

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD  
(Special Original Jurisdiction)**

THURSDAY, THE EIGHTEENTH DAY OF JUNE  
TWO THOUSAND AND TWENTY

**PRESENT**

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN  
AND  
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY**

**WRIT PETITION NO: 1291 OF 2020**

**Between:**

Mukthar Ahmad Ansari, S/o. Shamshuddin, Aged about 47 years, Occ. Business (Bed Sheets), R/o Ilabas Village, Moradabad Mandal, Dampur Tahsil, Bijnoor District, Uttar Pradesh.

...PETITIONER

**AND**

1. The State of Telangana, Rep. by its Special Chief Secretary to Government (POLL), Secretariat Buildings, Hyderabad.
2. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat, Hyderabad.
3. The Collector and District Magistrate, Bhadrachalam District.
4. The Principal Secretary to Government (Poll), GAD, Telangana, Hyderabad.
5. Advisory Board, Rep. by its Chairman, Sub-Jail, Bhadrachalam.
6. The Superintendent, Sub-Jail, Bhadrachalam.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Habeas Corpus directing the Respondents No.1, 2, 3 and 6 herein to forthwith produce Petitioner's son named Mohammad Aftab Ansari, detinue No.402, aged 28 years, son of Muktar Ahmed Ansari i.e., Petitioner herein presently lodged at Central Jail, Warangal, Telangana State, before this Honourable Court and pass appropriate orders forthwith for his release in the interest of justice declaring the detention of the detinue prisoner No.402 vide Proceedings No.C1/4864/2019, dt. 21/11/2019 passed by the 3rd Respondent as confirmed by the 1st Respondent in G.O.Rt.No.3141, dt. 29/11/2019 as arbitrary, illegal and without jurisdiction

**Counsel for the Petitioner: SMT. S. NANDA**

**Counsel for Respondents: SRI S. SHARATH KUMAR,  
SPECIAL GOVERNMENT PLEADER**

**THE ADVOCATE GENERAL**

**The Court made the following: ORDER**

**ORDER:** { Per BVR, JJ }

The order of detention of Mohammad Aftab Ansari, S/o. Mukhtar Ahmad Ansari, dated 21.11.2019, passed by the Collector and District Magistrate, Bhadravri Kothagudem District, under Section 3(2) of 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 Act, 1986 (Amendment Act No.13 of 2018) (for short 'the Act'), and as approved by the Government vide G.O.Rt.No.3143 dated 29.11.2019 are challenged in this Writ of Habeas Corpus as being illegal, arbitrary and unconstitutional.

2. Heard Mrs. S. Nanda, the learned counsel for the petitioner, and Mr. S. Sharat Kumar, the learned Special Government Pleader for the respondents.

3. Learned counsel for the petitioner submits that false cases have been registered against the petitioner; there is no material to show that the petitioner is a habitual offender and has participated in anti-social and unlawful activities, and such activities have created fear and insecurity in the minds of the public so as to adversely affect the maintenance of public order. Hence, there is no material on record to invoke the provisions of the Act. In fact, the detenu is branded as 'Goonda', without any justification, even before the crimes wherein the detenu is involved is investigated into, prematurely. Thus, at this juncture, it cannot be said that these acts were committed by the

detenu and the same would be prejudicial to the maintenance of public order. Lastly, the impugned order of detention is passed mechanically.

4. Per contra, the learned Special Government Pleader pleads that the sponsoring authority requested the second respondent – detaining authority by forwarding proposals and for passing order of detention against the detenu in order to prevent him from further indulging in such illegal activities. Upon perusal of such material, the detaining authority was satisfied that the order of detention needs to be passed against the detenu as recourse to normal law may not be deterrent in preventing the detenu in indulging in further unlawful activities of committing chain snatching offences, which are prejudicial to the maintenance of public order and tranquility. Moreover, the constitutional rights guaranteed to the detenu under Articles 21 and 22 of the Constitution of India have not been abridged or breached. In fact, the order of detention was passed treating the detenu as 'Goonda' under the Act, since his unlawful activities are prejudicial to the maintenance of public order, disturbing peace and tranquility in the limits of Bhadradi Kothagudem. Lastly, neither the reasonableness of the satisfaction of the detaining authority can be questioned in a Court of law, nor the adequacy of material, on which the said satisfaction purports to rest, can be examined in a Court of law.

5. The learned Special Government Pleader further submits that the order of preventive detention is qualitatively different from punitive detention. For, preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence, and it does not overlap with prosecution, and that the order of preventive detention may be made before or during prosecution. The basis for detention is the satisfaction of the Executive for a reasonable probability or likelihood of detenu acting in a manner

similar to his past acts, and preventing him by detention from doing the same. Thus, he contends that the writ petition is liable to be dismissed.

6. The detenu is stated to have been involved in one property offence in the year 2018, which is taken as antecedent criminal history of the detenu. The following 3 offences have been referred as grounds for of detention:

| Sl. No. | Crime No. & Date                                                                          | Police Station       | Offence     | Date of arrest                                              | Particulars of Bail |
|---------|-------------------------------------------------------------------------------------------|----------------------|-------------|-------------------------------------------------------------|---------------------|
| 1.      | Cr.No.74 of 2019<br>Dt.05.09.19                                                           | Chundrapalli PS      | u/s 379 IPC | 29.09.2019 in connection with Cr.No.150 of 2019 u/s 394 IPC | Nil                 |
| 2.      | Cr.No.150 of 2019<br>Dt. of offence - 03.09.19<br>Dt. of registration of crime - 28.09.19 | Laxmidivipalli PS    | u/s 394 IPC | 28.09.2019                                                  | Nil                 |
| 3.      | Cr.No.379 of 2018<br>Dt.20.05.19                                                          | Dharmavaram Urban PS | u/s 379 IPC | Not yet arrested                                            | Nil                 |

7. As is evident from the record, one bail petition was filed in CRLMP.No.1038 of 2019 in Cr.No.150 of 2019 of Laxmidivipalli PS, wherein the police had filed a counter opposing the grant of bail. The concerned Magistrate dismissed the bail application on 19.10.2019. It is pointed out by the detaining authority that the detenu made persistent efforts to come out of the prison by moving bail petitions in Cr.No.150 of 2019 (Sl.No.2 above) and after police opposed the bail petition, it was dismissed on 19.10.2019. But still, it is apprehended that there is likelihood of the detenu filing fresh bail petition in the said case and filing fresh bail petitions in other two cases. There is likelihood of his being released on bail in due course.

However, in the counter affidavit filed by the detaining authority it is stated that three bail petitions were moved in Cr.No.74 of 2019 (Sl.No.1 above) and were dismissed. Despite the detaining authority having kept in mind that bail petition was filed only in one out of three crimes viz. Cr.No.150 of 2019, which was dismissed, and in the other two cases, no bail petition was filed, surprisingly, the detaining authority concluded that there is likelihood of filing fresh bail applications in the said cases (Cr.No.150 of 2019 and Cr.No.74 of 2019) and also moving bail application in Cr.No.379 of 2018 and releasing on bail in due course. Hence, the detaining authority is satisfied that on detenu being released on bail, there is imminent possibility of the detenu committing similar offences unless he is prevented from doing so by appropriate order of detention.

8. The Supreme Court in **MOHINDER SINGH GILL v. THE CHIEF ELECTION COMMISSIONER**<sup>1</sup>

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

9. In WP.No.23400 of 2015 vide order dated 21.12.2015 a Division Bench of the High Court of Judicature for the State of Telangana and the State of Andhra Pradesh held as under:

There is a real possibility of a person being released on bail, who is already in custody, provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. The exception to this rule is where a co-

<sup>1</sup> (1978) 1 SCC 405

accused, whose case stands on the same footing, has been granted bail. In such cases, the detaining authority can reasonably conclude that there is a likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. Details of such alleged similar cases must be given, and a bald statement of the detaining authority would not suffice. (*Rekha v. State of Tamil Nadu* [(2011) 5 SCC 244]). As the order and grounds of detention make no reference to any material, based on which the subjective satisfaction was arrived at that there was a genuine possibility of the detenu being released on bail, the order of detention is vitiated and is liable to be set aside.

As held in the above decision, when there is no possibility of the detenu being released on bail, preventive detention laws cannot be resorted to. When the detenu is, admittedly, in judicial custody and more so, bail applications filed by him were dismissed, and there are no bail applications pending in the two crimes, ordinarily one cannot presume, in a casual manner, that there is likelihood of bail being granted. The order of detention, thus, suffers from non-application of mind.

10. The preventive detention laws cannot be invoked as an easy method, unless the authority forms a subjective satisfaction that ordinary law is not capable of acting as deterrent on the detenu. As pointed out, the detenu was already in judicial custody and to show that there was a possibility of the bail being granted, there was no material before the detaining authority. The High Court of Judicature for the State of Telangana and the State of Andhra Pradesh in

**C. NEELA v. STATE OF TELANGNA<sup>2</sup>** held as under:

The State cannot find an easy way out by choosing to invoke the draconian provisions of preventive detention laws against every criminal as a substitute for his prosecution. As discussed supra, the Supreme Court has drawn a clear distinction between disturbance to public order on one side and

<sup>2</sup> 2017 (2) ALD (CH) 760

disturbance to law and order on the other and held that only in the former case the State is permitted to invoke the powers under the preventive detention laws.

11. The offences involved relate to theft and robbery and committed against specific individuals in the limits of various police stations. Thus, it cannot be said that the activities of the detenu come within the purview of public order. "Law and order" and "public order" are distinguishable. In **PUSHKAR MUKHERJEE v. STATE OF WEST BENGAL**<sup>3</sup>, the Supreme Court held as under:

The question to be considered in the present case is whether grounds (a), (b) and (e) served on Subhas Chandra Bose are grounds which are relevant to 'the maintenance of public order'. All these grounds relate to cases of assault on solitary individuals either by knife or by using crackers and it is difficult to accept the contention of the respondent that these grounds have any relevance or proximate connection with the maintenance of public order. In the present case we are concerned with detention under Section 3(1) of the Preventive Detention Act which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. Does the expression 'public order' take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law

<sup>3</sup> (1969) 1 SCC 10

and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act.

The difference between the concepts of 'public order' and law and order' is similar to the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr. Allen has distinguished 'public' and 'private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. (See Dr. Allen's Legal Duties, p.249). There is a broad distinction along these lines, but differences naturally arise in the application of any such test. The learned author has pointed out that out of 331 indictable English offences 203 are public wrongs and 128 private wrongs.

12. In view of the above, the impugned detention order is liable to be set aside and accordingly set aside.

The writ petition is allowed. The impugned detention order dated 21.11.2019 passed by the respondent No.3, and the consequential confirmation order vide G.O.Rt.No.3141 dated 29.11.2019 passed by the respondent No.1 are, hereby, set aside. The respondents are directed to set the *detenu*, namely Mohammad Aftab Ansari, S/o. Mukhtar Ahmad Ansari, at liberty forthwith, in case he is no longer detained in the criminal cases which have been registered so far against him.

As a sequel, the miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

SD/-N.CHANDRA SEKHAR RAO  
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

- To,
1. The Special Chief Secretary to Government (POLL), State of Telangana Secretariat Buildings, Hyderabad.
  2. The Principal Secretary, Home Department, State of Telangana Secretariat, Hyderabad.

3. The Collector and District Magistrate, Bhadrachalam District.
  4. The Principal Secretary to Government (Poll), GAD, Telangana, Hyderabad.
  5. The Chairman, Advisory Board, Sub-Jail, Bhadrachalam.
  6. The Superintendent, Sub-Jail, Bhadrachalam.
  7. The Superintendent, Central Prison, Warangal, Warangal District
  8. One CC to Smt. S Nanda Advocate [OPUC]
  9. Two CCs to the Advocate General, High Court for the State of Telangana (OUT)
  10. Two CCs to Sri S. Sharath Kumar, Special Government Pleader, High Court for the State of Telangana (OUT)
  11. Two CD Copies
- MBC

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a small flourish.

HIGH COURT

DATED: 18/06/2020



ORDER

WP.No.1291 of 2020

ALLOWING THE WRIT PETITION

WITHOUT COSTS

14  
HMA  
DT 11/8/2020.