

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

**FRIDAY, THE TWENTY NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO**

PRESENT

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

WRIT PETITION NO: 3844 OF 2022

Between:

Kethavath Shirisha, W/o Shaik Masthan @ Harsha @ Sharah, Aged 23 years, Occ Housewife R/o Flat No 204, Srinivasa Apartment, Prashanthi Nagar, Kukatpally, Medchal District.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Pri. Secretary Office at Secretariat Buildings, Hyderabad, Telangana.
2. The Commissioner of Police and Addl. District Magistrate, Rachakonda Commissionerate, Rachakonda, Hyderabad.
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 an appropriate writ, order or direction more particularly one in the nature of Writ Habeas Corpus directing the respondents to produce the detainee viz., Shaik Masthan @ Harsha @ Sharah S/o Kalesha, Aged 26 years, who presently detained in Central Prison, Cherlapally before this Hon'ble Court and release him forthwith after declaring the order of detention passed by the 2nd respondent dated 26-06-2021 vide No.67/PD CELL/CCRB/RCKD/2021 and consequential order passed by the 1st respondent in G.O.Rt.No.2779.

Counsel for the Petitioner : SRI E. RAMESH CHANDRA GOUD

**Counsel for the Respondents: THE ADDITIONAL ADVOCATE GENERAL
REP. BY AGP FOR HOME SRI G. MALLA REDDY**

The Court made the following: ORDER

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

WRIT PETITION No.3844 OF 2022

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

Mrs. Kethavath Shirisha, the petitioner, has filed this Habeas Corpus petition, on behalf of Shaik Masthan @ Harsha @ Sharah, S/o. Kalesha, the *detenu*, challenging the detention order vide No.67/PD CELL/CCRB/RCKD/2021, dated 26.06.2021, 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.2779, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 16.12.2021.

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

3. The case of the petitioner is that basing on two crimes registered against the *detenu* viz., Crime Nos.54 of 2021 of Kukatpally Police Station, Rachakonda Commissionerate, and 237 of 2021 of Chaitanyapuri Police Station, Rachakonda Commissionerate, the respondent No.2 passed the impugned

detention order, dated 26.06.2021. According to respondent No.2, the *detenu* is an 'Immoral Traffic Offender', and that he, along with his associates, has been trafficking girls/women, even minor girls, from West Bengal, Karnataka States and other parts of Telangana for the sake of prostitution through his agents and has been running prostitution business with the said girls in the limits of Rachakonda and Cyberabad Police Commissionerates; Since the year 2020, he has been indulging in human trafficking and running prostitution with them by accommodating them in lodges on payments; He has been procuring male customers through online and known contacts and allowing them into lodges for having sexual pleasures with girls/women for pecuniary benefits to make easy money in short period; He also supplies girls to the brothel organizers on payments; The immoral activities of the *detenu* lead to social unrest and widespread health hazards, thereby endangering public health and are thus prejudicial to the maintenance of public order. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.2779, dated 16.12.2021.

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. Already criminal law was set into motion against the *detenu*. Further, the *detenu* was granted conditional bail by the Courts concerned in both the crimes relied by the detaining authority and he has been complying the bail conditions. But he was again sent to jail by invoking the draconian preventive detention laws on the apprehension that the *detenu* is not amenable to ordinary law and there is imminent possibility of his indulging in similar offences, which is unjustified. The alleged crimes do not add up to "disturbing the public order" and they are 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 *detenu* can certainly be tried and convicted under the penal code and 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 an 'Immoral Traffic Offender'. He has been indulging in trafficking of women/girls for the sake of prostitution and running prostitution business to lead luxurious life in an organized fashion in the police station limits of Rachakonda Commissionerate and thus acting in a manner prejudicial to the maintenance of public order. The immoral activities of the *detenu* not only endanger the family system, but also harmful to the inhabitants of the locality, creating embarrassing situation to the families and youth living in Rachakonda Police Commissionerate. Further, the immoral activities of the *detenu* are leading to social unrest causing widespread health hazards. 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 vide G.O.Rt.No.2779, dated 16.12.2021. 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.

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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.67/PD CELL/CCRB/RCKD/2021, dated 26.06.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.2779, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 16.12.2021, 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 two crimes indicated above, has passed the impugned detention order, dated 26.06.2021. We shall present them 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
54/2021 of Kukatpally PS	20.01.2021	20.01.2021	Section 370(A)(2) of IPC and 3, 4 & 5 of PITA	Section 370, 370(A)(2) of IPC: Cognizable/ Non Bailable Sections 3, 4 & 5 of PITA : Cognizable
237 of 2021 of Chaitanyapuri PS	15.04.2021	15.04.2021	Section 370(A) of IPC and 3, 4 & 5 of PITA	Section 370, 370(A) of IPC: Cognizable/ Non Bailable Sections 3, 4 & 5 of PITA : Cognizable

11. As seen from the material placed on record, the two crimes relied by the detaining authority for preventively detaining the *detenu* relates to immoral trafficking. In the first crime, i.e., Crime No.54 of 2021, the *detenu* was arrested and remanded to judicial custody on 21.01.2021. Thereafter, the *detenu* moved bail petition before the Court concerned and the Court concerned, vide order, dated 15.03.2021, granted bail to the *detenu* by imposing certain conditions and he was released from judicial custody. Subsequently, the *detenu* was arrested on 10.06.2021 in connection with the second crime, i.e., Crime No.237 of 2021. Later, the *detenu* moved bail petition in the said crime also and he was granted conditional bail by the Court concerned vide order, dated 18.06.2021, and he was released from judicial custody on

21.06.2021. The condition imposed in the bail order in Crime No.54 of 2021 is that the *detenu* shall appear before the concerned SHO on every Sunday until filing of charge-sheet. The condition imposed in the bail order in Crime No.237 of 2021 is that the *detenu* shall appear before the concerned SHO on every Monday till filing of charge-sheet. Under these circumstances, the apprehension of the detaining authority that the *detenu* is not amenable to ordinary law and that there is imminent possibility of his indulging in similar prejudicial activities again, which would be prejudicial to maintenance of public order, unless he is prevented from doing so by an appropriate 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*. Even assuming that the bail conditions are violated by the *detenu* and he is involved in further crimes, nothing prevents the prosecution to apprise the same to the concerned Court and seek cancellation of bail. By virtue of the conditions imposed in the bail orders, the *detenu* would be under

surveillance of the Court and the police. Moreover, criminal law was already set into motion against the *detenu*. Since the *detenu* has allegedly committed offences punishable under the Indian Penal Code and PITA, the said crime can be effectively dealt with under the provisions of the Penal Code and the special law and there was no need for the detaining authority to invoke draconian preventive detention laws. The detaining authority cannot be permitted to subvert, supplant or substitute the punitive law of land, by ready resort to preventive detention.

12. Grave as the offences may be, they relate to immoral trafficking. So, no inference of disturbance of public order can be drawn. The subject cases can certainly be tried under the Penal Code and special law. Thus, the cases relied by the detaining authority do 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.

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 No:67/PD CELL/CCRB/RCKD/2021, dated

26.06.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.2779, General Administration (Spl. (Law & Order)) Department, dated 16.12.2021, 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 Shaik Masthan @ Harsha @ Sharah, S/o. Kalesha, at liberty forthwith, if he is no longer required in any other criminal case.

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

SD/-N.CHNDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, State of Telangana, Office at Secretariat Buildings, Hyderabad, Telangana.
2. The Commissioner of Police and Addl. District Magistrate, Rachakonda Commissionerate, Rachakonda, Hyderabad.
3. The Superintendent of Prisons, Central Prison, Cherlapally, Medchal District.
4. One CC to Sri E. Ramesh Chandra Goud, Advocate [OPUC]
5. Two CCs to The Additional Advocate General, High Court for the State of Telangana at Hyderabad. [OUT]
6. Two CCs to GP for Home, High Court for the State of Telangana at Hyderabad. [OUT]
7. Two CD Copies
8. One Spare Copy.

CHR
BS

HIGH COURT

DATED:29/04/2022

ORDER

W.P.No.3844 of 2022



ALLOWING THE WRIT PETITION
WITHOUT COSTS

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5/7/22