

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.16424 of 2019

Date: 29.08.2019

Between:

Smt. Gajula Sarita

..Petitioner

And

The State of Telangana,
Rep. by its Principal Secretary,
GAD, Spl (Law & Order) Dept.,
Secretariat, Hyderabad,
and others.

..Respondents

Counsel for the Petitioner : Sri K.Pradeep Reddy

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.Gajula Saritha, the wife of the detenu questioning the proceedings vide C.No.77/PDC/KNR/2019, dated 03.06.2019, passed by the 2nd respondent, which is approved vide G.O.Rt.No.1569, General Administration (Spl.(Law & Order) Department, dated 11.06.2019 and also confirmed vide G.O.Rt.No.1929, General Administration (Spl.(Law & Order) Department, dated 20.07.2019 by the 1st 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 Orders of detention against her husband, Gajula Srinivas vide proceedings C.No.77/PDC/KNR/2019, dated 03.06.2019, 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'); the respondent No.1 has approved the same vide G.O.Rt.No.1569, General Administration (Spl.(Law & Order) Department, dated 11.06.2019, and also confirmed vide G.O.Rt.No.1929, General Administration (Spl.(Law & Order) Department, dated 20.07.2019. It is the case of the petitioner that her husband was engaged in the business of seeds in the name and style of

M/s.Sri Rounak Agro Sciences Private Limited, Karimnagar and was never involved in any sort of offences alleged and the police have falsely implicated him in the offences referred to in the impugned order. The order of detention was passed basing on two crimes i.e., F.I.R.No.228 of 2019 on the file of P.S.Huzurabad, Karimnagar Police Commissionerate, and F.I.R.No.237 of 2019 on the file of P.S.Medchal, Cyberabad Police Commissionerate. 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, which was approved and confirmed by the 1st respondent.

3. Heard Sri K.Pradeep Reddy, 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 two recently registered crimes; secondly, the cases which are registered, even if taken on the face value, come under the Seeds Act, 1966 (Central Act No.54 of 1966); thirdly, these types of cases can be easily dealt with by the ordinary Criminal Justice System by holding a criminal trial. At the most, these cases would fall within the ambit of *law and order* problem and do not fall under the Act. Hence, the impugned Order is liable to be set aside. Fourthly, the detaining authority is not justified in invoking a draconian power under the preventive detention laws. For, 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 by the people under Article 21 of the Constitution of India. Lastly, while passing the detention order, dated 03.06.2019, the 2nd respondent has not applied his mind to the facts and circumstances of the cases; that the respondent No.1 without application of mind has passed the confirmation order, dated 20.07.2019 in a mechanical manner. For, admittedly, the bail application moved by the detenu in Crime No.228 of 2019 was dismissed by the Additional Judicial Magistrate of First Class, Karimnagar, in Crl.M.P.No.733 of 2019 by its order dated 03.06.2019. 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, and as such even the confirmation order deserves to be set aside.

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, on the farmers who are cheated by the detenu by the sale of spurious seeds. The quantity of the spurious seeds sold by the detenu is very large. In order to effectively curb these kind of illegal activities, the order passed by the respondents is perfectly justified and as such, taking into consideration the fact that by use of these spurious seeds, the farmers at large are suffering huge losses and due to which many farmers are resorting to extreme measures like suicide and there is every likelihood of such farmers getting enraged and attacking these bogus Seed Companies/Shops and the same will affect the law and order problem and create panic in the minds of the general public.

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 03.06.2019 passed by the 2nd respondent and the confirmation order, dated 20.07.2019, passed by the 1st respondent, are liable to be set aside?”

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, 1966. It was alleged that chilli seeds sold were spurious, as

¹ (2017) 4 SCC 577

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 two cases, which were registered in the year 2019, for passing the impugned order and the subsequent confirmation order. Moreover, the grounds of detention were passed on the very same day on which the application for bail was rejected in Crime No.228 of 2019. A perusal of the order shows that the Section invoked under the Seeds Act is also not the correct provision of law. 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

³ (1972) 3 SCC 831

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 order in a mechanical manner, more particularly when only two 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. 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. Therefore, the impugned orders are legally unsustainable.

13. Even while passing the confirmation order dated 20.07.2019, the Special Chief Secretary to Government (POLL), General Administration (Spl (Law and Order) Department, Government of Telangana, the respondent No.1, has failed to notice that the detenu continues to languish as an under-trial in the jail. Once the detenu was already

⁴ (2011) 5 SCC 244

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 03.06.2019 passed by the respondent No.2, and the confirmation order dated 20.07.2019 passed by the respondent No.1 are hereby set aside. The respondents are directed to set the detenu, namely, Mr. Gajula Srinivas, S/o.Venkatrajam, 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