

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Petition No.14175 of 2019

Date: 12.09.2019

Between:

Kudhula Rajitha

..Petitioner

And

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

..Respondents

Counsel for the Petitioner : Ms.P.V.Nagamani

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

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

The present writ petition is filed by Smt.Kudhula Rajitha, the wife of the detenu, questioning the proceedings vide C.No.07/PD-CELL/CCRB/RGM/2019, dated 08.05.2019, passed by the 2nd respondent, as illegal, arbitrary, unjust, against law, against principles of natural justice, violation of Article 21 of the Constitution of India and to quash the same.

2. The case of the petitioner is that the respondent No.2 has passed the Order of detention against her husband, Kududula Kishan Kumar vide proceedings C.No.07/PD-CELL/CCRB/RGM/2019, dated 08.05.2019, while exercising the powers conferred 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, 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, 1986 (in short, hereinafter referred to as 'the Act'). It is the case of the petitioner that her husband was never involved in any sort of offences alleged; the police have falsely implicated him in the cases referred to in the impugned order. The order of detention was passed basing on three crimes i.e., F.I.R.Nos.25 of 2019, 26 of 2019 and 54 of 2019 on the file of P.S.Manthani. The detention order, passed by the respondents, was merely on the basis of apprehension and the same was not based on any facts, or that the detenu is a chronic offender. Thus, the present writ petition is filed seeking to set aside the impugned order of detention passed by the 2nd respondent.

3. Heard Ms.P.V.Nagamani, the learned Counsel for the petitioner, and Sri S.Sharath, the learned Special Government Pleader for the respondents.

4. The Counsel for the petitioner has raised the following contentions:-

Firstly, the detention order is not legally sustainable as the same is passed basing on only three recently registered crimes; secondly, the bail applications are already rejected. Thirdly, the detaining authority is not justified in invoking a draconian power under the preventive detention laws. The detaining authority has to be extremely careful while passing a detention order, as the detention order *ipso facto* will adversely affect the fundamental right of personal liberty enshrined under Article 21 of the Constitution of India. Lastly, while passing the detention order, dated 08.05.2019, the 2nd respondent has not applied his mind to the facts and circumstances of the cases. For, admittedly, all the bail applications moved by the detenu in Crime Nos.25 of 2019, 26 of 2019 and 54 of 2019 were dismissed by the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class at Manthani. Thus, the detenu continues to be in judicial custody. Despite the fact that the detenu is in custody, the preventive detention order has been passed against the detenu.

5. On the other hand, the learned Special Government Pleader has vehemently argued that the order passed by the respondents under the Act is legally sound. For, the activities, being carried out by the detenu, have a serious social consequences, more particularly, the illegal cutting and transportation of the teakwood trees and causing great loss to national wealth, ecological imbalance and deforestation which affects wildlife, ecosystems, weather pattern and even the climate, soil erosion,

increasing greenhouse gases and reduce of oxygen in atmosphere and also prejudicial to the maintenance of public order adversely.

6. In view of the submissions made by both the sides, the only question that arises for determination in this writ petition is:

“Whether the detention order, dated 08.05.2019 passed by the 2nd respondent is liable to be set aside, or not?”

7. The Hon'ble Supreme Court as well as this Court in catena of decisions has time and again held 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 guaranteed and protected 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.

8. Learned Counsel for the petitioner has relied on the Judgment of the Supreme Court reported in **V.SHANTHA v. STATE OF TELANGANA AND OTHERS**¹ wherein the Hon'ble Apex Court while considering various provisions of the Act held as under:-

The detenu was the owner of Laxmi Bhargavi Seeds, district distributor of Jeeva Aggri Genetic Seeds. Three FIRs were lodged against the detenu and others under Sections 420, 120-B, 34 IPC and Sections 19 and 21 of the Seeds Act,

¹ (2017) 4 SCC 577

1966. It was alleged that chilli seeds sold were spurious, as they did not yield sufficient crops, thus causing wrongful loss to the farmers, and illegal gains to the accused. Whether the seeds were genuine or not, the extent of the yield, are matters to be investigated in the FIRs. Section 19 of the Seeds Act provides for penalty by conviction and sentence also. Likewise, Section 20 provides for forfeiture. Sufficient remedies for the offence alleged were, therefore, available and had been invoked also under the ordinary laws of the land for the offence alleged.

The order of preventive detention passed against the detenu states that his illegal activities were causing danger to poor and small farmers and their safety and financial wellbeing. Recourse to normal legal procedure would be time-consuming, and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities in the business of spurious seeds, affecting maintenance of public order, and that there was no other option except to invoke the provisions of the Preventive Detention Act as an extreme measure to insulate the society from his evil deeds. The rhetorical incantation of the words “goonda” or “prejudicial to maintenance of public order” cannot be sufficient justification to invoke the Draconian powers of preventive detention. To classify the detenu as a “goonda” affecting public order, because of inadequate yield from the chilli seed sold by him and prevent him from moving for bail even is a gross abuse of the statutory power of preventive detention. The grounds of detention are ex facie extraneous to the Act.

The Supreme Court further held that preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law, and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention in most

cases is for a year only, and cannot be used as an instrument to keep a person in perpetual custody without trial.

9. 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 subvert the public order are. A

² AIR 1966 SC 740

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.”

10. 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?”

11. Even in the present case, the detaining authority has relied on only three cases, which were registered in the year 2019, for passing the impugned order. The contention of the learned Special Government Pleader that there is every possibility of the detenu moving a bail application in the said crime again, for which he is in judicial custody, and in the event of his release on bail, there is imminent possibility of indulging in similar prejudicial activities, unless and until he is prevented from doing so by an appropriate order of detention cannot be countenanced for the simple reason that the fundamental right of a person guaranteed under Article 21 of the Constitution of India is a paramount one. And once regular process of criminal justice is put into motion, the same cannot be circumvented by passing the impugned

³ (1972) 3 SCC 831

order in a mechanical manner, more particularly when only three cases in the year 2019 alone are registered. Furthermore, the detenu has not been released from the judicial custody. Thus, 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.”

12. The order of the 2nd respondent and the grounds for passing the same clearly shows that the same is passed in a mechanical manner only on the apprehension that the detenu is likely to move bail petitions in the crimes for which he was remanded to judicial custody. The respondent No.2 has lost sight of the fact that all the bail applications were successfully opposed by the Public Prosecutor and they were dismissed by the concerned Court and as such, there was no need to pass the detention order when the detenu is already in judicial custody and his bail applications have been rejected. The mere apprehension of the authority passing the order that one of the co-accused has got bail cannot be a ground for passing the present detention order.

13. For the reasons stated above, the Writ Petition is hereby allowed. The impugned detention order dated 08.05.2019 passed by the respondent No.2 is hereby set aside. The respondents are directed to set the detenu, namely, Mr. Kududula Kishan Kumar, S/o.Lingaiah, at

⁴ (2011) 5 SCC 244

liberty forthwith, if he is no longer detained in the judicial custody in the criminal cases, which have been registered so far against him.

14. It is needless to observe that the trial Court will deal with the bail petitions independently on its own merits uninfluenced by this order and this order does not in any manner be construed as directing the authorities to set the detenu free if they are under judicial remand.

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

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

12th September, 2019
smr

