

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

TUESDAY, THE TWENTY NINTH 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: 19123 OF 2020

Between:

Vempati Sujatha, W/o. Bachis, Aged. 38 years, Occ. Housewife, R/o. H.No.3-9-516,
Flat No.16, Madhuranagar Colony, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary for Home Department, Secretariat, Hyderabad.
2. The Hon'ble Chairman, Advisory Board for P.D. Act cases, Secretariat, Hyderabad.
3. The Principal Secretary to Government (Political), General Administration Department, Telangana, Hyderabad.
4. The Commissioner of Police, Rachakonda Commissionerate.

...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, Order or Direction, more particularly one in the nature of Writ of habeas corpus, to declare the impugned order passed by the 3rd Respondent vide G.O.Rt.No.1462, dated. 5/10/2020 by confirming the Order of Detention passed by the 4th Respondent vide its No.32/PD CELL/CCRB/RCKD/2020, dated 24/07/2020 against the detenu by name Vempati Bhachis who is petitioners husband is as illegal, arbitrary, unjust and violation of Principles of natural Justice and violation of Article 21 and 22 of the Constitution of India and consequently direct the Respondents to produce the detenu by name Vempati Bhachis and set aside the impugned orders of the 3rd and 4th respondents by directing them to release/set free the detenu and call for the records.

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 respondent authorities to release/set free the Detenu by name Vempati Bhachis by suspending the orders of the 3rd respondent vide G.O.Rt.No.1462, dated. 5/10/2020 by confirming the Order of Detention passed by the 4th Respondent vide its No. 32/PD CELL/CCRB/RCKD/2020, dated 24/07/2020 pending disposal of the main Writ Petition.

Counsel for the Petitioner: SRI. PULLA RAO YELLANKI

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 Vempati Bachis, S/o. Ramakrishna, dated 24.07.2020, by the Commissioner of Police, Rachakonda Commissionerate, in exercise of powers conferred under sub-section (2) of Section 3 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 the confirmation order of the State vide G.O.Rt.No.1462 dated 05.10.2020 are challenged by way of this writ of Habeas Corpus as being illegal, arbitrary, unconstitutional and violative of Articles 21 and 22 of the Constitution of India.

2. Heard Mr. Pulla Rao Yellanki, learned counsel for the petitioner and the learned Government Pleader for Home Mr. T. Srikanth Reddy for the respondents.

3. The detention order is passed on the following solitary ground case viz.

Cr.No.109 of 2020 under Section 420 IPC and Sections 3(1) the Seeds (Control) Order, 1983 and Clause 7 of the Fertilizers (Control) Order, 1985, Clause 3(2)(d) of the Essential Commodities Act, 1955 and Section 29(1)(c) of the Insecticides Act, 1968 of Kandukur Police Station, Rachakonda.

4. Learned counsel for the petitioner submitted that the detenu has been falsely implicated the aforesaid crime. The detention order is passed in a mechanical manner without application of mind, more

particularly, without examining the past conduct and criminal antecedents of the detenu. Hence, the detenu cannot be branded as spurious seed offender for the purpose of invoking the provisions of the Act. The ordinary law of the land was already invoked. The act of alleged supply of spurious seeds alleged to have been committed by the detenu does not affect public order and is not prejudicial to the maintenance of public order. The detenu has been granted bail in the aforesaid crime. The opinion formed by the detaining authority that there is imminent possibility of the detenu indulging in similar offences, which are detrimental to the maintenance of public order, 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. Per contra, the learned Government Pleader for Home submitted that the detenu indulged in the clandestine business of procuring spurious cotton seeds, treating them with colors and chemical, packing in bags and supplying to the innocent farmers of pecuniary gains, thereby disturbing the public order and tranquility in the Rachakonda Police Commissionerate. Having satisfied that the activities of the detenu are prejudicial to the maintenance of public order, it was necessary to detain him and hence impugned order is passed with a view to prevent him from indulging in such activities, in the interest of farmer community at large. The detaining authority having considered the entire material placed before him, , 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 public order. The main object for passing the detention order being that it has to be ensured that such object is achieved.

7. In **KISHORI MOHAN BERA v. STATE OF WEST BENGAL**¹

the Hon'ble Apex 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 Apex Court held at para 27 as under:

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'."

8. Assuming that there is imminent possibility of the detenu indulging in similar offences, the prosecuting agency is always at liberty to move application for cancellation of bail and without resorting to such step, the impugned detention order is passed. This Court in WP.No.28524 of 2019 dated 06.02.2020, held at para 12 as under:

"12) A perusal of the impugned detention order reveals that the detenu was granted bail only in crime No.290/2019 of Inthezargunj PS. However, the apprehension of the detaining authority that the detenu may move 2nd bail application in the remaining cases, the same may be allowed by the concerned Courts and in the event of his release from the jail on bail,

³ (2008) 3 SCC 613

there is imminent possibility of him committing similar offences, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. If the detenu is enlarged on bail and violates the conditions of bail or indulges in similar crimes while on bail, the concerned authority/Public Prosecutor is free to move the concerned Court for getting the bail cancelled. It is the bounden duty of the police concerned to hand over the entire material record available to the Public Prosecutor/Assistant Public Prosecutor to see that the bail application of the detenu is dismissed. If the Police are vigilant enough to collect the data relating to the alleged offences, and to furnish the relevant information to the learned Public Prosecutors, the same could be placed by the learned Public Prosecutors before the concerned Court. It is the Police that have to take required measures to inform the Public Prosecutor about the criminal history of the offender. 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."

9. When ordinary law is capable of dealing with the 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 offence relates to the provisions of the Seeds Act. Unless it is opined 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 PRADESH⁴

"No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra

⁴ (2012) 2 SCC 386

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 detainee 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."

10. 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 difference between law and order and public order. It is held by the Supreme Court in **ARUN GHOSH v. STATE OF WEST BENGAL**⁵ 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**⁶, 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. Commissioner 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

⁵ 1970(1) SCC 98

⁶ (1972)3 SCC 816

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.

11. In the light of the above observations, impugned detention order dated 24.07.2020 is liable to be set aside and this writ petition is liable to be allowed.

The writ petition is allowed. The impugned detention order dated 24.07.2020 and the confirmation order dated 05.10.2020 are hereby set aside. The respondents are directed to set the *detenu*, namely Vempati Bachis, S/o. Ramakrishna, 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/-M.MANJULA
ASSISTANT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The Principal Secretary for Home Department, State of Telangana Secretariat, Hyderabad.
2. The Hon'ble Chairman, Advisory Board for P.D. Act cases, Secretariat, Hyderabad.
3. The Principal Secretary to Government (Political), General Administration Department, Telangana, Hyderabad.
4. The Commissioner of Police, Rachakonda Commissionerate.
5. One CC to Sri Pulla Rao Yellanki, Advocate [OPUC]
6. Two CCs to GP for Home, High Court for the State of Telangana at Hyderabad. [OUT]
7. Two CD Copies

CHR

HIGH COURT

DATED:29/12/2020

ORDER

W.P.No.19123 of 2020



ALLOWING THE WRIT PETITION
WITHOUT COSTS

HM
8/1/2021 (9)