

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.43814 of 2018

Date: 13-06-2019

Between:

Khaja Awais Ahmed

...Petitioner

and

State of Telangana

Rep. by its Principal Secretary to
Government (POLL.)

General Administration SPL.(Law & Order) Dept.,
Secretariat, Hyderabad and 4 others.

...Respondents

Counsel for the petitioner:

**Mr. V.S. Reddy
for Mr. Syed Khader Mastan**

Counsel for the respondents:

Mr. S. Sharat, Spl. G.P.

The Court made the following:

Order: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Mr. Khaja Awais Ahmed, the brother of the *detenu*- Khaja Bilal Ahmed, has filed this writ petition for challenging the detention order dated 25-10-2018, passed by the Commissioner of Police, Rachakonda Commissionerate, respondent No.3, and G.O.Rt.No.2376 dated 02-11-2018, passed by the Principal Secretary to Government, respondent No.1, whereby the respondent No.1 has confirmed the detention order dated 25-10-2018.

The brief facts of the case are that according to the petitioner, his brother, Khaja Bilal Ahmed, belongs to a family of academicians as their father is the Founder Secretary, and their mother is the Founder and President of a group of educational institutions under the name and style of 'Ahmed Memorial Educational Society, Yakuthpura'. The said Society has an Engineering College, Post Graduate course in Business Administration and Sciences, B.Ed. Degree and Junior Colleges apart from primary and high schools. Thus, the *detenu* comes from a highly educated family. During the year 2003, the *detenu* was attracted towards politics, and became an active member in AIMIM party. He was elected as a Corporator from Ward No.29 of the Hyderabad Municipal Corporation in the year 2009.

However, his phenomenal rise became an eyesore for certain sections of the public, and for his political opponents. Therefore, according to the petitioner, about sixteen cases were registered against the *detenu* during the period from 2009 to 2014. Many of the FIRs were registered on the basis of reports from the police personnel and the officials of the State Government. The *detenu* also changed his political affinity from AIMIM party to the Congress party. He was appointed as the Vice-Chairman of the Telangana Pradesh Congress Committee. Therefore, according to the petitioner, the present detention order has been passed against the *detenu* not because he has disturbed “the public order”, but because of his political rivalry, and because of the fact that he happens to be a leader of his community. Moreover, according to the petitioner, the *detenu* was married to one Rafath Sultana. However, as marital disputes erupted between the two, they separated their ways in March, 2018. Subsequently, Rafath Sultana married one Syed Aqeel. Since the *detenu* was unhappy about the fact that his former wife had married Syed Aqeel, he decided, along with his other associates, to get rid of Syed Aqeel. Therefore, it is alleged that the *detenu* not only kidnapped Syed Aqeel, but also committed his murder, along with his other associates. A criminal case was registered against the *detenu* and his associates *vide* Crime No.178 of 2018 in Abdullapurmet Police

Station. The *detenu* was arrested in the said case, but during his custody, the impugned preventive detention order dated 25-10-2018 was passed by the respondent No.3. Subsequently, by order dated 02-11-2018, the said order was confirmed by the respondent No.1. Hence, the present petition before this Court.

Mr. V.S. Reddy, the learned counsel representing Mr. Syed Khader Mastan, the learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, the entire detention order is based only on the murder case registered against the *detenu* i.e., Crime No.178 of 2018 mentioned herein above.

Secondly, since the police could not complete its investigation within the stipulated period of 90 days, the *detenu* was about to be released on bail under Section 167 (2) Cr.P.C. Therefore, the impugned preventive detention order was merely surreptitious means to scuttle the operation of Section 167 (2) Cr.P.C. Hence, passing of the detention order was not only motivated, but most importantly was an abuse of the process of law. By passing the said detention order, the detaining authority has scuttled the scope and ambit of Section 167 (2) Cr.P.C. In fact, the detaining authority has deprived the petitioner's liberty, which he would have had under Section 167 (2) Cr.P.C.

Thirdly, that mere registration of one case for the offences under Sections 302, 147, 148 and 149 IPC against the *detenu* cannot be said to be disturbing the 'public order'. It would clearly be causing the 'law and order' problem. Therefore, the detaining authority and the confirming authority are not justified in passing the impugned orders.

Lastly, for, both the impugned orders tantamount to the colourable exercise of power, and to the abuse of the process of law. According to the learned counsel, it merely reveals the high-handedness of the detaining authority. Moreover, the detaining authority seems to be dancing to the tunes of the political rivals of the *detenu*. Therefore, the impugned orders deserve to be set aside by this Court.

On the other hand, Mr. S. Sharath, the learned Special Government Pleader, has raised the following counter arguments:

Firstly, the impugned orders are not passed at the behest of the political opponents of the *detenu*. In fact, the impugned orders have been passed by the detaining authority while keeping in mind the *detenu's* entire criminal record. According to the detaining authority itself, the *detenu* had been indulging in criminal activities ranging from rioting, to criminal trespass, to attempt to murder, and finally, to murder during the period between 2009

and 2018. Therefore, the *detenu* has been graduating from minor offences to major ones. Despite being involved in sixteen cases, the *detenu* has not mended his ways. In fact, his consistent criminal activities have created panic and a sense of insecurity in the minds of the residents of the Hyderabad City in Rachakonda Police Commissionerate. Thus, looking at the totality of the case, the detaining authority was convinced that the time had come to preventively detain the *detenu*.

Secondly, the series of criminal cases registered against the *detenu* clearly point to the disturbance of “public order”. Therefore, the case does not fall within the ambit and scope of the term “law and order”.

Lastly, the power of preventive detention has not been invoked in order to scuttle the beneficial provision of Section 167(2) Cr.P.C., but has been invoked in order to protect the society from anti-social elements, which are squarely covered by the P.D. Act. Therefore, the learned Special Government Pleader has supported both the impugned orders.

Heard both the learned counsel for the parties, and perused the record submitted before the Court.

A bare perusal of the impugned detention order dated 25-10-2018, clearly reveals that it is divided into two different

sections marked as 'A' and 'B'. In the first part of the order, the detaining authority has given a list of criminal cases registered against the *detenu*. The list clearly reveals that the *detenu* has been engaging in criminal activities from 2007 to 2018 *i.e.*, for a period of eleven years. The offences do range from rioting, to criminal trespass, to attempt to murder, and eventually to the alleged murder itself. Thus, obviously, the *detenu* has been increasing in the number and the intensity of his alleged criminal activities.

Part 'B' of the impugned detention order states that “ *The following (01) ground cases committed by him in the recent past amply prove your activities are prejudicial to the maintenance of public order.*”, and then it goes on to discuss the facts of Crime No.178 of 2018 registered for the offences under Sections 364, 302, 120 (B), 506 r/w 34 IPC. But, a holistic reading thereof clearly reveals that the detaining authority has not relied merely on Crime No.178 of 2018 in order to preventively detain the *detenu*. In fact, the detaining authority has clearly observed as under:

“Thus, you have indulged in the acts of goondaism by committing unlawful and dangerous activities such as Murder/Attempt to Murder/Rioting/Criminal trespass and Assault on Public Servants along with your associates in an organized fashion and thereby causing panic and a feeling of insecurity among the innocent general public traveling/living in the limits of Hyderabad City and Rachakonda Police Commissionerates. Further, your acts have been adversely affecting the maintenance of public order and creating feeling of insecurity to their life

and properties and thereby disturbing peace and tranquility in the area. Having regard to your recent antecedents, there is every likelihood of your indulging in similar prejudicial activities, which are detrimental to public order, unless you are prevented from doing so by an appropriate order of detention.

It is imperative to prevent you from acting in any manner prejudicial to the maintenance of public order. I feel that recourse to normal law may not be effective deterrent in preventing you from indulging in such further activities prejudicial to the maintenance of public order in the area, unless you are detained by invoking the provisions under the "Telangana prevention of dangerous activities of bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders, land grabbers, spurious seed offenders, insecticide offenders, fertilizer 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 (Amendment) Act, 1986 (Act no.13 of 2018).

It is pertinent to mention here that you have already moved bail petition in Cr.No.178/2018 on 22-06-2019 and same was dismissed vide Crl.M.P.No.3901/2018 by the Hon'ble Metropolitan Sessions Judge, Cyberabad-cum-I Additional District Judge, Ranga Reddy District. You again moved mandatory bail petition on 25-10-2018 U/s 167(2) Cr.P.C. and same is pending for orders vide Crl.M.P.No.1645/2018 by the VII MM Court at Hayathnagar. Since, you were involved in communal offences during the year 2007 and on account of your antecedent Criminal Conduct and however you will be granted bail since it is mandatory bail petition. In strongly believe that there is every likelihood of your indulging in similar prejudicial activities, which are prejudicial to maintenance of public order unless you are detained by an appropriate order of detention."

The observations made herein above by the detaining authority clearly reveal that the detaining authority has taken into account

the cases of rioting, criminal trespass, attempt to murder and murder for passing the impugned detention order. Therefore, the contention raised by the learned counsel for the petitioner that the impugned detention order is based merely on a single criminal offence is clearly unacceptable.

The large number of criminal cases in which the *detenu* was/is involved in the last eleven years clearly reveals that he continues to violate the law. Even after being bailed out in the criminal cases, he has showed scant respect for the law. Therefore, the impugned detention order has been passed not in order to scuttle the provision of Section 167 (2) Cr.P.C., but in order to prevent the *detenu* from continuing to indulge in anti-social activities, and from disturbing the public order.

In catena of cases, the Hon'ble Supreme Court has distinguished between the "law and order" and the "public order". The "law and order" problem arises in those cases, which are committed against particular individuals. However, the cases, which would have impact on the tranquility of the society, and the sense of security enjoyed by the citizens, would be termed as disturbing the "public order". A series of cases ranging from rioting to murder can cumulatively affect and adversely impact the sense of security enjoyed by the people.

Therefore, the series of crimes committed by an individual can disturb “the public order”. Considering the fact that most of the cases alleged against the *detenu* are confined to a particular geographical location, namely the Rachakonda Police Commissionerate in Hyderabad, the series of offences allegedly committed by him would certainly disturb the public order in that area. Hence, the learned counsel for the petitioner is unjustified in claiming that mere commission of a single murder cannot be held to have disturbed the public order. Hence, the learned counsel is clearly unjustified in pleading that the alleged offence committed by the *detenu viz.*, murder should be seen as a “law and order” problem, and not as a “public order” problem.

For the reasons stated above, this Court does not find any illegality or perversity in the two impugned orders dated 25-10-2018 and 02-11-2018, passed by the detaining authority *i.e.*, respondent No.3, and the confirming authority *i.e.*, the respondent No.1 respectively.

The *detenu*, namely Mr. Khaja Bilal Ahmed, S/o Khaja Hassan, is directed to surrender immediately before the Commissioner of Police, Rachakonda Commissionerate, the respondent No.3, failing which, the respondent No.3 shall be free to take the *detenu* into custody for detaining him for the remaining

period of detention in terms of the impugned detention order dated 25-10-2018 passed by respondent No.3, as confirmed by respondent No.1 *vide* order dated 02-11-2018.

In the result, the Writ Petition is dismissed.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, ACJ)

(Dr. Shameem Akther, J)

Dt: 13th June, 2019
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