

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

**MONDAY, THE TWENTY FIFTH 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: 7437 OF 2022

Between:

Smt. Sunita Devi, W/o. Upendra Das, Aged about 46 years, Occ ; Housewife, R/o.
H.No.12-14-571/85/5, Upper Dhoolpet, Mangalhat, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Represented by its Principal Secretary, Home Department (Poll), GAD At Secretariat, Hyderabad.
2. The Commissioner of Police, Hyderabad City, At Basheerbagh, Hyderabad.
3. The Advisory Board for the State of Telangana, Home Department.
4. The Superintendent of Jail, 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 Writ of Habeas Corpus under Article 226 of the constitution of India. Directing the respondents to produce Kishan Kumar S/o. Upendra Das, detenu No. 1737 who is presently detained in Central Prison, Chanchalguda, Hyderabad before this Honourable Court and he may be ordered to be released forthwith set a liberty after declaring his detention order SB (1) No. 376/PD-1 /Hyd/2021, dated. 13/12/2021 and G.O.Rt.No. 2857 of 2012, dt 23/12/2021 passed by the Commissioner of Police, Hyderabad i.e., 2 respondent as illegal, arbitrary, unconstitutional.

Counsel for the Petitioner : SRI.B.SANTOSH

Counsel for the Respondents : ADDL 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.7437 OF 2022

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

Smt. Sunita Devi, the petitioner, has filed this Habeas Corpus petition on behalf of her son, Kishan Kumar, S/o. Upendar Das, the detenu, challenging the detention order vide SB (I).No.376/PD-1/HYD/2021, dated 13.12.2021, 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.601, 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 two crimes registered against the detenu in the recent past, i.e. Crime No.187 of 2021 of Panjagutta Police Station registered for the offence

under Section 8(c) read with 20(b)(ii)(C) of NDPS Act, and Crime No.208 of 2021 of Kodad Rural Police Station, Suryapet District, registered for the offence under 20(b)(ii)(C) of the NDPS Act, the respondent No.2 passed the impugned detention order, dated 13.12.2021. According to respondent No.2, the detenu is a 'Drug Offender', and has been habitually involving in dangerous activities of peddling of 'Ganja', a narcotic substance, among the innocent people in the limits of Hyderabad Police Commissionerate, and has been endangering the lives of youth and innocent people, causing irreparable damage to their body organs, including the central nervous system, thereby crippling the mental and physical health of the people addicted to drugs, thus adversely affecting the public order and public health at large. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.601, dated 15.03.2022.

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 two cases 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. In Crime No.187/2021 of Panjagutta Police Station, the detenu was granted conditional bail by this Court vide order, dated 08.09.2021, passed in Criminal Petition No.6881 of 2021. However, in Crime No.208 of 2021 of Kodad Rural Police Station, the detenu did not move any bail petition. Thus, the detenu continues to be in judicial custody as on the date of passing of the impugned detention order. Under these circumstances, the apprehension of the detaining authority that there is every possibility of the detenu moving bail petition in Crime No.208 of 2021 before the Court concerned, grant of bail to the detenu, his release soon from judicial custody soon and on such release, there is imminent possibility of his committing similar offences is highly misplaced. Further, 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'. His illegal and highly dangerous activities of peddling 'ganja' among the people in the limits of Hyderabad Police Commissionerate have been endangering the lives of innocent people, especially youth. The detenu was granted conditional bail by this Court in one of the crimes, i.e., Crime No.187 of 2021. Therefore, the apprehension of the detaining authority that there is every possibility of the detenu moving bail petition in the other crime, i.e., Crime No.208 of 2021 and grant of bail to the detenu by the Court concerned and on his release on bail, there is imminent possibility of his committing similar offence, is not misplaced. The crime allegedly committed by the detenu was causing widespread danger to public health and detrimental to public order. 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.601, dated 15.03.2022. 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(1).No.376/PD-1/HYD/2021,dated 13.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.601, dated 15.03.2022, passed by the Principal Secretary to Government (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 two crimes indicated above, has passed the impugned detention order, dated 13.12.2021. We shall present them in a tabular form the date of occurrence, the date of registration of FIR, the offence

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

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
187/2021 of Panjagutta PS	10.04.2021	10.04.2021	Section 8(c) read with 20 (b)(ii)(C) of NDPS Act Qty: 21.9 Kgs of Ganja	Cognizable/ Non Bailable
208/2021 of Kodad Rural PS	06.10.2021	06.10.2021	Section 29(b)(ii)(C) of NDPS Act Qty: 22 Kgs of Ganja	Cognizable/ Non Bailable

11. As seen from the material placed on record, the two crimes relied upon by the detaining authority for preventively detaining the detenu relate to peddling of ganja. The detenu was arrested in connection with the Crime No.187 of 2021 of Panjagutta Police Station on 10.04.2021. Subsequently, he moved ten bail petitions in the said crime before the Courts concerned, which were dismissed. Later, he filed Criminal Petition No.6881 of 2021 before this Court and this Court, vide order, dated 08.09.2021, granted conditional bail to the detenu and he was released from judicial custody on 13.09.2021. The detenu was again arrested in connection with Crime No.208 of 2021 and was remanded to judicial custody. However, the detenu did not move any bail petition in the said crime. Thus, the detenu continues to be in judicial custody as on the date of passing of the impugned detention order, dated 13.12.2021. Under these circumstances,

the apprehension of the detaining authority that there is every possibility of the detenu moving bail petition in Crime No.208 of 2021 and granting bail to the detenu and his release from judicial custody and on such release, there is imminent possibility of his committing similar offences, 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. Further, when the detenu has not moved any bail petition in Crime No.208 of 2021 and continues to in 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**¹, 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."

¹ (2011) 5 SCC 244

Moreover, criminal law was already set into motion against the detenu. Since the detenu has allegedly committed offences punishable under NDPS Act, the said crimes 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, they fall 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. Even while passing the confirmation order, dated 15.03.2022, the Principal Secretary to Government, General Administration (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 order would not even arise.

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* SB(I).No.376/PD-1/HYD/2021, dated 13.12.2021, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.601, 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 Kishan Kumar, S/o. Upendar Das, 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/-K.AMMAJI
ASSISTANT REGISTRAR

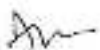
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SECTION OFFICER

To

1. The Principal Secretary, Home Department (Poll), GAD At Secretariat, State of Telangana at Hyderabad.
2. The Commissioner of Police, Hyderabad City, At Basheerbagh, Hyderabad.
3. The Advisory Board for the State of Telangana, Home Department.
4. The Superintendent of Jail, Central Prison, Chanchalguda, Hyderabad.
5. Two CC to Advocate General, High Court for the State of Telangana at Hyderabad. (OUT)
6. One CC to SRI.B.SANTOSH, Advocate [OPUC]
7. Two CD Copies
8. One spare copy

S.A
BS



HIGH COURT

DATED:25/04/2022



ORDER

WP.No.7437 of 2022

ALLOWING THE W.P
WITHOUT COSTS.

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4/7/22