

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.14524 of 2019

Date: 29.08.2019

Between:

Bhukya Laxmi

..Petitioner

And

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

..Respondents

Counsel for the Petitioner : Sri Karunakar Reddy

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

The Court made the following:

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

Smt.Bhukya Laxmi, the wife of the detenu, Bhukya Lalu, has filed the present Writ Petition, challenging the detention order passed by the 6th respondent who 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 C.No.47/WRC/CSB-XI/2019, dated 17.01.2019, and confirmed by the 2nd respondent vide G.O.Rt.No.710, General Administration (Spl.(Law & Order) Department, dated 08.03.2019, alleging that the petitioner's husband has been habitually engaging himself in unlawful acts, and indulging in offences of theft of cash by diverting the attention of the innocent people while travelling in autos in public places, and creating panic in the minds of public, which are prejudicial to the maintenance of public order. The grounds on which the detention order is passed by the 6th respondent is that in the year 2018, the detenu was involved in four similar offences vide crime Nos.317 of 2018, 427 of 2018, 429 of 2018 and 432 of 2018 of Intezagunj P.S., in which he committed theft of cash by diverting attention of the innocent people along with his associates.

2. It is the case of the petitioner that her husband was falsely implicated in all these cases by the Police, and as a matter of fact, all these cases were registered against her husband when he was in judicial custody in Crime No.311 of 2018. Even though her husband got

bail in all these cases, he could not furnish sureties and that he continued to be in judicial custody. The orders of detention are passed only to see that her husband does not come out of the jail. Hence, the present writ petition.

3. Heard the learned Counsel for the parties, and perused the impugned order.

4. Sri Karunakar Reddy, the learned Counsel appearing for the petitioner, submits that relying only on four cases registered against the detenu in the year 2018, the impugned detention order is passed. The learned Counsel further submits that the alleged cases do not amount 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 Indian Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned order tantamounts to the colourable exercise of power and as such, is legally unsustainable.

5. On the other hand, Mr.S.Sharath Kumar, the learned Special Government Pleader, pleads that in all the four cases registered against the detenu, he managed to get bail 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 theft of cash by diverting the attention of the innocent people, 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 Special Government Pleader has supported the impugned orders.

6. In view of the submissions made by both the sides, the point that rises for determination in this Writ Petition is:-

“Whether the detention order, dated 17.01.2019, passed by the respondent No.6, and the confirmation order, dated 08.03.2019, passed by the respondent No.2, are liable to be set aside or not?”

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 regular 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, 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

¹ AIR 1966 SC 740

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 'ordre 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

² (1972) 3 SCC 831

affect merely an individual leaving the tranquillity of the society undisturbed?”

10. In the instant case, the detaining authority relied on four cases registered against the detenu for preventively detaining him vide Crime Nos.317/2018, 427/2018, 429/2018 and 432/2018 of P.S.Inthezargunj.

11. A perusal of the impugned detention order reveals that the detenu moved bail petitions in all the above crimes, and the detenu was granted bail by the Court concerned in Crime Nos.432 of 2018. Despite the fact that the detenu was granted bail in Crime No.432 of 2018 by the Court concerned, he could not be released on the bail, as he was unable to furnish the sureties required. However, the apprehension of the detaining authority that the detenu may furnish sureties in the cases in which he was granted bail and may get bail in the other cases and in the event of his release from the prison on bail, there is an imminent possibility of his committing similar offences, and unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. It is the bounden duty of the police concerned to hand over the entire material record available to the Public Prosecutor/Assistant Public Prosecutor to see that the bail application/s of the detenu is dismissed. If the Police are vigilant enough to collect the data relating to 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. 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.

12. Grave as the offences may be, they relate to cheating and dishonestly inducing delivery of property and theft. So, no inference of disturbance of public order can be drawn. These types 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.

13. Therefore, for the reasons stated above, the impugned order is legally unsustainable.

14. In the result, the Writ Petition is allowed. The impugned detention order, dated 17.01.2019, passed by the respondent No.6, and the confirmation order, dated 03.03.2019, passed by the respondent No.2, are hereby set aside. The respondents are directed to set the *detenu*, namely, Mr. Bhukya Lalu, S/o.Harisingh, 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, if any, shall stand closed.
There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

ABHISHEK REDDY, J

29th August, 2019
smr