

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

**THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO**

PRESENT

**THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER
AND
THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI**

WRIT PETITION NO: 3307 OF 2022

Between:

Anthony Bhagya, W/o. Anthony Moses Lawrence, aged 37 years,
R/o.H.No.11-3-416/58/123. New Ashok Nagar, Parsigutta, Secunderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary to Govt.(Political),
General Administration Dept., Telangana Secretariat, Hyderabad.
2. The Commissioner of Police, Rachakonda Commissionerate.
3. The Superintendent of Prisons, Central Prison, Cherlapally, Medchal District.

...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 of Habeas Corpus under Art.226 of the Constitution of India directing the respondents to produce Sri. Anthony Moses Lawrence @ Laddu S/o. Anthony Masi, now detained at Central Prison, Cherlapally, Medchal District, before this Honorable Court and he may be ordered to be released forthwith/set at liberty after declaring his detention vide No.169/PD-CELL/CCRB/RCKD/2021, dated 18/12/2021 passed by the 2nd respondent and consequential confirmation orders passed by the 1st respondent "**vide G.O.Rt.No.612 General Administration (Spl. (Law & Order) Department, dated 15.03.2022**" as illegal, unconstitutional and void.

(Prayer is amended as per Court Order, date 31.03.2022 vide I.A.No.1 of 2022)

Counsel for the Petitioner: SMT. B. MOHANA REDDY

**Counsel for the Respondents: AGP FOR HOME FOR
THE ADDITIONAL ADVOCATE GENERAL**

The Court made the following: ORDER

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

WRIT PETITION No.3307 OF 2022

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

Smt. Anthony Bhagya, the petitioner, has filed this Habeas Corpus petition on behalf of her husband, Anthony Moses Lawrence @ Laddu, challenging the detention order *vide* No.169/PD-CELL/CCRB/RCKD/2021, dated 18.12.2021, 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.612, General Administration (Spl. (Law & Order)) Department, dated 15.03.2022, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana.

2. Heard the learned counsel for the petitioner, learned Assistant Government Pleader for Home appearing for the respondents and perused the record.

3. The case of the petitioner is that basing on a recent solitary crime registered against the detenu viz., Crime No.690 of 2021 of Neredmet Police Station, Rachakonda Commissionerate, registered

for the offences punishable under Sections 420, 395, 342 and 120(b) of IPC, the respondent No.2 passed the impugned detention order, dated 18.12.2021. According to the respondent No.2, the detenu is a 'Dacoit', as he has been habitually engaging himself in unlawful acts and indulging in committing of snatching, robberies, dacoities and murder cases in the limits of Hyderabad City and Rachakonda Police Commissionerate, and also indulging in committing offences continuously, repeatedly by acting as a leader/member of a criminal gang and thereby acting in a manner prejudicial to the maintenance of public order. Subsequently, the impugned detention order was confirmed by the Government, *vide* G.O.Rt.No.612, dated 15.03.2022.

4. Learned counsel for the petitioner would contend that relying on the recent solitary crime registered against the detenu in the year 2021, the impugned detention order was passed. The alleged case does not add up to "disturbing the public order". It is confined within the ambit and scope of the word "law and order". Since the offence alleged is under the Indian Penal Code, the detenu can certainly be tried and convicted under the Indian Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law. Hence, the impugned orders tantamount to colourable exercise of power. It is

further contended that the detaining authority erroneously reached to the conclusion that there is every likelihood of the detenu releasing on bail in the subject case and after his release on bail, there is imminent possibility of the detenu again indulging in similar prejudicial activities, unless he is prevented from doing so by an appropriate order of detention is highly misplaced. The subjective satisfaction recorded by the detaining authority in preventively detaining the detenu is tainted and illegal. Preventive detention cannot be made a substitute to punitive detention. The detaining authority has to be extremely careful while passing the detention order, since the detention *ipso facto* adversely affects the fundamental right and personal liberty enjoyed by the detenu under Article 21 of the Constitution of India. Thus, the impugned orders are legally unsustainable and ultimately, prayed to 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 a 'dacoit' as he has been indulging in committing of snatching, thefts, dacoity and murder case and thereby acting in a manner prejudicial to the maintenance of public order, apart from disturbing peace and tranquility in the area. Since the detenu got bail in Drug peddling

and Human Trafficking cases and there is every likelihood of granting bail in the subject case relied upon by the detaining authority, the apprehension of the detaining authority that there is imminent possibility of the detenu indulging in similar offences, is not misconceived. The series of crimes allegedly committed by the detenu was sufficient to cause a feeling of insecurity in the minds of the people at large. 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 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.169/PD-CELL/CCRB/RCKD/2021, dated 18.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.612, General Administration (Spl. (Law & Order)) Department, dated 15.03.2022, passed by the 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 committed against a particular individual fall within the ambit of "law and order" and when the public at large is adversely affected by the criminal activities of a person, such activities of that person are 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 Hon'ble 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

¹ AIR 1966 SC 740

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 Apex 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 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, dated 18.12.2021. We shall present it in a tabular form the date of occurrence, the date of registration of FIR, the offence complained of and its nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
690/2021 of Neredmet PS	30.09.2021	30.09.2021	Sections 420, 395, 342 and 120B of IPC	420, 395- Cognizable/ Non Bailable 342 Cognizable /Bailable

11. As seen from the material placed on record, the solitary crime relied upon by the detaining authority for preventively

² (1972) 3 SCC 831

detaining the detenu relates to 'dacoit'. The detenu was arrested in connection with the said crime and subsequently, he moved three bail petitions in the said crime before the Court concerned and the Court concerned dismissed the said bail petitions. Thereafter, the detenu moved fourth bail petition *vide* Cri.M.P.No.9448 of 2021 and the same is pending before the Court concerned. Earlier, the detenu got bail in Drug peddling and Human Trafficking cases. Since the detenu was granted bail in Drug peddling and Human Trafficking cases, the apprehension of the detaining authority that there is every likelihood of the detenu releasing on bail in the subject crime also and after his release on bail, there is imminent possibility of the detenu again indulging in similar offences is highly misplaced. It is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of the detenu and to handover the entire case record available against the detenu. The police are supposed to be vigilant in collecting the whole data against the detenu and furnish the same to the Public Prosecutor/Additional Public Prosecutor to defeat the bail application/s of the detenu. Further, in the instant case, even if the detenu was granted bail by the Court concerned and if it is found that the detenu is involved in further crimes, the prosecution can apprise the same to the Court concerned and seek cancellation

of bail. Moreover, criminal law was already set into motion against the detenu. Further, since the detenu has allegedly committed offences punishable under the Indian Penal Code, the said crime can be effectively dealt with under the provisions of the Penal Code and there was no need for the detaining authority to invoke the draconian preventive detention law. Thus, the offence allegedly committed by the detenu in the solitary crime relied by the detaining authority does not fall within the ambit of the words "public order" or "disturbance of 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. The detaining authority cannot be permitted to subvert, supplant or substitute the punitive law of land, by ready resort to preventive detention.

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

13. In the result, the Writ Petition is allowed. The impugned detention order *vide* No.169/PD-CELL/CCRB/RCKD/2021, dated 18.12.2021, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.612, General Administration (Spl. (Law & Order)) Department, dated

15.03.2022, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, are hereby set aside. The respondents are directed to set the *detenu*, namely Anthony Moses Lawrence @ Laddu, S/o Anthony Masi, at liberty forthwith, if he is no longer required in any other criminal case.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

SD/- MOHD.SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary to Govt.(Political), General Administration Dept., State of Telangana, Telangana Secretariat, Hyderabad.
2. The Commissioner of Police, Rachakonda Commissionerate.
3. The Superintendent of Prisons, Central Prison, Cherlapally, Medchal District.
4. One CC to Smt B. Mohana Reddy, Advocate [OPUC]
5. Two CCs to GP for Home, High Court for the State of Telangana at Hyderabad. [OUT]
6. Two CCs to the Additional Advocate General, High Court for the State of Telangana at Hyderabad. [OUT]
7. Two CD Copies
8. One Spare Copy

CHR

SW 

HIGH COURT

DATED:07/04/2022

ORDER

W.P.No.3307 of 2022



ALLOWING THE WRIT PETITION
WITHOUT COSTS

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23/8/22