

**HIGH COURT FOR THE STATE OF TELANGANA**

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

**Writ Petition No.42034 of 2018**

Date: 04.07.2019

Between:

Mohd. Sayyad

...Petitioner

And

The State of Telangana,  
Rep. by its Principal Secretary,  
Home Department,  
Secretariat Buildings, Hyderabad,  
and others.

...Respondents

Counsel for the Petitioner : Sri Govardhan Reddy Gouni

Counsel for the respondents : Sri S. Sharath,  
Special Government Pleader for  
The Advocate General

**The Court made the following:**

**ORDER:** (Per the Hon'ble Dr. Justice Shameem Akther)

Mohd. Sayyad, the petitioner, has filed this present petition on behalf of detenu-Mr. Mohammed Mehaboob Pasha @ Syed Mehaboob Pasha @ Pasha @ Biryani Pasha, challenging the detention order dated 13.08.2018 passed by the Commissioner of Police, Rachakonda Commissionerate, the respondent No.2.

When the matter came up for hearing, there is no representation on behalf of the petitioner. On previous occasions also, none appeared for the petitioner. Hence heard learned Special Government Pleader and disposed of the matter on merits.

Briefly, the facts of the case are that the respondent No.2 had passed the impugned detention order dated 13.08.2018 on the ground that the detenu was involved in ten cases of lurking house trespass and theft in dwelling house, which were committed by him during the year 2018. Hence, this writ petition before this Court.

Mr.S.Sharath, the learned Special Government Pleader, pleads that in some of the cases allegedly committed by the detenu, he managed to get bail from the Court concerned. The series of crimes allegedly committed by him were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crime was lurking house-

trespass and theft in dwelling house, it has created sufficient panic in the minds of the general public. Therefore, the detaining authority was legally justified in passing the impugned detention order. Hence, the learned Government Pleader has supported the said detention order.

In view of the above submissions, the point that arises for determination in this Writ Petition is:

***“Whether the detention order, dated 13.08.2018, passed by the respondent No.2 is liable to be set aside?”***

**POINT:**

In catena of cases, the Hon'ble Supreme Court had clearly opined 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. For the invoking of such law adversely effects the fundamental right of personal liberty which is protected and promoted 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 Telangana Prevention of Dangerous

Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act.

In the case of **Ram Manohar Lohia v. State of Bihar**<sup>1</sup>, 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 subversion of public order but not in aid of maintenance of law and order under ordinary circumstances."*

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<sup>1</sup> AIR 1966 SC 740

In the case of **Kanu Biswas v. State of West Bengal**<sup>2</sup>, 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?”*

In the present case, the detenu is allegedly involved in ten criminal cases in Crime Nos.176/2018, 341/2018, 463/2018, 464/2018, 546/2018, 562/2018, 592/2018, 606/2018, 609/2018 and 509/2018. We shall present them 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                  | Nature                   |
|---------------------------|--------------------|-----------------------------|---------------------------|--------------------------|
| 176/2018 of Kushaiguda PS | 17.03.2018         | 20.03.2018                  | Sections 457 & 380 of IPC | Non-bailable/ cognizable |
| 341/2018 of Kushaiguda PS | 20.05.2018         | 21.05.2018                  | Sections 457 & 380 of IPC | Non-bailable/ cognizable |
| 463/2018 of Kushaiguda PS | 30.06.2018         | 01.07.2018                  | Sections 457 & 380 of IPC | Non-bailable/ cognizable |
| 464/2018 of Kushaiguda PS | 30.06.2018         | 01.07.2018                  | Sections 457 & 380 of IPC | Non-bailable/ cognizable |
| 546/2018 of KPHB PS       | 11.06.2018         | 11.06.2018                  | Sections 457 & 380 of IPC | Non-bailable/ cognizable |
| 562/2018 of KPHB PS       | 13.06.2018         | 15.06.2018                  | Sections 457 & 380 of IPC | Non-bailable/ cognizable |
| 592/2018 of KPHB PS       | 20.06.2018         | 22.06.2018                  | Sections 457 & 380 of IPC | Non-bailable/ cognizable |

<sup>2</sup> (1972) 3 SCC 831

|                            |            |            |                               |                             |
|----------------------------|------------|------------|-------------------------------|-----------------------------|
| 606/2018 of<br>KPHB PS     | 26.06.2018 | 27.06.2018 | Sections 457 &<br>380 of IPC  | Non-bailable/<br>cognizable |
| 609/2018 of<br>KPHB PS     | 27.06.2018 | 28.06.2018 | Sections 457,<br>380, 511 IPC | Non-bailable/<br>cognizable |
| 509/2018 of<br>Madhapur PS | 07.06.2018 | 07.06.2018 | Sections 457 &<br>380 of IPC  | Non-bailable/<br>cognizable |

A bare perusal of the detention order clearly reveals that the detaining authority is concerned by the fact that in some of the criminal cases registered against the detenu, he has been granted bail by the Court concerned and subsequently, on the petitions filed by the learned Assistant Public Prosecutor, the bails granted to the detenu were cancelled. However, the apprehension of the detaining authority that even in future the detenu is likely to get bail, is highly misplaced. It is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of an accused and to handover the history-sheet of the accused. If the Police is vigilant enough to collect the data on 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 has to take required measures to inform the Public Prosecutor about the criminal history of the offender and appraise the Court about the criminal tendency of the offender to deny the bail. Since the detenu has not been granted bail by the date of order of detention, his coming out and committing similar offences would not arise. On this sole ground the impugned detention

order is liable to be set aside. [Ref. to **Rekha v. State of Tamil Nadu through Secretary to Government & another**<sup>3</sup>]

Grave as the offences may be, they are lurking house-trespass and theft in dwelling house. So, no inference of disturbance of public order can be drawn. These cases can be tried under the normal criminal law. Hence, there was no need for the detaining authority to pass the detention order. Therefore, the impugned detention order is legally unsustainable.

For the reasons stated above, the Writ Petition is, hereby, allowed. The impugned detention order dated 13.08.2018 is set aside. The respondents are directed to set the *detenu*, namely Mr. Mohammed Mehaboob Pasha @ Syed Mehaboob Pasha @ Pasha @ Biryani Pasha, at liberty forthwith, if he is not required in any case.

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

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**RAGHVENDRA SINGH CHAUHAN, HCJ**

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**Dr. SHAMEEM AKTHER, J**

Date: 04.07.2019  
scs

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<sup>3</sup> (2011) 5 SCC 244