

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

Coram :

*** The Honourable Mr. Justice V.RAMASUBRAMANIAN
and**

The Honourable Mr. Justice P. KESHA VA RAO

+ WRIT PETITION Nos.41946, 41954 and 41955 of 2018

AND

**I.A.No.1/2019 in W.P. No.41946/2018, I.A. No.1/2018 in W.P.
No.41954/2018 AND I.A. No.1/2019 in W.P. No.41955/2018**

% Delivered on: 26-04-2019

Between:

# 1. Mrs. T. Padmaja W/o Sravan Kumar,	.. Petitioner (in W.P. No.41946/2018)
2. Mrs. Girija Rani W/o T. Maruthi Rao	.. Petitioner (in W.P. No.41954/2018)
3. Mrs. Rehana Sultana W/o Md. Abdul Kareem	.. Petitioner (in W.P. No.41955/2018)

Vs.

\$ 1. The State of Telangana, rep. by its Prl.Seceretary, GAD (L&O) Dept., Secretariat Bldgd., Hyd.	
2. The Collector & District Magistrate, Nalgonda Dist.	
3. The Superintendent, Central Prison, Warangal,	
4. The Superintendent of Police, Nalgonda, Nalgonda Dist.	.. Respondents

! For Petitioners	: Mr. C.V. Mohan Reddy, Sr. Counsel Mr. T. Niranjan Reddy, Sr. Counsel
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^ For Respondents	: Mr. Sharat Kumar, Special Government Pleader
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For Proposed party	: Mr. G.V. Shivaji
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< Gist	:
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> Head Note	:
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? Cases referred	:
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- 1) AIR 1951 SC 157
- 2) (1984) 3 SCC 14
- 3) (2006) 6 SCC 14
- 4) (1975) SCC 250

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

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**I.A.No.1/2019 in W.P. No.41946/2018, I.A. No.1/2018 in W.P.
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COMMON ORDER:

The 14th day of February is celebrated the World over, as Valentine's Day. The 14th day of July has been declared in the United Kingdom as a National Day of Memory for the Victims Honour Killings, in memory of Shafiea Ahmed, killed by her own parents, when she was just 17 years young. Ironically, it was on the 14th day of September, 2018 that a young *Dalit* at the prime of his youth, was brutally murdered in broad day light in a public place, purportedly by his father-in-law, the brother of his father-in-law and their family friend, for having fallen in love with a girl belonging to a Hindu Upper Caste.

2. Thereafter, the father, paternal uncle and their family friend were ordered by the District Collector and Magistrate, to be detained under Section 3 (2) of the Telangana Act No.1 of 1986. It is against these three orders of detention passed against the girl's father, paternal uncle and their family friend that the petitioners have come up with the above writ petitions.

3. We have heard Mr. C.V. Mohan Reddy and Mr. T. Niranjan Reddy, learned Senior Counsel for the petitioners, Mr. Sharat Kumar, learned Special Government Pleader attached to the office of the

learned Advocate General, appearing for the respondents and Mr. G.V. Shivaji, learned counsel appearing for the persons who sought to implead themselves to these writ petitions.

4. The petitioner in W.P. No.41946 of 2018 is the wife of the detenu, by name, Thirunagaru Sravan Kumar @ Sravan. The petitioner in W.P. No.41954 of 2018 is the wife of the detenu Thirunagaru Maruthi Rao. Maruthi Rao and Sravan Kumar are brothers.

5. The petitioner in W.P. No.41955 of 2018 is the wife of the third detenu, by name, Md. Abdul Kareem, purported to be a friend of the other two detenus.

6. It appears that the daughter of T. Maruthi Rao (one of the three detenus), by name, Amrutha Varshini, belonging to the Hindu Vysya Community, purportedly fell in love with one Perumalla Pranay Kumar, a boy belonging to the Scheduled Caste Community. Much against the wishes of her parents, the girl married the boy. Though a case of kidnapping was filed against the boy, no prosecution could take place as both of them were majors.

7. When the girl, Amrutha Varshini, was in the fifth month of her pregnancy and when she was taken to Jyothi Hospital by her husband, (the deceased Pranay Kumar), for medical check-up at noon on 14.09.2018, the deceased was attacked and killed on the spot when he was coming out of the hospital. A First Information Report was registered in Crime No.139 of 2018 against the girl's father T. Maruthi Rao and the girl's paternal uncle T. Sravan Kumar for alleged

offences under Sections 302, 34, 120B read with 109 IPC and Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 2015.

8. On 18.09.2018, the detenus, T. Maruthi Rao, T. Sravan Kumar and Md. Abdul Kareem were arrested.

9. After the arrest of the detenus and their detention to custody, two more First Information Reports came to be registered against the detenus in Crime Nos.149 of 2018 and 150 of 2018 respectively on 05.10.2018 and 06.10.2018. The offences complained of in both these First Information Reports were respectively under (i) 342, 323 and 506 read with 34 IPC and (ii) Sections 448, 323, 504 and 506 read with 34 IPC.

10. These two First Information Reports (FIRs) registered on 05.10.2018 and 06.10.2018 respectively, related to certain incidents that allegedly happened on 6.08.2018 and 11-8-2018.

11. After these two FIRs were registered on 05.10.2018 and 06.10.2018, the District Collector passed the impugned orders of preventive detention, dated 29.10.2018.

12. Mr. C.V. Mohan Reddy and Mr. T. Niranjan Reddy, learned senior counsel for the petitioners challenge the orders of detention on the following grounds:

- i) that the detenus do not come within the definition of the expression “Goonda” under Section 2 (g) of the Telangana Act No.1 of 1986;

- ii) that though the orders of detention took note of the fact that the detenus were in custody and that they had moved bail applications, the Detaining Authority did not even take note of the most important fact, *viz.*, the rejection of the bail on 24.10.2018;
- iii) that after the solitary incident of murder that happened on 14.09.2018, two more FIRs were deliberately registered on 05.10.2018 and 06.10.2018 relating to the alleged occurrences on 6/11.08.2018, just for the purpose of slapping the orders of preventive detention;
- iv) that the two subsequent FIRs registered on 05.10.2018 and 06.10.2018 are for offences which are bailable and non-cognizable, but the orders of preventive detention do not disclose any application of mind on the part of the Detaining Authority to this important aspect;
- v) that unlike the National Security Act which contains a provision in Section 5A, an order of detention under Telangana Act No.1 of 1986 will stand vitiated even if one of the grounds of detention is wrong;
- vi) that there was a delay in the disposal of the representations of the detenus; and
- vii) that the orders of detention suffer from non-application of mind, failure to taking into account the relevant considerations and for taking into account the irrelevant considerations.

13. In response, it was contended by Mr. Sharath Kumar, learned Special Government Pleader attached to the office of the learned Advocate General, that it was not a case of simple murder, but a case of honour killing, having the potential to trigger communal violence between persons belonging two castes; that by their actions, the detenus created a rift between two sections of society; that all that has to be tested in a writ petition challenging orders of preventive detention, is just to see whether sufficient grounds existed for the Detaining Authority to make up his mind and whether a meaningful opportunity to make a representation was given to the detenu and whether all the material on the basis of which the order of detention was passed, were taken into account by the Detaining Authority or not. It is also contended by the learned Special Government Pleader that what is important in cases of this nature is just to find out whether there were sufficient material before the Detaining Authority. Once it is found that there were sufficient materials and once it is found that all the material were supplied and an opportunity was granted to the detenus, the Court would not go beyond the protection available under Article 22 (5). Strong reliance was placed by the learned Special Government Pleader, on the judgment of the Constitution Bench of the Supreme Court in **State of Bombay v. Atama Ram Shridhar Vaidya**¹.

14. We have carefully considered the above submissions.

¹. AIR 1951 SC 157

15. The law relating to preventive detention is now fairly well-settled. While Article 22 (5) of the Constitution specifically recognizes two rights for the detenu, viz., (i) to be communicated with all the grounds on which the detention was ordered; and (ii) to be afforded an earliest opportunity of making a representation, the Courts have gone beyond Article 22 (5) and laid down certain parameters, depending upon the language of the Statute under which a person is detained.

16. We are concerned in this case with a State Enactment, which has a very long title viz., “*The Telangana Prevention of Dangerous Activities of Boot-Leggers, 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*”.

17. Section 3 (1) of the Telangana Act No.1 of 1986 empowers the Government to make an order directing the detention of any boot-legger, dacoit, goonda etc., with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

18. Therefore, two requirements are to be satisfied under Section 3(1). They are: (i) persons sought to be detained must come within the definition of any one or more expressions ‘boot-legger’,

‘dacoit’ and ‘goonda’ etc.; and (ii) the detention should be with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

19. The expression “public order” is not defined in the Act. But, the expression “goonda” is defined in Section 2 (g), and the phrase “acting in a manner prejudicial to the maintenance of public order” is defined in section 2 (a).

20. Section 2 (g) reads as follows:

“ *“Goonda”* means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act 45 of 1860);”

21. Section 2 (a) reads as follows:

“ *“Acting in any manner prejudicial to the maintenance of public order”* means when a bootlegger, a dacoit, a drug offender, a goonda, an immoral traffic offender Land-Grabber, a Spurious Seed Offender, an Insecticide Offender, a Fertiliser Offender, a Food Adulteration Offender, a Fake Document Offender, a Scheduled Commodities Offender, a Forest Offender, a Gaming Offender, a Sexual Offender, an Explosive Substances Offender, an Arms Offender, a Cyber Crime Offender and a White Collar or Financial Offender is engaged or is making preparations for engaging in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order.”

22. Under Section 8 (1) of the Act, the Detaining Authority should communicate to the detenu, the grounds on which the order had been made, as soon as may be, but not later than five (5) days from the date of detention. The Detaining Authority should also afford

him the earliest opportunity of making a representation against the order.

23. Having thus seen the broad frame work of Telangana Act No.1 of 1986, let us now come to the facts of the case. The detenus in the cases on hand are branded as “goondas”. But, to fall within the definition of the expression “goonda,” a person, either by himself or as a member or leader of a gang, should habitually commit or attempt to commit or abets the commission of the offences listed in Chapters XVI, XVII and XXII of the Indian Penal Code, 1860 (IPC).

24. The detenus in these cases are not alleged to be members or leaders of any gang. They are said to be involved in three criminal cases in Crime Nos.139 of 2018, 149 of 2018 and 150 of 2018. We shall present in a tabular column the date of occurrence, the date of registration of FIRs, the offences complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences under	Nature
139/2018	14.09.2018	14.09.2018	Sections 302, 34, 120B r/w 109 IPC and Section 3 (2) (v) of SCs/STs (POA) Act	Non-bailable/ Cognizable
149/2018	11.08.2018	05.10.2018	Sections 342, 323 and 506 r/w 34 IPC	Bailable/Non-cognizable
150/2018	06.08.2018	06.10.2018	448, 323, 504 and 506 r/w 34 IPC	Bailable/Non-cognizable

It is clear from the above, (i) that all the three criminal complaints registered against the detenus are in relation to one particular issue; (ii) that the offences for which two out of those three FIRs were registered are non-cognizable and bailable; and (iii) that at least two

of the three detenus, who are respectively the father and paternal uncle of the girl whose husband was killed, are not stated in the orders of detention to have any criminal antecedents. Therefore, we do not know how the petitioners would fall within the definition of the word “goonda” under Section 2 (g). The word “habitually” occurring in Section 2 (g) is of significance. Unless a person is said to be involved in the habitual commission of stated offences or habitually attempts to commit or habitually abets in the commission of the offences, he will not come within the definition under Section 2 (g).

25. The learned Special Government Pleader sought to contend that the word “habitually” precedes the word “commits” in Section 2 (g) and that after the words “habitually commits”, there is a punctuation mark, viz., ‘comma’ followed by a disjunction viz., “or”. Therefore, his contention is that the word “habitually” should be read only along with the word “commits” and not with the other parts of Section 2 (g).

26. But, if such an interpretation as offered by the learned Special Government Pleader is accepted, it will lead to an absurd result. Persons who actually commit offences will escape from the definition, if they are not habituated to the commission of the offences. In contrast, persons who merely attempt to commit offences may get caught even on a solitary instance, if the interpretation given by the learned Special Government Pleader is accepted.

27. In any case, the interpretation sought to be given by the learned Special Government Pleader, will not save the Detaining

Authority. This is for the simple reason that according to the Detaining Authority, the detenus in these cases have actually committed the offences referred to in Section 2 (g). Therefore, the Detaining Authority must show that the detenus are habituated to the commission of the offences indicated in Section 2 (g).

28. But, unfortunately, the orders of preventive detention do not show that the detenus habitually committed the offences mentioned in Section 2 (g). Even assuming that the two FIRs registered against them in Crime Nos.149 of 2018 and 150 of 2018, would establish the habitual commission of offences by the detenus, the offences alleged in these two FIRs are merely non-cognizable and bailable. Therefore, we do not think that the detenus in these cases would come within the definition of the expression “*goonda*” under Section 2 (g).

29. In **Vijay Narain Singh v. State of Bihar**², the Supreme Court was concerned with the purport of the word “habitually” appearing in Section 2 (d) of the Bihar Control of Crimes Act, 1981. Justice E.S. Venkataramiah as he then was, in his majority opinion (Justice O. Chinnappa Reddy concurring with him) held that a single act or omission cannot be characterized as a habitual act or omission. The learned Judge observed “**because the idea of ‘habit’ involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omission in question are not of the same kind or even if they are of the same**

². (1984) 3 SCC 14

kind when they are committed with a long interval of time between them, they cannot be treated as habitual ones.”

30. Though, Mr. Justice A.P. Sen as he then was, in his minority opinion took an opposite view with regard to the interpretation to be given to the word “habitual”, the majority opinion in that case favours the interpretation that we are obliged to adopt in these cases.

31. The decision in **Vijay Narain Singh** was followed by the Supreme Court in **R. Kalavathi v. State of Tamil Nadu**³. In fact, the Supreme Court was concerned in **R. Kalavathi**, with the definition of the very same expression “goonda” appearing in Section 2 (f) of the Tamil Nadu Act 14 of 1982. The definition of the word “*goonda*” in Section 2 (f) of the Tamil Nadu Act and Section 2 (g) of the Telangana Act with which we are now concerned, are presented in a tabular column as follows:

Section 2 (f) of the Tamil Nadu Act 14 of 1982	Section 2 (g) of the Telangana Act 1 of 1986
“2. (f) ‘ goonda ’ means a person, who either by himself or as a member of or leader of a gang, <i>habitually</i> commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act 45 of 1860);”	“2 (g) “ Goonda ” means a person, who either by himself or as a member of or leader of a gang, <i>habitually</i> commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act 45 of 1860);”

32. Therefore, the decision of the Supreme Court in **R. Kalavathi**, which reiterates the majority opinion in **Vijay Narain Singh**, clinches the issue in favour of the detenus.

³. (2006) 6 SCC 14

33. Though the above ground itself is sufficient to quash the orders of detention, we would also briefly deal with the other submissions.

34. As rightly pointed out by Mr. C.V. Mohan Reddy, learned senior counsel for the petitioner, the First Information Report relating to the murder was registered on 14.09.2018. It was only after more than 21/22 days of the registration of the first FIR, that the other two FIRs get registered on 05.10.2018 and 06.10.2018, in relation to offences that are said to have taken place on 06.08.2018 and 11.08.2018. A reading of the FIR in Crime No.149 of 2018 registered on 05.10.2018 would show that the acts complained of therein, took place in the office of T. Maruthi Rao, on 11.08.2018. Similarly, the FIR in Crime No.150 of 2018, registered on 06.10.2018 proceeds on the basis that the incidents complained of therein took place in the house of the *de facto* complainant.

35. Therefore, while the gruesome murder on 14.09.2018 was committed in a public place, the offences in relation to the other two FIRs had taken place (i) in the office of one of the detenus and (ii) in the house of the *de facto* complainant.

36. Therefore, we do not know how the acts complained of would fall within the definition of “acting in a manner prejudicial to the maintenance of public order” under Section 2 (a). Though the expression “public order” is not defined in Telangana Act 1 of 1986, there is a long-line of decisions of the Supreme Court which brings about the distinction between ‘law and order’ and ‘public order’. We

do not think that it is necessary to deal with all those decisions, except the one in **Jatindra Nath Biswas v. The State of West Bengal**⁴. In the said decision, the Supreme Court held that even the act of committing dacoity with deadly weapons in the house of a single individual at the dead of night need not necessarily lead to the inference of disturbance of public order. Therefore, we are of the view that the objection to the orders of preventive detention on the basis of Section 2 (a) has also to be upheld.

37. Another important lacuna in the impugned orders of detention as pointed by Mr. T. Niranjan Reddy, learned senior counsel, is that though the orders of detention take note of the arrest and detention of the detenus and the filing of bail applications, the orders of detention do not take note of the dismissal of the bail applications on 24.10.2018. A specific ground is raised in the writ petition about this lacuna. But, in the counter affidavit, the respondents seek to white-wash the same by contending that though the order of rejection of bail application was placed before the Detaining Authority, it was omitted to be mentioned in the orders of detention due to inadvertence.

38. Admittedly, the bail applications were dismissed on 24.10.2018. The orders of detention were passed on 29.10.2018. The orders of detention do not make a reference to the same. But, the orders of detention proceed on the basis that the detenus are likely to be released on bail. The statement in the orders of detention, that there

⁴. (1975) 4 SCC 250

is likelihood of the detenus coming out on bail, has been obviously made mechanically without any application of mind to a crucial material, viz., the rejection of bail applications. Therefore, even on this ground, the impugned orders are liable to be quashed.

39. Though Section 8 (1) of the Act stipulates a time limit for communicating the grounds of detention, but does not stipulate any time within which the representation should be disposed of, the Court has to take it that the representations deserve to be disposed of within a reasonable time. In these cases, the representation made on 24.11.2018 was disposed of on 24.12.2018. This is one more ground as to why the impugned orders should be set aside.

41. Before parting, we should also deal with the applications for impleading filed by the unfortunate father of the boy who was murdered. In his applications for impleading in these three writ petitions, the father of the deceased has poured out the agony that his family went through.

42. As human beings, we share the agony of the family members of the victim. But, unfortunately, there is no scope for any third party to intervene in a Writ of *Habeas Corpus* for quashing orders of preventive detention. While the victims have a right to seek justice in the criminal cases filed against the perpetrators of the crime, they cannot seek to justify orders of preventive detention. Therefore, the applications for impleading are dismissed.

43. Therefore, the Writ Petitions are allowed and the impugned orders of detention are quashed. The detenues shall be set at liberty forthwith, if they are not already in judicial custody and if they are not required in connection with any other case. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petitions shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHA VA RAO, J

April 23, 2019

Note:

L.R. copy to be marked.

B.O. KTL/Mgr

