

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.47763 of 2018

Date: 13.06.2019

Between:

Bandi Nageswar Rao

...Petitioner

And

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

...Respondents

Counsel for the petitioner : Mr. P. Vishnuvardhana 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)

Mr. Bandi Nageswar Rao, the petitioner, has filed this present petition on behalf of his son, Bandi Veera Babu @ Veeranna, in order to challenge the detention order dated 09.08.2018 passed by the Commissioner of Police, the respondent No.2, and the confirmation order dated 01.11.2018 passed by the Principal Secretary, General Administration Department, the respondent No.1.

Briefly, the facts of the case are that according to the petitioner, his son, Bandi Veera Babu @ Veeranna, is a car mechanic by profession. According to him, his son has never indulged in any criminal activities. However, according to the detaining authority, the detenu was involved in six different cases of robberies. In the year 2018, a series of robberies had caused panic and insecurity in the minds of the people. Therefore, by order dated 09.08.2018 the respondent No.2 had issued the detention order. The said detention order was subsequently confirmed by the order dated 01.11.2018. Hence, this present petition before this Court.

Mr. P. Vishnuvardhana Reddy, the learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, the detenu has allegedly committed six offences of robberies under similar circumstances. However, even these six cases do not add up to “disturbing the public order”. They are

confined within the ambit and scope of the word “law and order”. Since the offences are under the Indian Penal Code, the detenu can certainly be tried and convicted under the penal code. 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. S. Sharath, the learned Special Government Pleader, pleads that in each case, allegedly committed by the detenu, he managed to get bail from the learned trial Court. 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 same, namely, to beguile innocent passengers in the auto rickshaw, and to rob them later, 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 counsel has supported the impugned orders.

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

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 effected 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 affects 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 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

¹ AIR 1966 SC 740

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.”

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?”

In the present case, allegedly, the detenu is involved in six cases for offence under Section 392 IPC. Grave as the offence

² (1972) 3 SCC 831

may be, they have been committed against particular individuals. These cases can be tried under the normal criminal law. Hence, there was no need for the detaining authority to pass the detention order.

A bare perusal of the detention order clearly reveals that the detaining authority is concerned by the fact that in all the criminal cases the detenu has been granted bail by the learned trial Court. However, the apprehension of the detaining authority that even in future the detenu is likely to get bail, is highly misplaced. Since the detaining authority is the Commissioner of Police himself, 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 were 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 learned Court. However, it is the Police that has failed to inform the learned Public Prosecutor about the criminal history of the offender. For the fault of the Police, the respondent No.2 cannot be permitted to invoke the preventive detention laws in order to breach the liberty of an individual.

Therefore, for the reasons stated above, the impugned orders are legally unsustainable.

Hence, the Writ Petition is hereby allowed. The impugned orders, dated 09.08.2018 and 01.11.2018, are set aside. The respondents are directed to set the detenu at liberty forthwith, if he is not being detained in any other criminal cases.

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

13.06.2019
vs

