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.16972 OF 2019

Date : 31.10.2019

Between :

Shaik Parveen ... Petitioner

and

The State of Telangana,
Rep. by its Principal Secretary,
General Administration (Spl. (Law & Order) Department,
Secretariat, At Hyderabad,
and others

... Respondents

Counsel for the petitioner: Mr.Pasham Trivikram 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. Shaik Parveen, the wife of the detenu *viz.,* Shaik Khadar, has filed the present Writ Petition, challenging the Detention Order passed by the 2nd 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, 'the Act'), vide proceedings No.27/PD/CCRB/CYB/2019, dated 21.06.2019, and the confirmation order passed by the 1st respondent vide G.O.Rt.No.2004, General Administration (Spl. (Law & Order) Department, dated 31.07.2019, alleging that the detenu has been habitually engaging himself in property offences i.e. house burglaries, and thereby acting in a manner prejudicial to the maintenance of public order. The ground on which the impugned detention order is passed by the 2nd respondent is that during the years 2018 and 2019, the detenu was involved in seven similar offences, *viz.,* (1) Crime No.885 of 2018 of Pet-Basheerabad Police Station registered for the offences under Sections 457 and 380 IPC, (2) Crime No.4 of 2019 of Shamirpet Police Station registered for the offences under Sections 457 and 380 IPC, (3) Crime No.68 of 2019 of Shamirpet Police Station registered for the offences under Sections 457 and 380 IPC, (4) Crime No.78 of 2019 of Alwal Police

Station registered for the offences under Sections 457 and 380 IPC, (5) Crime No.71 of 2019 of Shamirpet Police Station registered for the offences under Sections 457, 380 and 511 IPC, (6) Crime No.114 of 2019 of Shamirpet Police Station registered for the offences under Sections 457 and 380 IPC, and (7) Crime No.135 of 2019 of Shamirpet Police Station registered for the offences under Sections 457 and 380 IPC.

2. It is the case of the petitioner that the detenu was falsely implicated in the above referred cases. Even though, he was granted bail in crime No.885/2018 of Pet-Basheerabad PS and likely to get bail in the remaining cases, he is likely to be continued in judicial custody due to passing of the impugned detention order and the same is passed only to see that he 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. Mr.P.Trivikram Reddy, the learned counsel appearing for the petitioner, submits that relying one seven cases registered against the detenu, the impugned detention order is passed. He further submits that the alleged offences 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 provisions of 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 power. Thus, the impugned orders are legally unsustainable.

5. On the other hand, Mr.S.Sharath Kumar, the learned Special Government Pleader, pleads that only in crime Nos.885/2018, the detenu was granted bail by the concerned Court. The series of crimes allegedly committed by the detenu were sufficient to cause a large scale fear and panic among the general public. Since the *modus* of the crime is committing burglaries in the night targeting the locked commercial establishments, wine shops and ATM centres, it has caused sufficient panic and fear in the minds of the public. Therefore, the detaining authority was legally justified in passing the impugned detention order. Hence, the learned Special Government Pleader has supported the impugned order.

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 21.06.2019, passed by respondent No.2, and the confirmation Order, dated 31.07.2019, passed by the respondent No.1, are liable to be set aside or not?"

POINT:

7. In catena of decisions the Hon'ble Supreme Court as well as this Court have 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. The invoking of such law adversely effects 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. The Hon'ble Supreme Court in **V.Shantha v. State of Telangana and Others**[1] while considering the various provisions of the Act has 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 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*

[1] (2017) 4 SCC 577

> *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 Hon'ble 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*

[2] AIR 1966 SC 740

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.

10. In the case of **Kanu Biswas v. State of West Bengal**[3], the Hon'ble 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?

[3] (1972) 3 SCC 831

11. In the instant case, the detaining authority relied on seven cases registered against the detenu for preventively detaining him. The below tabular form shows the date of occurrence, the date of registration of FIR, the offences complained of and its nature, such as bailable/non-bailable or cognizable/non-cognizable.

Sl. No.	Crime No.	Date of occurrence	Date of registration of FIR	Offences	Nature
1.	Cr.No.885/2018 of Pet-Basheerabad PS	14.12.2018	15.12.2018	Secs.457 and 380 IPC.	Cognizable/ Non-Bailable
2.	Cr.No.4/2019 of Shamirpet PS	01.01.2019	02.01.2019	Secs.457 and 380 r/w 511 IPC.	Cognizable/ Non-Bailable
3.	Cr.No.68/2019 of Shamirpet PS	10.02.2019	11.02.2019	Secs.457 and 380 IPC.	Cognizable/ Non-Bailable
4.	Cr.No.78/2019 of Alwal PS	23.02.2019	23..02.2019	Secs.457 and 380 r/w 511 IPC.	Cognizable/ Non-Bailable
5.	Cr.No.71/2019 of Shamirpet PS	11.02.2019	12.02.2019	Secs.457 380, 511 IPC.	Cognizable/ Non-Bailable
6.	Cr.No.114/2019 of Shamirpet PS	10.03.2019	11.03.2019	Secs.457 and 380 IPC.	Cognizable/ Non-Bailable
7.	Cr.No.135/2019 of Shamirpet PS	22.03.2019	23.03.2019	Secs.457 and 380 IPC.	Cognizable/ Non-Bailable

12. A perusal of the impugned detention order reveals that only in crime Nos.885/2018, the detenu was granted bail by the concerned Court. The apprehension of the detaining authority that in case of the detenu obtaining bail in the remaining cases and in the event of his coming out of the jail, there is imminent possibility of his committing similar offences, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. If the detenu is enlarged on bail and violates the conditions of bail or indulges in similar crimes while on bail, the concerned authority/Public Prosecutor is free to move the concerned Court for getting the bail cancelled. 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 of the detenu is dismissed. If the Police are vigilant enough to collect the data relating to the alleged offences, 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.

13. In **State of Maharashtra and Ors. v. Bhaurao Punjabrao Gawande**[4] the Hon'ble Supreme Court has held as follows:

> *23....personal liberty is a precious right. So did the Founding Fathers believe because, while their first object was to give unto the people a Constitution whereby a government was established, their second object, equally important, was to protect the people against the government. That is why, while conferring extensive powers on the government like the power to declare an emergency, the power to suspend the enforcement of fundamental rights or the power to issue ordinances, they assured to the people a Bill of Rights by Part III of the Constitution, protecting against executive and legislative despotism those human rights which they regarded as fundamental. The imperative necessity to protect these rights is a lesson taught by all history and all human experience. Our Constitution-makers had lived through bitter years and seen an alien Government trample upon human rights which the country had fought hard to preserve. They believed like Jefferson that "an elective despotism was not the Government we fought for". And, therefore, while arming the Government with large powers to prevent anarchy from within and conquest from without, they took*

[4] (2008) 3 SCC 613

care to ensure that those powers were not abused to mutilate the liberties of the people.

14. In the Nine-Judge Constitution Bench decision in **I.R. Coelho v. State of T.N.**[5] the Hon'ble Supreme Court has observed as follows:

109. ……It is necessary to always bear in mind that fundamental rights have been considered to be (the) heart and soul of the Constitution

49. ..... Fundamental rights occupy a unique place in the lives of civilized societies and have been described in judgments as "transcendental", "inalienable", and primordial.

15. It is also appropriate to refer to the decision of the Hon'ble Apex Court in **Rekha Vs. State of Tamil Nadu**[6], wherein it is held as follows:

23. ….criminal cases are already going on against the detenu under various provisions of the Indian Penal Code as well as under the Drugs and Cosmetics Act, 1940 and if he is found guilty, he will be convicted and given appropriate sentence. In our opinion, the ordinary law of the land was sufficient to deal with this situation, and hence, recourse to the preventive detention law was illegal."

30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal.

16. Grave as the offences may be, they relate to burglaries. 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

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[5] (2007) 2 SCC 1
[6] (2011) 5 SCC 244

punished by the Court of law. Hence, there was no need for the detaining authority to pass the detention order.

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

18. In the result, the Writ Petition is allowed. The impugned detention order, dated 21.06.2019, passed by respondent No.2, and the confirmation order, dated 31.07.2019, passed by respondent No.1 are set aside. The respondents are directed to set the *detenu,* namely Shaik Khadar, S/o.Hussain, at liberty forthwith, if he is no longer detained in judicial custody in the criminal cases, which have been so far registered against him. It is needless to observe that the Trial Court shall deal with the bail application filed by the detenu/accused independently on its own merits, uninfluenced by any observations made in this order.

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

Date : 31.10.2019
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