unnatural sex with the victim boy and threatened him with dire consequences if he discloses the incident to anyone. Out of fear, the victim boy had not disclosed the incident to anyone. Taking advantage of the same, the detenu performed unnatural sex again with that boy. In Crime No.192/2018, the detenu threatened another victim boy with dire consequences at the point of knife and performed unnatural sex with him. Both these acts show the perverse and immoral state of mind of the detenu. So it is imperative upon the officers concerned to pass the order of detention, since the acts of the detenu are prejudicial to the maintenance of public order. Both these incidents were of such a reach and extent, that they will certainly affect the even tempo of life and the public morale at large and were prejudicial to the public order. The detaining authority had sufficient material to record subjective satisfaction that the detention of the detenu was necessary to maintain the public order and even tempo of life of the community. The order of detention does not suffer from any illegality. The grounds of detention, as indicated in the impugned order, are found to be relevant and in tune with the provisions of the P.D. Act. Since the detenu was granted bail in both the cases relied by the detaining authority, there is nothing wrong on the part of the detaining authority in raising an apprehension that there is possibility of the detenu coming out on bail and commit

similar offences, which would again certainly affect the public morale at large. The manner in which the alleged offences are committed by the detenu makes it amply clear that there is every possibility of detenu committing similar offences in future, which are prejudicial to the maintenance of public order. The subjective satisfaction of the detaining authority is not tainted or illegal on any account. The acts of the detenu cannot be dealt with under ordinary criminal law. Under these circumstances, the detaining authority is justified in passing the impugned order dated 29.10.2018 and so also the Principal Secretary to Government, General Administration (Spl. (Law & Order) Department, Government of Telangana, is passing the confirmation order dated 10.01.2019. We do not see any merit in this Writ Petition and as such, it is liable to be dismissed.

15) The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.

The miscellaneous petitions pending, if any, in this Writ Petition, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

22nd August, 2019
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