

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

**THURSDAY, THE TWENTY EIGHTH 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: 9304 OF 2022

Between:

Sonam Bai, D/o.Late Bansi Singh. Aged about 22 years, Occ Student. R/o.H.No.14-10-501, Mohan Das Matt, Lower Dhoolpet, Mangalhat. Hyderabad, Telangana State.

...PETITIONER

AND

1. The State of Telangana, Rep by its Principal Secretariat Government, General Administration Department (Poll), Secretariat, Hyderabad.
2. The Commissioner of Police and Addl. District Magistrate (Executive), Hyderabad City, Hyderabad District.
3. The Superintendent, Chenchalguda Central Prison. Chenchalguda, 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, order, direction particularly in the nature of writ of Habeas Corpus directing the respondents to produce the detinue by name Satish Singh S/o.Late Bunny Singh @ Bansi Singh, aged about 25 years, Occ Business, R/o. H.No.14-10-501, Mohanddas Mutt, Jali Hanuman, Lower Dhoolpet, Mangalhat, Hyderabad before this Hon'ble Court and set him at liberty by declaring the detention order 15.12.2021 issued in Proceedings SB(I).No.386/PD-2/HYD/2021 passed by the 2nd respondent and all the consequential orders passed by the 1st respondent as illegal, arbitrary.

Counsel for the Petitioner: SRI. K. SATISH CHAKRAVARTHY

**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.9304 OF 2022

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

Smt. Sonam Bai, the petitioner, has filed this Habeas Corpus petition on behalf of her brother Satish Singh S/o. Late Bunny Singh @ Bansi Singh, the detenu, challenging the detention order vide SB(I) No.386/PD-2/HYD/2021, dated 15.12.2021, 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.603, General Administration (Spl. (Law & Order)) Department, dated 03.01.2022, passed by the Principal Secretary to Government, General Administration (Special (Law and 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.100 of 2021 of Mangalhat Police Station registered for the

offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act and Crime No.124 of 2021 of Dhoolpet Police Station registered for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, the respondent No.2 passed the impugned detention order, dated 15.12.2021. According to respondent No.2, the detenu is a 'Drug Offender', and has been habitually involving in peddling of 'ganga, a narcotic drug among the youth and innocent people and thereby 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.603, dated 03.01.2022.

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. Further, the detenu was granted bail by the Courts concerned in both the crimes relied by the detaining authority. But again, he was sent to jail by invoking draconian preventive detention laws. The apprehension that since the detenu has come out of the prison on bail, there is every possibility of his violating bail conditions in both the cases and that there is imminent

possibility of his committing similar offences, which would be detrimental to the public order, unless he is prevented from doing so by an order of detention, is highly misplaced. 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 offence alleged in both the crimes 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.

2. On the other hand, the learned Assistant Government Pleader appearing for the respondents supported the impugned orders and submitted that the detenu is a 'drug offender'. He, along with his associate has been indulging in unlawful activities as a leader/member of the gang and committed two offences of peddling of 'ganja' a narcotic drug endangering the lives of youth causing irreparable damage to their body organs including the central nervous system and thereby crippling the health of those who are addicted to drugs. Since the detenu was granted conditional bails in both the crimes relied by the detaining

authority, the apprehension of the detaining authority that there is every possibility of detenu violating the bail conditions and there is imminent possibility of his committing similar offences, is not misconceived. The crimes 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.603, dated 03.01.2022. 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.

3. 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.386/PD-2/HYD/2021, dated 15.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.603, dated 03.01.2022, passed by Principal Secretary to Government, General Administration (Special (Law and 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.

¹AIR 1966 SC 740

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 15.12.2021. 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.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
100/2021 of Mangalhat PS	06.05.2021	06.05.2021	8(c) r/w 20(b)(ii)(C) of NDPS Act	Cognizable/ Non Bailable
124/2021 of Prohibition & Excise Station, Dhoolpet	05.06.2021	05.06.2021	8(c) r/w 20(b)(ii)(B) of NDPS Act	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 'ganga', a narcotic drug. Subsequent to his arrest, the detenu moved bail petition in Crime

² (1972) 3 SCC 831

No.100 of 2021 of Mangalhat PS before the Court concerned and it was dismissed. Thereafter, the detenu moved Criminal Petition No.5786 of 2021 before this Court and this Court, *vide* order, dated 03.08.2021, granted conditional bail to the detenu. Further, in Crime No.124 of 2021, the detenu moved bail petition before the Court concerned and it was dismissed. Thereafter, the detenu moved Criminal Petition No.4514 of 2021 before this Court and this Court, *vide* order dated 09.07.2021, granted conditional bail to the detenu and the detenu was released from judicial custody on 04.08.2021. Under these circumstances, the apprehension of the detaining authority that since the detenu has come out of the prison on bail, there is every possibility of detenu violating bail conditions in both the cases and that there is imminent possibility of his committing similar offences, which would be detrimental to the public order, 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 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, the conditional order of bail

restricts the movement of the detenu and requires him to appear before the officer concerned periodically and the detenu would be under the surveillance of the police and the Court. Moreover, criminal law was already set into motion against the detenu. Further, since the detenu has allegedly committed offences punishable under the NDPS Act, the said crimes can be effectively dealt with under the provisions of the special law and there was no need for the detaining authority to invoke the draconian preventive detention law. Thus, the offences allegedly committed by the detenu in the two crimes relied by the detaining authority do 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. 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.386/PD-2/HYD/2021 dated 15.12.2021, passed by the respondent No.2, and the

consequential confirmation order, *vide* G.O.Rt.No.603 General Administration (Special (Law and Order)) Department, dated 15.03.2022, passed by the Principal Secretary to Government, General Administration (Special (Law and Order)) Department, Government of Telangana, are hereby set aside. The respondents are directed to set the *detenu*, namely Satish Singh S/o. Late Bunny Singh @ Bansi Singh, 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/-K.ONESIM
DEPUTY REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The Principal Secretariat Government, General Administration Department (Poll), State of Telangana, Secretariat, Hyderabad.
2. The Commissioner of Police and Addl. District Magistrate (Executive), Hyderabad City, Hyderabad District.
3. The Superintendent, Chenchalguda Central Prison, Chenchalguda, Hyderabad.

4. One CC to Sri K. Satish Chakravarthy, 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
PS



HIGH COURT

DATED:28/04/2022

ORDER

W.P.No.9304 of 2022



ALLOWING THE WRIT PETITION
WITHOUT COSTS

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MMA
05/8/2022