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

TUESDAY, THE TWENTY SECOND DAY OF DECEMBER
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. 18473 OF 2020

Between:

Kurva Sunitha, W/o. Narsimhulu, Aged about 30 years, R/o. H.No.2-1-20, SC Colony, Kaloor Thimmanadoddi (KT DODDI) Village, Gattu Mandal, Jogulamba Gadwala District, T.S. - 509129

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, General Administration (Law & Order) Department, Secretariat, Hyderabad.
2. The Collector & District Magistrate Wanaparthy District, Wanaparthy.
3. The Superintendent of Police, Wanaparthy District, Wanaparthy.

...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 an appropriate writ or order or direction more particularly one in the nature of WRIT OF HABEAS CORPUS declaring the action of 2nd Respondent in Detention Proceedings No. C/610/2020, dated 19.09.2020 as illegal, arbitrary and violative of Articles 14, 19, 21 and 22 of the Constitution of India and consequently set aside the same and direct the Respondents to release the Petitioner's husband i.e.(detenu) Kurva Srinivasulu @ Pilli Srinivasulu, S/o. Govindu, Age: 33 years, Occ: Business, R/o. K.T. Doddi Village & Mandal of Jogulamba Gadwal District from the detention.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to release the Petitioner's husband i.e.(detenu) Kurva Srinivasulu @ Pilli Srinivasulu, S/o. Govindu, Age: 33 years, Occ: Business, R/o. K.T. Doddi Village and Mandal of Jogulamba Gadwal District from the detention pending disposal of the above writ petition.

Counsel for the Petitioner: SRI AJGAL RAVI BABU

Counsel for the Respondents: SRI T. SRIKANTH REDDY, GP FOR HOME

The Court made the following: ORDER

ORDER: (Per Hon'ble Sri Justice B. Vijaysen Reddy)

The detention order passed against the detenu namely Kurva Srinivasulu @ Pilli Srinivasulu, S/o. Govindu, dated 19.09.2020, by the Collector and District Magistrate, Wanaparthy District, the respondent No.2, in exercise of powers conferred under Section 3 (1) and (2) of the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act. No.7 of 1980) (for short 'the Act') and the confirmation order of the respondent No.1 26.11.2020 are challenged in this Writ of Habeas Corpus as being illegal and arbitrary.

2. The detention order is passed on two ground cases viz.

1) Cr.No.26 of 2020, under Section 420 IPC and Section 7 of the Essential Commodities Act of Kothakota PS., and

2) Cr.No.48 of 2020 under Section 420 IPC; Section 7 of the Essential Commodities Act and Section 17(c) of T.S. PDS (Control) Order, 2016 of Atmakur PS.

3. Heard Mr. Ajgal Ravi Babu, learned counsel for the petitioner and Mr. T. Srikanth Reddy, the learned Government Pleader for Home for the respondents.

4. The learned counsel for the petitioner submitted that in Cr.No.26 of 2020, the detenu was arrested on 15.02.2020, his confessional statement was recorded and later, he was released after serving notice under Section 41-A Cr.P.C. In Cr.No.48 of 2020, the detenu was arrested on 01.07.2020 and he was granted bail by the JFCM, Atmakur, vide Crl.MP.No.281 of 2020 on 03.07.2020. Learned counsel further submitted that the detenu is falsely implicated in the above two crimes and in any case the offences relating to Essential Commodities Act r/w. Section 420 IPC do not come under the purview of public order. There is no sufficient material to treat the

detenu as Black Marketer. The opinion formed by the detaining authority that there is imminent possibility of the detenu committing similar offences, which would be detrimental to the maintenance of supplies of commodities essential to the community through public distribution system, is wholly untenable and vindictive only to curtail the life and liberty of the detenu. The detention order is violative of Article 21 of the Constitution of India.

5. On the other hand, the learned Government Pleader for Home submitted that the detenu engaged himself in clandestine business of purchasing PDS commodities pertaining to public distribution system hoarding, diverting and selling the same without having any valid license under the Control Order and the EC Act and causing interruption to the process of supply of essential commodities to the beneficiaries. The detenu is a "black marketeer" under Section 3(1) and (2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980. The detaining authority having considered the entire material placed before it, including the bail petitions and orders passed therein and having satisfied that the detenu is obstructing in the process of supply of essential commodities to the poor and needy people which is in contravention of Clause 17(e) of TSPDS (Control) Order 2016 and Section 7 of the Act, r/w Section 420 IPC passed the detention order duly following the well established procedure under the law and in strict compliance of provisions of the Act.

6. Preventive detention is an extreme step, which can be resorted to by an executive authority as a last resort. Before passing of detention order the authority has to keep in mind that liberty of an individual, which is a precious and cherished fundamental right guaranteed under Article 21 of the Constitution of India, is being

deprived. In the process of depriving an individual of such valuable right to life and personal liberty, the authority has to satisfy itself that the activities of the detenu are of such nature which cannot be curbed except for passing the detention order. Personal liberty of an individual which is a precious and basic human right cannot be allowed to be trampled with at the whims and fancies of the executive authorities. The detention order needs to be passed for genuine and *bona fide* reasons and not on extraneous grounds. It should subserve the purpose and object of the Act under which the authority has drawn its power. The detention order may be passed under Section 3 of the Act if the Government is satisfied that a person is to be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community. The main object for passing the detention order being "maintenance of supplies of commodities essential to the community" it has to be ensured that such object is achieved.

In **KISHORI MOHAN BERA v. STATE OF WEST BENGAL**[1] the Hon'ble Supreme Court held at page 847, para 4 as under:

> "The Act confers extraordinary power on the executive to detain a person without recourse to the ordinary laws of the land and to trial by Courts. Obviously, such a power places the personal liberty of such a person in extreme peril against which he is provided with a limited right of challenge only. There can, therefore, be no doubt that such a law has to be strictly construed. Equally also, the power conferred by such a law has to be exercised with extreme care and scrupulously within the bounds laid down in such a law."

In **YUMMAN ONGBI LEMBI LEIMA v. STATE OF MANIPUR AND OTHERS**[2], the Supreme Court held at para 27 as under:

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[1] (1972) 3 SCC 845
[2] (2012) 2 Supreme Court Cases

> "27. As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order."

Further, in **STATE OF MAHARASHTRA v. BHAURAO PUNJABRAO GAWANDE**[3] it is held at para 23 as under:

> "23..... personal liberty is a precious right. So did the Founding Fathers believe because, while their first object was to give unto the people a Constitution whereby a Government was established, their second object, equally important, was to *protect the people against the Government*. That is why, while conferring extensive powers on the Government like the power to declare an emergency, the power to suspend the enforcement of fundamental rights or the power to issue ordinances, they assured to the people a Bill of Rights by Part III of the Constitution, protecting against executive and legislative despotism those human rights which they regarded as 'fundamental'."

7. It is settled law that preventive detention cannot be resorted to as a substantive and as an easy way out law. The High Court of Judicature for the State of Telangana and the State of Andhra Pradesh in **C. NEELA v. STATE OF TELANGANA**[4] 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 disturbance to law and order on the other and held that only in

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[3] (2008) 3 SCC 613
[4] 2017 (2) ALD (Cri) 760

> the former case the State is permitted to invoke the powers under the preventive detention laws."

8. When ordinary law is capable of dealing with alleged prejudicial activities of the detenu the provisions of the preventive detention law cannot be invoked. The executive authority has to keep in mind before detention order is passed that ordinary law will not act as deterrent on the activities of the detenu. In the instant case, the offences relate to provisions of the Essential Commodities and Control Orders made thereunder. Unless it is held that the activities of the detenu have impact on the public order or are of such nature, which have the potential of adversely affecting the public order, detention order cannot be passed in a routine manner. There is no discussion in the impugned detention order as to how the activities of the detenu would affect the public order and also as to the compelling reasons for invoking the provisions of the Act when ordinary law is sufficient. The Supreme Court in **MUNGALA YADAMMA v. STATE OF ANDHRA PRADESH**[5], held as under:

> "No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act, but that in our view has to be done under the said laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenue may have committed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial."

9. Apart from that, there is also no proper conclusion arrived at by the detaining authority as to how public order is affected. There is a

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[5] (2012) 2 SCC 386

difference between law and order and public order. It is held by the Supreme Court in **ARUN GHOSH v. STATE OF WEST BENGAL**[6] as under:

> "It means therefore that 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. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognized as meaning something more than ordinary maintenance of law and order.

In **S.K. KEDAR v. STATE OF WEST BENGAL**[7], the Supreme Court held as under:

> The relevant criteria to distinguish in the abstract between acts prejudicial to maintenance of law and order and those which are prejudicial to maintenance of public order are laid down in a number of rulings of this Court (see ***Pushkar Mukherjee and others v. The State of West Bengal*** [(1969) 1 SCC 10], ***Sudhir Kumar Saha V. Commisssioner Of Police, Calcutta*** [(1970) 1 SCC 149] and ***Nagendra Nath Mondal v. The State of West Bengal*** [(1972) 1 SCC 498]. The question whether a person 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 one of degree and the extent of the reach of the act upon the society. An act by itself is not determinative of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of the law and order.

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[6] 1970(1) SCC 98
[7] (1972) 3 SCC 816

10. In the light of the above observations, the detention order dated 19.09.2020 is liable to be set aside and this writ petition is liable to be allowed.

11. The writ petition is allowed. The impugned detention order dated 19.09.2020 of the 2nd respondent and the confirmation order dated 26.11.2020 of the 1st respondent are hereby set aside. The respondents are directed to set the detenu, namely Kurva Srinivasulu, @ Pilli Srinivasulu, S/o. Govindu, 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/-K.VENKAIAH
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, General Administration (Law & Order) Department, State of Telangana, Secretariat, Hyderabad.
2. The Collector & District Magistrate Wanaparthy District, Wanaparthy.
3. The Superintendent of Police, Wanaparthy District, Wanaparthy.
4. One CC to Sri Ajgal Ravi Babu, Advocate [OPUC]
5. Two CCs to Sri T. Srinivas Reddy, Government Pleader for Home, High Court for the State of Telangana at Hyderabad. (OUT)
6. Two CD Copies.

MP

HIGH COURT

DATED:22/12/2020



ORDER

WP.No.18473 of 2020

ALLOWING THE WRIT PETITION
WITHOUT COSTS

