

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.16433 of 2019

Date: 29.08.2019

Between:

Gangaram Mukhiya

..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 P.Trivikram 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)

Gangaram Mukhiya, the brother of the detenu-Kishan Mukhiya, has filed the present Writ Petition, challenging the detention order passed by the 2nd 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.46/PD/CCRB/CYB/2018, dated 14.11.2018, and confirmed by the 1st respondent vide G.O.Rt.No.161, General Administration (Spl.(Law & Order) Department, dated 18.01.2019, relying on a solitary case in Crime No.1279 of 2018 of P.S.Rajendranagar, in which the detenu was involved in the murder of one Rajendra Prasad Agarwal and robbed away gold, silver jewellery and net cash.

2. Heard the learned counsel for the parties, and perused the impugned order.

3. Briefly, the facts of the case are that by relying on a solitary case registered in the year 2018, the 2nd respondent has passed the impugned order of detention on 14.11.2018 and the reason being that the detenu had been indulging in the acts of goondaism by acting as a leader/member of gang and committed series of heinous crimes i.e., murder for gain in an organized way, creating terror etc., and the said

detention order was confirmed by the 1st respondent vide G.O.Rt.No.161, dated 18.01.2019.

4. Sri P.Trivikram Reddy, learned Counsel for the petitioner, has contended that passing of the impugned order of detention, based on a solitary crime cannot be sustained and the same is liable to be set aside and the detenu released. According to the learned Counsel, individual cases cannot fall within the ambit of 'law and order problem' and these kinds of cases can be dealt with easily under the normal criminal justice system and the reason given by the 2nd respondent based on a solitary incident cannot be sustained and is an abuse of process of law and the same is nothing but colourable exercise of power. That indiscriminate use of preventive detention laws is in violation of right to life and personal liberty guaranteed by Article 21 of the Constitution of India and as such the impugned order deserves to be set aside.

5. On the other hand, Mr.S.Sharath, the learned Special Government Pleader, submits that the alleged offence committed by the detenu is a crime against the society in which the detenu had murdered a person for personal gain and the same is likely to cause panic and insecurity in the minds of the people. The detaining authority was legally justified in passing the impugned Order.

6. In view of the submissions made by the rival parties, the point that arises for consideration in this Writ Petition is:

“Whether the detention order passed by the 2nd respondent herein vide proceedings No.46/PD/CCRB/CYB/2018, dated 14.11.2018, and confirmed by the 1st respondent vide G.O.Rt.No.161, General Administration (Spl.(Law & Order) Department, dated 18.01.2019, is liable to be set aside?

7. This Court in a series of Judgments has time and again held that the draconian laws under the Preventive Detention Act cannot be

invoked against the persons who have committed a solitary crime and the same cannot be termed as an order which is passed for maintenance of *public order* and such person cannot be termed as *goonda* under the said 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 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

¹ AIR 1966 SC 740

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?”

10. In the present case, the detaining authority relied on only one criminal case registered against the detenu for preventively detaining him vide Crime No.1279 of 2018 of P.S.Rajendranagar.

11. A perusal of the impugned detention order reveals that the detenu had moved two bail applications in crime No.1279 of Rajendranagar Police Station and the same were rejected by the

² (1972) 3 SCC 831

Metropolitan Sessions Judge, Hyderabad at L.B.Nagar. The apprehension of the detaining authority that the detenu may move another bail application and in the event of his release from the prison on bail, there is an imminent possibility of his committing similar offences, 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 for dismissal of the bail application/s of the detenu. 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. However, it is the Police that have to take required measures to inform the Public Prosecutor about the criminal history of the offender. Mere apprehension of the detaining authority cannot be a ground to invoke the preventive detention laws, in order to breach the liberty of an individual.

12. Grave as the offence may be, it relates to murder for gain. 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.

13. In view of the foregoing reasons, the impugned order is legally unsustainable and is liable to be set aside.

14. In the result, the Writ Petition is allowed and the impugned detention order passed by the 2nd respondent vide proceedings

No.46/PD/CCRB/CYB/2018, dated 14.11.2018, and confirmed by the 1st respondent vide G.O.Rt.No.161, General Administration (Spl.(Law & Order) Department, dated 18.01.2019, are hereby set aside, and the respondents are directed to set the detenu, namely Kishan Mukhiya, S/o.Bhagwath Mukhiya, 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

