

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

**MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND TWENTY TWO**

PRESENT

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

WRIT PETITION NO: 16052 OF 2022

Between:

Shivraj Singh Chouhan, S/o. Roopsingh Chouhan, Age. 20 Years, Occ.
Student, R/o. 11, Jeeth Nagar, Batlam Village and Tahsil, Rotlam District,
Madhya Pradesh.

...PETITIONER(S)

AND

1. The State of Telangana, represented by its Principal Secretary to the Home Department, Secretariat Buildings, Hyderabad.
2. The Collector and District Magistrate, Medak District.
3. The Superintendent, Central Prison, Cherlapalli, Ranga Reddy District.
4. The Station House Officer Prohibition and Excise Station, Narsapur, Medak 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 order or direction more particularly one in the nature of writ of Habeas Corpus or any other appropriate writ, directing the respondents to produced the petitioner's father i.e., detenue "Roop Sing alias Roopsing Chouhan S/o. Radha Kishan, Age. 47 Years, R/o. H. No. 11, Jeeth Nagar Ralam, Ratlam, Tehsil Ratlam, District Ratlam, Madhya Pradesh" before this Hon'ble court upon such production he may be set free, by setting aside the order of detention passed by the respondent No. 2, in Proc. No. C1/375/2022, dated 08/02/2022, **the consequential G.O.Rt.No.886, dated 21-04-2022 issued by the respondent No.1, confirming the detention order passed by the respondent No.2 as illegal and unconstitutional. Consequently direct the**

respondents to pay compensation a sum of Rs. 5,00,000/- for illegal detention of the detainee Roop Sing @ Roopsing Chouhan S/o. Radha Kishan.

(Prayer is amended as per Court Order dt.13-06-2022 vide IA No.1/2022 in WP No.16052/2022)

Counsel for the Petitioner: SRI K. VENUMADHAV

Counsel for Respondents: AGP for HOME rep. 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.16052 OF 2022

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

Sri Shivraj Singh Chouhan, the petitioner, has filed this Habeas Corpus petition on behalf of his father, Roop Singh S/o. Radha Kishan, the detenu, challenging the detention order vide Proc.No.C1/375/2022, dated 08.02.2022, 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.886, General Administration (Spl. (Law & Order)) Department, dated 21.04.2022, passed by the Chief 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 representing the learned Advocate General appearing for the respondents and perused the record.

3. Learned counsel for the petitioner would submit that the accusation levelled against the detenu in the solitary crime viz.,

Crime No.150 of 2021 of Prohibition and Excise Station, Narsapur, Medak District, relied on by the detaining authority is that he along with his associates was found in possession of 2.5 Kgs of Alprazolam, which is alleged to have been seized under a cover of panchanama. The detenu had filed two bail applications before the Court concerned and the same were dismissed. The detenu was in judicial custody as on the date of passing of the impugned detention order. Just one day prior to passing of the confirmation order by the Government vide G.O.Rt.No.886 dated 21.04.2022, the detenu was granted bail *vide* order dated 20.04.2022 passed by this Court in Criminal Petition No.3393 of 2022. The apprehension of the detaining authority that the detenu would be granted bail and on release from jail, he would indulge in commission of similar offence is not based on sound material. There is no justification to arrive at such a conclusion. Further, there is no criminal history against the detenu committing similar offence. Commission of solitary crime would not reflect the tendency of repetition of such offence. The solitary crime relied on by the detaining authority does not add up to "disturbing the public order". At the most, the accusation made against the detenu amounts to disturbance of law and order and it can be

adequately dealt with under the special law i.e., NDPS Act. Hence, the impugned orders are legally unsustainable and ultimately, prayed to allow the Writ Petition, as prayed for.

4. On the other hand, the learned Assistant Government Pleader for Home appearing for the respondents supported the impugned orders and submitted that on 01.11.2021, the detenu along with his associates was found in possession of 2.5 Kgs of Alprazolam in Room No.608 of Sapthagiri Hotel, near Secunderabad Railway Station. The detenu has been indulging in illegal activities of manufacture and sale of Alprazolam, a narcotic and psychotropic drug banned by the Government, as it endangers the lives of innocent public, especially youth and students, 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. Therefore, the satisfaction reached by the detaining authority is not misconceived. The solitary crime relied on by the detaining authority amounts to disturbance of public order at large. Therefore, the detaining authority and the Government are justified in passing the impugned orders. The impugned orders are legally sustainable and ultimately, prayed to dismiss the Writ Petition.

5. 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 Proc.No.C1/375/2022, dated 08.02.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.886, General Administration (Spl. (Law & Order)) Department, dated 21.04.2022, passed by the Chief Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, are liable to be set aside?"

POINT:

6. 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.

7. 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.

8. 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.

9. In the present case, the detaining authority, basing on a solitary crime indicated above, has passed the impugned detention order, dated 08.02.2022. 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
150/2021 of Prohibition and Excise Station, Narsapur PS	01.11.2021	02.11.2021	Section 8(c) r/w 22(c) of NDPS Act Qty: 2.5 kgs of Alprazolam	Cognizable/ Non Bailable

10. As seen from the material placed on record, the case against the detenu in the aforesaid crime is that on 01.11.2021, the detenu along with his associates was found in possession of 2.5 Kgs of Alprazolam in Room No.608 of Sapthagiri Hotel, near Secunderabad Railway Station and the same was seized under a cover of panchanama. The detenu moved two bail applications in the aforesaid crime before the Sessions Court concerned and the same were dismissed. Thereafter, the detenu moved bail application before this Court and *vide* order dated 20.04.2022 passed in Criminal Petition No.3393 of 2022, he was granted conditional bail. 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. Under these circumstances, the apprehension of the detaining authority that there is imminent possibility of his committing 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, as held in **Vijay Narain Singh v. State of Bihar**³, a single act or omission cannot be characterized as a habitual act because, the idea of 'habit' involves an element of persistence and a tendency to commit or repeat similar offences, which is patently not present in the instant case. Moreover, criminal law was already set into motion against the detenu. Further, since the detenu has committed offence punishable under the NDPS Act, the said crime 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 offence committed by the detenu in the solitary crime relied by the detaining authority do 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

³ (1984) 3 SCC 14

substitute the punitive law of land, by ready resort to preventive detention.

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

12. In the result, the Writ Petition is allowed. The impugned detention order vide Proc.No.C1/375/2022, dated 08.02.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.886, General Administration (Spl. (Law & Order)) Department, dated 21.04.2022, passed by the Chief 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, Roop Singh S/o. Radha Kishan, 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.

//TRUE COPY//

SD/- N. RAJA GOPAL
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Principal Secretary to the Home Department, State of Telangana, Secretariat Buildings, Hyderabad.
2. The Collector and District Magistrate, Medak District.
3. The Superintendent, Central Prison, Cherlapalli, Ranga Reddy District
4. The Station House Officer Prohibition and Excise Station, Narsapur, Medak District.
5. Two CCs to the Advocate General, High Court for the State of Telangana [OUT]
6. Two CCs to the GP for Home, High Court for the State of Telangana. [OUT]
7. One CC to SRI K.VENUMADHAV, Advocate [OPUC]
8. Two C.D. Copies
9. One Spare Copy.

MRC
GJP 

HIGH COURT

DATED:20/06/2022



ORDER

WP.No.16052 of 2022

ALLOWING THE WRIT PETITION
WITHOUT COSTS

17/9/2022 (12)