

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

**FRIDAY, THE FIRST 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: 3863 OF 2022

Between:

B. Rajesh Singh, S/o Late Bheem Singh, Aged. 49 Years, Occ. Pvt. Employee, R/o 13-2-391 /B, Near Raheernpura Jenda, Mangalhat, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by Chief Secretary, Secretariat building, Hyderabad.
2. The Commissioner of Police, Commissionerate of Hyderabad, Basheerbagh, Hyderabad.
3. The Superintendent of Central Prison, Chanchalguda, Hyderabad

...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 orders more particularly one in the nature Writ of Habeas Corpus Under Article 226 of the Constitution of India directing the Respondents to release the Detenu i.e. A. Rohit Singh S/o. A. Rajesh Singh who is now detained in Central Prison, Chanchalguda, Hyderabad, by setting aside the order of detention passed by the Respondent No.2 vide SB(1) No.256/PD 2/HYD/2021, dated. 12-10-2021, G.O.Rt.No.2327 G.A. (Spl.(Law and order) Dept,dated.20-10-2021 and G.O.Rt.No.2867, dated.24-12-2021 confirmed and approved by the Respondent No.1, are illegal, arbitrary, discriminatory and unsustainable in the eye of law as it is contrary to the Article 21 of the Constitution of India.

IA NO: 1 OF 2022

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 Detenu forthwith by revoking the order of detention passed by the Respondent No.2 vide SB(1) No.256/PD-2/HYD/2021,

dated. 12-10; 2021, G.O.Rt.No.2327 G.A. (Spl.(Law 85 Order) Dept, dated 20-10-2021 and G.O.Rt.No.2867, dated.24-12-2021 confirmed and approved by the Respondent No.1

Counsel for the Petitioner: SRI. MOHD MUZAFFER ULLAH KHAN

Counsel for the Respondents: AGP FOR HOME/ADDL ADVOCATE GENERAL

The Court made the following:

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

WRIT PETITION No.3863 OF 2022

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

Sri B.Rajesh Singh, the petitioner, has filed this Habeas Corpus petition on behalf of his son, A.Rohit Singh, S/o. A.Rajesh Singh, the detenu, challenging the detention order vide SB(I)No.256/PD-2/HYD/2021, dated 12.10.2021, 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.2867, General Administration (Spl. (Law & Order)) Department, dated 24.12.2021, 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.100 of 2021 of Mangalhat Police Station, Hyderabad Commissionerate, registered



for the offence punishable under Section 8(c) read with 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'), the respondent No.2 passed the impugned detention order, dated 12.10.2021. According to respondent No.2, the detenu is a 'Drug Offender', as he has been peddling 'Ganja', a narcotic substance, in the limits of Hyderabad Police Commissionerate, duly endangering the lives of youth causing irreparable damage to their body organs, including the Central Nervous System, thereby crippling the health of those addicted to drugs. His illegal activities are causing widespread danger to public health and are detrimental to public order. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.2867, dated 24.12.2021.

4. Learned counsel for the petitioner would contend that the impugned detention order has been passed in a mechanical manner and without application of mind. The detenu was falsely implicated in the solitary crime relied by the detaining authority. The alleged illegal activities of the detenu would not satisfy the word 'drug offender'. Already criminal law was set into motion against the detenu. Though the detenu moved seven bail petitions in the solitary crime relied by the detaining authority, the Court

concerned dismissed all the seven bail petitions and as such, the detenu continues to be in judicial custody. Therefore, the apprehension of the detaining authority that there is every possibility of the detenu moving bail petition again in the subject crime and bail being granted to the detenu and on release on bail, there is imminent possibility of the detenu committing similar offences which would be detrimental to the public order and public health at large, unless he is prevented from doing so by an order of detention, is highly misplaced. 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 offence alleged is under the NDPS Act, the detenu can certainly be tried and convicted under the said special law. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law against the detenu. Hence, the impugned orders tantamount to colourable exercise of power. 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 'Drug



Offender'. He has been indulging in peddling of 'ganja', a narcotic substance, endangering the lives of youth causing irreparable damage to their body organs including the central nervous system, thereby crippling the health of those addicted to drugs. In view of the constant and repeated efforts of the detenu to come out from the jail, the apprehension of the detaining authority that there is every likelihood of the detenu coming out from jail and on such release, there is imminent possibility of his committing similar offence/s, is not misplaced. The crime allegedly committed by the detenu was causing widespread danger to public health and detrimental to public order. Substantial quantity of Ganja (26 Kgs) was seized from the possession of the detenu and his associate. 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 on record, the Government confirmed the impugned detention order vide G.O.Rt.No.2867, dated 24.12.2021. 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 SB (I) No.256/PD-2/HYD/2021, dated 12.10.2021, passed by respondent No.2, and the consequential confirmation order vide G.O.Rt.No.2867, General Administration (Spl. (Law & Order)) Department, dated 24.12.2021, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, 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 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 12.10.2021. 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.

¹ AIR 1966 SC 740

² [1972] 3 SCC 831

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
100/2021 of Mangalhat PS	05.05.2021	06.05.2021	Section 8(c) read with 20 (b)(ii)(C) of NDPS Act <u>Qty</u> : 26 Kgs of Ganja	Cognizable/ Non Bailable

11. As seen from the material placed on record, the solitary crime relied upon by the detaining authority for preventively detaining the detenu relate to peddling of ganja. It is evident from the record that the detenu moved as many as seven bail petitions in the solitary crime relied by the detaining authority and all the seven bail petitions were dismissed by the Court concerned. Thus, the detenu continues to be in judicial custody. Under these circumstances, the apprehension of the detaining authority that there is every possibility of the detenu moving bail petition again in the subject crime and bail being granted to the detenu and on release on bail, there is imminent possibility of the detenu committing similar offences which would be detrimental to the public order and public health at large, unless he is prevented from doing so by an order of detention, 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 hand over 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. When the detenu has not been released from the judicial custody, the apprehension of his coming out from the prison and committing similar offences is misplaced. Here, it is appropriate to refer to the decision of the Hon'ble Apex Court in **Rekha Vs. State of Tamil Nadu**³, wherein it is held as follows:

"Where a detention order is served on a person already in jail, there should be a real possibility of release of a person 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."

Moreover, criminal law was already set into motion against the detenu. Since the detenu has allegedly committed offence punishable under the NDPS Act, the said crime can be effectively dealt with under the provisions of the said special law and there was no need for the detaining authority to invoke draconian preventive detention laws. The instant case 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

³ (2011) 5 SCC 244

cannot be permitted to subvert, supplant or substitute the punitive law of land, by ready resort to preventive detention.

12. Even while passing the confirmation order, dated 24.12.2021, the Principal Secretary to Government, (Spl. (Law & Order)) Department, Government of Telangana, has failed to notice that the detenu continue to languish as under-trial in the jail. Once the detenu was already confined, the question of confirming the detention orders would not even arise.

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

14. In the result, the Writ Petition is allowed. The impugned detention order *vide* SB(1)No.256/PD-2/HYD/2021, dated 12.10.2021, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.2867, 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 A.Rohit Singh, S/o A.Rajesh Singh, 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/-T.TIRUMALA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The State of Telangana., Rep. by Chief Secretary, Secretariat building,
Hyderabad.
2. The Commissioner of Police, Commissionerate of Hyderabad, Basheerbagh,
Hyderabad.
3. The Superintendent of Central Prison, Chanchalguda, Hyderabad
4. One CC to Sri. Mohd Muzaffer Ullah Khan, Advocate [OPUC]
5. Two CCs to the Advocate General, High Court for the State of Telangana.
[OUT]
6. Two CCs to GP for Home, High Court for the State of Telangana. [OUT]
7. Two CD Copies.

PM
PS

HIGH COURT

DATED:01/04/2022

ORDER

WP.No.3863 of 2022



Allowing the WP
Without costs.

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MA
11/7/22