

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA**

WRIT PETITION No.2052 OF 2022

ORDER: (Per Hon'ble Dr. Justice Shameem Akther)

Sri S.Sree Ramulu, the petitioner, has filed this Habeas Corpus petition on behalf of his cousin, Baluboyina Guraiah @ Guravaiah @ Ramu, S/o Guravaiah, challenging the detention order *vide* No.142/PD CELL/CCRB/RCKD/2021, dated 12.11.2021, passed by the respondent No.2, whereby, the detenu was detained under Section 3(2) of the Telangana Preventive Detention Act, 1986 (Act 1 of 1986), and the consequential confirmation order, *vide* G.O.Rt.No.299, General Administration (Spl. (Law & Order)) Department, dated 05.02.2022, passed by the respondent No.1.

2. Heard the learned counsel for both sides and perused the record.

3. The case of the petitioner is that basing on a solitary crime registered against the detenu viz., Crime No.443 of 2021 of Vanasthalipuram Police Station, Rachakonda Commissionerate, the respondent No.2 passed the impugned

detention order, dated 12.11.2021. According to the respondent No.2, the detenu is an 'Immoral Traffic Offender', as he has been indulging in immoral trafficking for the sake of prostitution and running organized prostitution business for their pecuniary benefits by procuring innocent girls from AP State and other parts of the Telangana State through his agents under the guise of providing livelihood, exploiting them and forcibly dragging them into prostitution and thereby living on the earnings of prostitution and also indulging in the acts of organizing prostitution clandestinely by acting as a member of criminal gang to make easy buck in a short period and thus running clandestine prostitution business in the limits of Vanasthalipuram Police Station of Rachankonda Commissionerate and thereby acting in a manner prejudicial to the maintenance of public order and public health at large. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.299, dated 05.02.2022.

4. Learned counsel for the petitioner would submit that the impugned detention order has been passed in a mechanical manner and without application of mind. The detaining

authority relied on a solitary case for preventively detaining the detenu. Admittedly, in the solitary case relied upon by the detaining authority, the detenu was granted bail by the Court concerned. But, the detenu was again sent to judicial remand by invoking the draconian preventive detention laws on the apprehension that there is imminent possibility of the detenu indulging in similar prejudicial activities again, which is unjustified. The alleged crime does not add up to “disturbing the public order” and it is confined within the ambit and scope of the word “law and order”. Since the offences alleged are under the Indian Penal Code and the Immoral Traffic (Prevention) Act, 1956 (for short, ‘PITA’), the said case can certainly be dealt with under the Penal Code and the said special law. 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 and ultimately prayed to set aside the same and allow the writ petition as prayed for.

5. On the other hand, the learned Assistant Government Pleader for Home appearing for the respondents supported the impugned orders and submitted that the detenu is an “Immoral Traffic Offender”. He indulged in procuring innocent girls from AP State and other parts of the Telangana state under the guise of providing livelihood, exploiting them and forcibly dragging them into prostitution and thereby living on the earnings of prostitution and thereby acting in a manner prejudicial to the maintenance of public order and public health at large. Since the detenu got bail in the solitary crime relied upon by the detaining authority, the apprehension of the detaining authority that there is imminent possibility of his indulging in similar offences, is not misconceived. The criminal activities of the detenu not only endanger the family system but also create social unrest causing widespread health hazards to the general public. Therefore, the detaining authority was legally justified in passing the impugned detention order. Further, the Advisory Board rendered its opinion that there is sufficient cause for detention of the detenu and on considering the same along with the entire material, the Government confirmed the impugned detention

order. All the mandatory requirements were strictly followed by the detaining authority while passing the impugned detention order. The impugned detention orders are legally sustainable and ultimately, prayed to dismiss the writ petition.

6. In view of the submissions made by both the sides, the point that arises for determination in this Writ Petition is:

“Whether the impugned detention order, vide No.142/PD CELL/CCRB/RCKD/2021, dated 12.11.2021, passed by the respondent No.2 and the consequential confirmation order vide G.O.Rt.No.299, General Administration (Spl. (Law & Order)) Department, dated 05.02.2022 passed by respondent No.1 are liable to be set aside?”

POINT:

7. 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 affected by the criminal activities of a person, the conduct of a person is 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. Hence, according to the Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

8. In **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. It was observed that every breach of public peace and every violation of law may create a 'law and order' problem, but does not necessarily create a problem of 'public order'. The distinction has to be borne in mind in view of what has been stated in the grounds of detention.

9. In **Kanu Biswas v. State of West Bengal**², the Hon'ble Supreme Court, while discussing the meaning of word 'public order', held that the question whether a man has only committed a breach of 'law and order' or has acted in a

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

manner likely to cause a disturbance of the 'public order', is a question of degree and extent of the reach of the act upon the Society.

10. In the present case, the detaining authority, basing on a solitary crime indicated above, has passed the impugned detention order. We shall present it in a tabular form the date of occurrence, the date of registration of FIR, the offence complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
Cr.No.443/2021 of Vanasthalipuram PS	19.06.2021	19.06.2021	Section 370(A)(2) of IPC and Sections 3, 4, 5 and 7 of Immoral Traffic (Prevention) Act, 1956	Non-bailable/cognizable

11. A bare perusal of the impugned detention order clearly reveals that the three regular bail petitions moved by the detenu were dismissed *vide* CrI.M.P.No.2798 of 2021, dated 14.07.2021, CrI.M.P.No.3239 of 2021, dated 26.07.2021 and

Crl.M.P.No.3445 of 2021, dated 10.08.2021 by the II Additional Metropolitan Sessions Judge, Cyberabad and thereafter, he moved fourth bail petition under Section 167(2) Cr.P.C. and was granted unconditional bail on 31.08.2021 and released vide release order in Dis.No.3056/2021, dated 02.09.2021. Further, there is no history of the detenu being prosecuted for the offence under Section 370(A) of IPC and Sections 3, 4, 5 and 7 of Immoral Traffic (Prevention) Act, 1956. The detenu was released, vide release order in Dis.No.3056/2021, dated 02.09.2021. The detention order was passed on 12.11.2021, i.e., about more than two months after the release of the petitioner/detenu from prison. There are no attempts or commission of the offences of the nature for which the petitioner is being prosecuted. Under these circumstances, there was no need for the detaining authority to pass the detention order. The impugned detention order, dated 12.11.2021, suffers from non-application of mind.

12. It is appropriate to refer the decision rendered by the Hon'ble Apex Court in ***Vijay Narain Singh v. State of***

Bihar³, wherein it was held that a single act or omission cannot be characterized as a habitual act or omission because the idea of 'habit' involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omission in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them, they cannot be treated as habitual ones.

13. Grave as the offence may be, it relates to immoral trafficking. So, no inference of disturbance of public order can be drawn. The subject case can certainly be tried under the Penal Code and Special law. Thus, this case does not fall within the ambit of the words "public order". Instead, it falls within the scope of the words "law and order". Hence, there was no need for the detaining authority to pass the impugned detention order.

14. For the foregoing reasons, the impugned orders are legally unsustainable and are liable to be set aside.

³ (1984) 3 SCC 14

15. In the result, the Writ Petition is allowed. The impugned detention order *vide* No.142/PD CELL/CCRB/RCKD/2021, dated 12.11.2021, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.299, General Administration (Spl. (Law & Order)) Department, dated 05.02.2022, passed by the respondent No.1, are hereby set aside. The respondents are directed to set the *detenu*, namely Baluboyina Guraiah @ Guravaiah @ Ramu, S/o Guravaiah, at liberty forthwith, if he is no longer required in any other criminal case.

The miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Dr. CHILLAKUR SUMALATHA, J

Date: 21.03.2022
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