

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.41168 of 2018

Date: 20.06.2019

Between:

Patri Muthaiah

...Petitioner

And

The State of Telangana,
Rep. by its Principal Secretary to Government (POLL),
General Administration (Special Law and Order) Department,
Secretariat, Hyderabad,
and another.

...Respondents

Counsel for the petitioner : Mr. P. Prabhakar Reddy

Counsel for the respondents: Mr. S. Sharath
Special Government Pleader

The Court made the following:

ORDER: (Per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)

The petitioner, Patri Muthaiah, has filed this Habeas Corpus Petition, *inter alia*, on the ground that for a single murder case, Patri Someshwar @ Sonu is preventively detained by the respondents by order, dated 19.07.2018, passed by the respondent No.2, the Commissioner of Police, and subsequently confirmed by orders, dated 25.07.2018 and 12.10.2018, passed by the respondent No.1.

Briefly, the facts of the case are that on 23.04.2018 a complaint was filed by one Thaithala Swapna alleging that Pathi Kumar and some others have come to their house, and had threatened her husband, Thaithala Sambaiah. They told him that if he does not mend his ways, and if he does not stop being a Police informant, he would be killed. Due to their threats, her husband and she had vacated their house from NTR Nagar, and had started living in Dayanand Colony. On 22.04.2018 at about 8:00 am, her husband went out of the house, and he did not come back even by 8:00 pm. When she called him up on his cell phone, it was switched off. On 23.04.2018, around 6:00 am, she was informed that a body of an unknown person was found in a gunny bag in the Enumamula market yard. She went to the market yard, and identified the body of the unknown person as that of her husband. On the basis of the said complaint, a criminal case, namely, Crime No.142 of 2018, was registered by the Inthezar Gunj Police Station for offences under Sections 120-B, 143, 148, 364, 342, 302 read with 149

IPC and for offence under SEction 3(2)(V) of the Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989. During the investigation of the said case, the detenu was arrested on 27.04.2018. His bail application was dismissed on 27.06.2018. However, by order, dated 19.07.2018, the respondent No.2 passed the detention order against the detenu. The said detention order was subsequently confirmed by orders, dated 25.07.2018 and 12.10.2018, passed by the respondent No.1. Hence, this petition before this Court.

Mr. Prabhakar Reddy, the learned counsel for the petitioner, has raised the following contentions:

Firstly, a clear distinction exists between “a law and order problem” and “a public order problem”. The only case registered against the detenu is that of murder. Therefore, it is a case which is against an individual. Hence, it is the case that falls within the ambit of “law and order” and does not fall within the ambit of “disturbance of public order”.

Secondly, ever since his arrest on 27.04.2018 till present, the detenu continues to be in judicial custody, as his bail application has already been dismissed on 27.06.2018. Since the detenu is in the judicial custody, there was no possibility of the detenu coming out. Despite the fact that he continues to be in judicial custody, the detaining authority has passed the detention order for the reasons best known to it.

Thirdly, even if the detaining authority claims that there is a distinct possibility that the Court may grant bail to the detenu, even then the said ground is not a legal and valid ground for detaining a person. According to the learned counsel, the harsh laws of preventive detention cannot be used to violate the fundamental right to life and personal liberty guaranteed by the Article 21 of the Constitution of India. In fact, instead of invoking the other remedies available to the detaining authority in opposing the grant of bail, the detaining authority has abused the preventive detention laws. Hence, the detention orders suffer both from non-application of mind, and from colourable exercise of power. Thus, the detention order and the confirmation orders deserve to be set aside by this Court.

On the other hand, Mr. Sharath, learned Special Government Pleader, submits that the victim, Thaithala Sambaiah, was a member of the Scheduled Caste. Since the murder was a brutal one, it had disturbed "the public order" as it had created panic and insecurity in the minds of the people. Therefore, the detaining authority was legally justified in passing the impugned orders. Thus, the learned Counsel has supported the impugned orders.

Heard the learned counsel for the parties, and perused the impugned orders.

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 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

¹ AIR 1966 SC 740

subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.”

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?”

Admittedly, the detenu has been detained only on the basis of a single murder allegedly committed by him and by his co-accused persons. Hence, the crime was targeted at an individual, and not at a class of persons. Even if the murder is a brutal one, even then it can easily be tackled by the criminal justice system. Therefore, the learned Special Government Pleader is not justified in claiming that it has disturbed the public order. Thus, the detention order suffers from the virus of colourable exercise of power.

Moreover, since the detenu happens to be in judicial custody ever since he was arrested on 27.04.2018, there was no reason for the detaining authority to pass the detention order

² (1972) 3 SCC 831

on 19.07.2018. Even when the detention order was subsequently confirmed by orders, dated 25.07.2018 and 12.10.2018, even then the detenu was in judicial custody as no bail was granted to him by the learned trial Court. Hence, the impugned orders suffer from non-application of mind.

For the reasons stated above, this Writ Petition is, hereby, allowed. The impugned orders, dated 19.07.2018, 25.07.2018 and 12.10.2018, are set aside. The respondents are directed to immediately release the detenu, Patri Someshwar @ Sonu, from preventive detention, although he shall continue to be an under-trial in Crime No.142 of 2018 till he is released on bail, if any, granted by the Court.

The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Dr. SHAMEEM AKTHER, J

20.06.2019
vs