

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

**MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO**

PRESENT

**THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER
AND**

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION NO: 21155 OF 2022

Between:

Syeda Shahnaz Fatima, W/o. Nader Abbas Ali Mirza, aged 53 years, Occ ;
Housewife, R/o. H.No.18-7-316/B/5, Aman Nagar, Moula Ka Chilla, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, General Administration (Spl. (Law and Order) Department, Secretariat, Hyderabad.
2. The Commissioner of Police and Addl District Magistrate (Executive), Hyderabad City.
3. The Superintendent, Central Prison Hyderabad at Chanchalguda.

...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 of Habeas Corpus, directing 3rd Respondent to produce the detainee i.e. Nader Rizwan Ali Mirza @ Rizwan @ Rizwan Ali Mirza @ Hyder Hussain now detained in Central Prison Hyderabad, at Chanchalguda before this Hon'ble Court and set-aside the impugned detention order passed by the 2nd Respondent vide No. SB(I) No. 360/ PD-7/ HYD/ 2021, dt. 13/12/2021 and Confirmation Order Vide G.O.Rt. No. 542, dated 05/03/2022 passed by the 1st Respondent as being illegal, arbitrary, improper, unilateral, unconstitutional and violative of Article 21 and 22 of the Constitution of India and to forthwith release the Detenue.

**Counsel for the Petitioner : SRI.PASHAM TRIVIKRAM REDDY
Counsel for the Respondents : ADDL ADVOCATE GENERAL
The Court made the following ORDER**

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE N. TUKARAMJI**

WRIT PETITION No.21155 OF 2022

ORDER: (Per Hon'ble Dr.SA,J)

Smt. Syeda Shahnaz Fatima, the petitioner, has filed this Habeas Corpus petition on behalf of her son, Nader Rizwan Ali Mirza @ Rizwan @ Rizwan Ali Mirza @ Hyder Hussain, S/o.late Nader Abbas Ali Mirza, the detenu, challenging the detention order vide SB(1).No.360/PD-7/HYD/2021, dated 13.12.2021, passed by the respondent No.2-Commissioner of Police, Hyderabad City, 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.542, General Administration (Spl. (Law & Order)) Department, dated 05.03.2022, passed by the respondent No.1-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 representing the learned Advocate General appearing for the respondents and perused the record.

3. Learned counsel for the petitioner would submit that by relying on five cases viz., Crime No.7 of 2021 of Rein Bazar Police Station registered for the offence under Section 392 I.P.C.; Crime No.162 of 2021 of Rein Bazar Police Station registered for the offence under Section 380 I.P.C.; Crime No.220 of 2021 of Rein Bazar Police Station registered for the offence under Section 394 I.P.C.; Crime No.140 of 2021 of Sultan Bazar Police Station registered for the offence under Section 379 I.P.C. and Crime No.656 of 2021 of Pet Basheerabad Police Station registered for the offence under Section 379 I.P.C., the respondent No.2 passed the impugned detention order, dated 13.12.2021. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.542, dated 05.03.2022. The detenu was granted conditional bail in Crime No.7 of 2021. The bail applications moved by the detenu in Crime Nos.162 and 220 of 2021 were dismissed by the Court concerned. The detenu did not move any bail application in Crime Nos.140 and 656 of 2021. Hence, 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 petitions again

in two crimes and moving bail petitions in other two crimes, granting of bail to him and after his release from judicial remand on bail, there is imminent possibility of his committing similar offences, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. The five crimes relied on by the detaining authority do not add up to "disturbing the public order" and they are confined within the ambit and scope of the words "law and order". Since the offences alleged are under the Indian Penal Code, the detenu can certainly be tried and convicted under the Indian Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law against the detenu. Therefore, 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 the detenu is a 'goonda'. He has been habitually committing property offences including robberies in the limits of Hyderabad and Cyberabad Police Commissionerates. He has been causing widespread fear and

panic among the people by committing such offences and thus, he has been acting in a manner prejudicial to the maintenance of public order, apart from disturbing the peace, tranquillity and social harmony in the society. As the activities of the detenu were prejudicial to the maintenance of public order, during the year 2015, he was detained vide proceedings SB(I).No.466/PD/S-1/2015, dated 09.08.2015, passed by the respondent No.2, and he was released from jail after completion of 12 months of detention period. Thereafter, there is no change in the attitude of the detenu and he committed nine more offences, which demonstrates his habitual nature of committing crimes, creating widespread fear in the public, apart from disturbing the peace and tranquillity in the society. Further, after release on bail in Crime No.7 of 2021, the detenu committed the other four offences. Under these circumstances, the apprehension of the detaining authority is not misconceived. The crimes allegedly committed by the detenu are prejudicial to the maintenance of public order at large. Therefore, the detaining authority and the Government are legally justified in passing the impugned orders. The impugned orders are legally sustainable and ultimately, prayed to dismiss the Writ Petition.

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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 SB(I).No.360/PD-7/HYD/2021, dated 13.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.542, General Administration (Spl. (Law & Order)) Department, dated 05.03.2022, passed by the respondent No.1, 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.

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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 five 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 FIRs, the offences

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
7/2021 of Rein Bazar PS	18.01.2021	18.01.2021	Section 392 I.P.C.	Cognizable/ Non Bailable
140/2021 of Sultan Bazar PS	16/17.06.2021	18.06.2021	Section 379 I.P.C.	Cognizable/ Non Bailable
656/2021 of Pet Basheerabad PS	18.06.2021	19.06.2021	Section 379 I.P.C.	Cognizable/ Non Bailable
162/2021 of Rein Bazar PS	27/28.06.2021	28.06.2021	Section 380 I.P.C.	Cognizable/ Non Bailable
220/2021 of Rein Bazar PS	06.10.2021	06.10.2021	Section 394 I.P.C.	Cognizable/ Non Bailable

10. As seen from the material placed on record, the five crimes relied upon by the detaining authority for preventively detaining the detenu relate to theft, robbery and voluntarily causing hurt in committing or attempting to commit robbery. The detenu was granted conditional bail in Crime No.7 of 2021. The bail applications moved by the detenu in Crime Nos.162 and 220 of 2021 were dismissed by the Court concerned. The detenu has not moved any bail application in Crime Nos.140 and 656 of 2021. Therefore, 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 again moving bail petitions in Crime Nos.162 and 220 of 2021 and moving bail

petitions in Crime Nos.140 and 656 of 2021, granting of bail to him and on his release from judicial custody, there is imminent possibility of his committing similar offences, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. It is open to the State to complete investigation and file charge sheet, if not filed, and thereafter, lead evidence in accordance with law in the said five crimes and prove the guilt of the accused. 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."

Moreover, criminal law was already set into motion against the detenu. Further, passing of detention order against the detenu on earlier occasion cannot be a ground to pass the impugned detention order. The accusations levelled against the detenu in the said five crimes are not that grave. Since the detenu has committed the offences punishable under the Indian Penal Code, the said crimes can be effectively dealt with under the provisions of the Indian Penal Code and there was no need for the detaining

¹ (2011) 5 SCC 244

authority to invoke the draconian preventive detention law. The offences committed by the detenu in the five crimes relied on 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". Further, the life and personal liberty guaranteed to the detenu under Article 21 of the Constitution of India cannot be defeated by invoking the provision under Section 3(2) of the Telangana Preventive Detention Act. 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.

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 SB(I).No.360/PD-7/HYD/2021, dated 13.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.542, General Administration (Spl. (Law & Order)) Department, dated 05.03.2022, passed by the respondent No.1, are hereby set aside. The respondents are directed to set the *detenu*, namely Nader

Rizwan Ali Mirza @ Rizwan @ Rizwan Ali Mirza @ Hyder Hussain,
S/o. late Nader Abbas Ali Mirza, 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.

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SD/- K. ONESIM
DEPUTY REGISTRAR

SECTION OFFICER

To

1. The Principal Secretary, General Administration (Spl. (Law and Order) Department, Secretariat, State of Telangana at Hyderabad.
2. The Commissioner of Police and Addl District Magistrate (Executive), Hyderabad City.
3. The Superintendent, Central Prison Hyderabad at Chanchalguda.
4. Two CC to Advocate General, High Court for the State of Telangana at Hyderabad. (OUT)
5. One CC to SRI.PASHAM TRIVIKRAM REDDY, Advocate [OPUC]
6. Two CD Copies
7. One spare copy

S.A
GJP

BSR

HIGH COURT

DATED:18/07/2022

ORDER

WP.No.21155 of 2022



ALLOWING THE W.P
WITHOUT COSTS.

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23/12
BSR