

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.14307 of 2019

Date: 29.08.2019

Between:

Shaik Chand Pasha

..Petitioner

And

The State of Telangana,
Rep. by its Principal Secretary,
Home Department (POLL),
Secretariat, Hyderabad,
and others.

..Respondents

Counsel for the Petitioner : Sri Jacob Mudi

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 Shaik Chand Pasha, the brother of the detenu by name Shaik Salman, S/o.Shaik Kaleem, aggrieved by the order of detention passed by the 3rd respondent by 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'), vide proceedings No.21/PD/CCRB/CYB/2019, dated 11.05.2019, and confirmed by the 1st respondent vide G.O.Rt.No.1642, General Administration (Spl.(Law & Order) Department, dated 19.06.2019

2. Heard learned Counsel for the parties, and perused the impugned orders.

3. The brief facts of the case are that the detenu who is arrayed as A.5 in Crime No.57 of 2019 on the file of Miyapur Police Station, in which the allegation is that the detenu has engaged in the gruesome gang rape on one Smt.Lilmuni Tudu and as such, the respondent No.3 has passed the detention order, dated 11.05.2019. According to the 3rd respondent, the detenu is involved in two (2) criminal cases i.e., Crime No.57 of 2019 of P.S.Miyapur, and Crime No.73 of 2019 registered at Raidurgam Police Station.

4. The contention of the Counsel for the petitioner is that the detenu after been released on bail in Crime No.57 of 2019 on 27.04.2019, was falsely implicated in Crime No.73 of 2019 by Raidurgam Police on 30.04.2019 and the same violated the fundamental rights guaranteed under Article 21 of the Constitution of India. That passing of the detention order based on two crime registered in the year 2019 is not only illegal, but the same is an arbitrary exercise of power. Moreover, the cases under which the detenu was booked can easily be tackled by the ordinary criminal justice system by holding criminal trial. Therefore, all these cases fall 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 cases narrated by the detaining authority do not fall within the ambit of “disturbance of public order”, the detaining authority is unjustified in invoking the Act. Therefore, the detention of the detenu is patently illegal. Hence, the detaining authority is unjustified in claiming that these cases have created a panic and have “disturbed the public order”. 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. Even while confirming the detention order dated 11.05.2019, the respondent No.1 has not applied his mind to the facts and circumstances of the case. Instead, the confirmation order dated 19.06.2019 has been passed in a mechanical manner. Admittedly, the

¹ AIR 1966 SC 740

bail application moved by the petitioner in Crime No.57/2019 of Miyapur Police Station was granted by the Court concerned. Even though no bail application has been moved in Crime No.73 of 2019 of Raidurgam P.S., the apprehension of the authorities that there is every likelihood of the detenu getting bail in due course and he will be released from jail, and after his release from jail, there is a genuine possibility that he will indulge in similar activities, which are detrimental to the *public order* and unless he is prevented from doing so by an appropriate order of detention is not correct and the same cannot be countenanced in view of the fact that the authorities have passed the impugned detention order only to scuttle the regular judicial process and as such, the preventive detention order as well as the confirmation order deserve to be set aside.

5. 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 nature of the crimes was gang rape and abetment of suicide, it had 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.

6. 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 11.05.2019, passed by the respondent No.3 and the confirmation order, dated 19.06.2019, passed by the respondent No.1, are liable to be set aside?”

POINT:

7. 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 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.

8. In the case of **Ram Manohar Lohia v. State of Bihar (1 supra)**, 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 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.”

9. 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 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?”

² (1972) 3 SCC 831

10. In the present case, the detaining authority has relied on two cases, which are registered only in the year 2019, for passing the impugned detention order against the detenu. A bare perusal of the detention order clearly reveals that the bail application filed by the detenu in Crime No.57 of 2019 was granted by the Special Sessions Judge for SC & ST Cases (POA) Act-cum-VII. Additional District and Sessions Judge, Ranga Reddy District, and the detenu was released from jail on 27.04.2019 and another crime was registered by Raidurgam Police vide Crime No.73 of 2019 and the detenu was arrested on 30.04.2019. Even though he has moved a bail application in the said crime, the same is pending for orders. Thus, the detenu continues to be in judicial custody.

11. However, the apprehension of the detaining authority that the detenu may move bail petition in the said crime again in 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 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 ought to have been vigilant in collecting the complete data against the detenu, and to furnish the same to the Public Prosecutor/Additional Public Prosecutor for the dismissal of the bail application 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**³, 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. Grave as the offences may be, they relate to gang rape and abatement of suicide. So, no inference of disturbance of public order can be drawn. These type of cases can certainly be tried under the normal criminal justice system. 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, the impugned orders are legally unsustainable.

13. Even while passing the confirmation order dated 19.06.2019, 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.

14. For the reasons stated above, the Writ Petition is hereby allowed. The impugned detention order dated 11.05.2019 passed by the respondent No.3 and the confirmation order dated 19.06.2019 passed by the respondent No.1 are hereby set aside. The respondents are directed to set the detenu, namely, Mr.Shaik Salman, S/o.Shaik Kaleem,

³ (2011) 5 SCC 244

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

ABHISHEK REDDY, J

29th August, 2019
smr

