

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.42760 of 2018

Date: 01.08.2019

Between:

Mr. Md. Khajamiya

..Petitioner

And

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

..Respondents

Counsel for the petitioner : Sri B. Vijaysen Reddy

Counsel for the respondents : The Advocate General

The Court made the following:

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

Mr. Md. Khajamiya, the petitioner, has filed this present Habeas Corpus Petition on behalf of his son-Md. Faheem, S/o. Khajamiya, the detenu, challenging the detention order, dated 31.10.2018, passed by the Commissioner of Police, Cyberabad Police Commissionerate, the respondent No.2, and the approval order, dated 08.11.2018, passed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana, the respondent No.1.

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

Briefly, the facts of the case are that by relying on a single case registered against the detenu in the year 2018, the Commissioner of Police, Cyberabad Police Commissionerate, the respondent No.2, passed the detention order dated 31.10.2018. According to the respondent No.2, the detenu is a 'drug offender' and involving himself in peddling of Narcotic Drugs, i.e., ganja, among the innocent people and endangering the lives of youth, especially college students and causing irreparable damage to the body parts including central nervous system and thereby crippling the mental and physical health of people addicted to drugs, in the limits of Cyberabad Police Commissionerate. Subsequently, by order dated 08.11.2018, the detention order was approved by the Principal Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department,

Government of Telangana, the respondent No.1. Hence, this writ petition before this Court.

Sri B. Vijaysen Reddy, learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, that relying only on one case registered against the detenu in the year 2018, the detention order is passed.

Secondly, the alleged case does not add up to “disturbing the public order”. It is confined within the ambit and scope of the word “law and order”. Since the offence alleged is under the Narcotic Drugs and Psychotropic Substances Act, 1985, the detenu can certainly be tried and convicted under the said special law. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned order tantamount to the colourable exercise of power. Thus, the impugned orders are legally unsustainable.

On the other hand, Mr. T. Srikanth Reddy, the learned Government Pleader for Home, appearing for the respondents would plead that in the single case relied by the detaining authority for preventively detaining the detenu, he managed to get bail from the Court concerned. The crime allegedly committed by him was sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crime was peddling narcotic drugs among the innocent people, especially college students, it has created sufficient panic in the minds of the general public. Therefore,

the detaining authority was legally justified in passing the impugned orders. Hence, the learned Government Pleader has supported the impugned orders.

In view of the submissions made by both the sides, the point that arises for determination in this Writ Petition is:

“Whether the detention order, dated 31.10.2018, passed by the respondent No.2, and the approval order, dated 08.11.2018, passed by the respondent No.1, are 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, is the conduct of a person 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 Act.

In the case of Ram Manohar Lohia v. State of Bihar¹, 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

¹ AIR 1966 SC 740

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.”

In the case of Kanu Biswas v. State of West Bengal², 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 detaining authority relied on a single case for preventively detaining the detenu vide Crime No.247/2018 of Gachibowli Police Station. We shall present it in a tabular column the date of occurrence, the date of registration of FIR, the offences complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

² (1972) 3 SCC 831

Sl. No.	Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
1.	247/2018 of Gachibowli PS	23.03.2018	23.03.2018	Section 20(b)(ii)(c) of NDPS Act	Cognizable

It is appropriate to refer the decision rendered by the Hon'ble Apex Court in *Vijay Narain Singh v. State of Bihar*³, wherein it was held that a single act or omission cannot be characterized as a habitual act or omission 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 kind when they are committed with a long interval of time between them, they cannot be treated as habitual ones.

A bare perusal of the detention order clearly reveals in the single case relied upon by the detaining authority (Crime No.247/2018), the detenu was granted statutory bail under Section 167(2) of Cr.P.C. by the Court concerned and he was released on bail on 28.09.2018. So, it appears that the investigating officer had not completed investigation within a period of ninety days. Therefore, the detenu was granted bail under Section 167(2) of Cr.P.C. It is a grave omission on the part of the investigating officer in not completing the investigation within a period of ninety days. The very purpose of enacting the provision under Section 167(2) of Cr.P.C. is to

³ (1984) 3 SCC 14

expedite the investigation, so that the valuable material evidence is not lost and can be collected and produced before the Court. For the laches on the part of the investigating officer, it is not appropriate to invoke draconian preventive detention laws against the detenu. The relief granted to the detenu under Section 167(2) of Cr.P.C. cannot be scuttled by invoking the preventive detention laws. Moreover, in the case relied on by the detaining authority, the detenu alleged to have committed offence punishable under Section 20(b)(ii)(c) of NPDS Act. So, it can be safely concluded that the said crime can be dealt with under the provisions of NDPS Act. 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.

Grave as the offences may be, they relate to peddling of narcotic drugs. So, no inference of disturbance of public order can be drawn. This type of case can certainly be tried under the special law. And, if convicted, can certainly be punished by the Court of law. Thus, this case does not fall within the ambit of the words “public order”. Instead, it falls within the scope of the words “law and order”. Hence, there was no need for the detaining authority to pass the detention order. Therefore, for the reasons stated above, the impugned orders are legally unsustainable.

In the result, the Writ Petition is allowed. The impugned detention order dated 31.10.2018, passed by respondent No.2,

and the approval order dated 08.11.2018, passed by respondent No.1 are hereby set aside. The respondents are directed to set the detenu, namely, Mr. Md. Faheem, S/o. Khajamiya, at liberty forthwith, if he is no longer detained in judicial custody in the criminal cases, which have been so far registered against him.

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

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

01st August, 2019
Bvv

