

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.18056 OF 2019

Date : 17.10.2019

Between :

Mohd.Javeed Khan @ Javeed

... Petitioner

and

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

... Respondents

Counsel for the petitioner: Ms.P.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)

Mr.Mohd.Javeed Khan @ Javeed, the detenu, 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.37/PD-Cell/CYB/2019, dated 12.07.2019, and confirmed by the 1st respondent vide G.O.Rt.No.2220, General Administration (Spl. (Law & Order) Department dated 29.08.2019, alleging that Mohd.Javeed Khan @ Javeed is a sexual offender as he has engaged himself in acts of sexual offence of committing of Kidnap, Heinous Gang Penetrative Sexual Assault on a minor girl Kum.Habiba and acted in a manner prejudicial to maintenance of public order, apart from disturbing peace and tranquility in the society. The ground on which the impugned detention order is passed by the 2nd respondent is that the detenu was involved in Crime No.131 of 2019 of Jagadgirigutta Police Station of Cyberabnad Police Commissionerate for the offences under Sections 363, 323, 506 376 DB of IPC and Section 5(g)(l)(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012.

2) It is the case of the petitioner that he was falsely implicated in the above case. Even though, the petitioner/the

detenu got bail in the above referred case, he continued to be in judicial custody due to passing of the impugned detention order and the same is passed only to see that the detenu 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, learned counsel appearing for the petitioner, submits that relying only one case registered against the detenu, that too in the year 2019, the impugned detention order is passed. He further submits that the alleged case does not amount to 'disturbing the public order'. The same is 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 power. Thus, the impugned orders are legally unsustainable.

5) On the other hand, Mr.S.Sharath Kumar, the learned Special Government Pleader, pleads that in the case registered against the detenu, he obtained bail from the concerned Court. The crime allegedly committed by him was sufficient to cause a feeling of insecurity and fear in the minds of the people at large. Since the *modus* of crime is committing sexual offence on minor girl taking advantage of absence of her parents, it has created sufficient panic and fear in the minds of the general public. Therefore, the detaining authority was legally justified in passing

the impugned detention order. 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 12.07.2019, passed by the 2nd respondent, and the confirmation Order, dated 29.08.2019, passed by the 1st respondent, are liable to be set aside or not?”

POINT:

7) A perusal of the impugned detention order reveals that the detenu moved bail petitions in the above crime, and he was granted bail but remained in jail for failure to furnishing sureties and in the event of his release from the prison on bail, there is imminent possibility of his committing similar offences, unless he is prevented from doing so by an appropriate order of detention, is perfectly justified.

8) In **Haradhan Saha v. State of W.B.**¹, a Constitution Bench has held that even if a person is liable to be tried in a criminal Court for commission of criminal offence or is actually been so tried that does not debar the authorities from passing a detention order under the preventive detention law.

9) In **Arun Ghosh** (supra), the Hon’ble Supreme Court has clearly opined that *what in a given situation may be a matter covered by law and order, on account of its impact on the society may really turn out to be one of ‘public order’*. It has further observed as under:

¹ (1975) 3 SCC 198

“Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies.”

10) In the case of **Madhu Limaye v. Sub-Divisional Magistrate²**, the Apex Court had clearly opined that *acts which disturb public tranquility or are breaches of the peace should not be given a narrow meaning, but should be given a liberal interpretation. For the expression ‘in the interest of public order’ is very wide amplitude.*

11) The offences committed by the detenu are very grave in nature and relate to sexual offences committing rape on minor child. If the detenu is released, there is every likelihood of his committing the crime again and while on bail he may tamper with the evidence or threaten the witnesses including the victim.

² (1970) 3 SCC 746

12) Therefore, for the reasons stated above, the impugned detention order is legally sustainable. This Court does not find any merit in the present writ petition.

13) In the result, the Writ Petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

Date : 17.10.2019
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