

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

**THURSDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND TWENTY TWO**

PRESENT

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

WRIT PETITION NO. 21652 OF 2022

Between:

Prabha Bai, (M/o. Detenu Santosh Singh), W/o. Late Sri. Digamber Singh, aged: 53 Years, Occ: House hold, R/o.13-1-571/277, Mangalhat, Balakdas Math, Hyderabad - 500 006.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, General Administration (Spl.(Law and Order) Department, Secretariat building, Hyderabad.
2. The Commissioner of Police, Hyderabad City, Hyderabad.
3. The Superintendent, 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 a Writ, Order or orders more particularly one in the nature Writ of Habeas Corpus Under Article 226 of the Constitution of India directing the Respondents to release the Detenu i.e. Santosh Singh, S/o. Late Sri. Digamber Singh, who is now detained in Central Prison Chanchalguda, Hyderabad, by setting aside the order of detention passed by the Respondent No.2 vide proceedings No.SB(I) No.354/PD-2/HYD/2021, dated:08/12/2021, which was approved by the Respondent No.1 vide G.O.Rt.No.2789, dated 16/12/2021 and consequently confirmation order vide G.O. Rt.No.523, dated. 04/03/2022,

declaring the said detention order as illegal, arbitrary, discriminatory and unsustainable in the eye of law as it is contrary to the Article 21 of the Constitution of India.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to release the detainee i.e. Santosh Singh, S/o. Late Sri. Digamber Singh, forthwith by revoking the order of detention vide proceedings No. SB(I)No.354/PD-2/HYD/2021, dated 08/12/2021, which was approved by the Respondent No.1 vide G.O.Rt.No.2789, dated 16/12/2021 and consequently confirmation order vide G.O. Rt.No.523, dated: 04/03/2022.

Counsel for the Petitioner: SRI UMESH SINGH

Counsel for the Respondent No.1: GP FOR GENERAL ADMINISTRATION

**Counsel for the Respondent Nos.2 & 3: AGP FOR HOME REP. FOR
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.21652 OF 2022

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

Smt. Prabha Bai, the petitioner, has filed this Habeas Corpus petition on behalf of her son, Santosh Singh, S/o.late Digamber Singh, the detenu, challenging the detention order vide SB(I).No.354/PD-2/HYD/2021, dated 08.12.2021, 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.523, General Administration (Spl. (Law & Order)) Department, dated 04.03.2022, 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 Additional Advocate General appearing for the respondents and perused the record.

/

3. Learned counsel for the petitioner would submit that out of three crimes registered against the detenu during the years 2020 and 2021, the respondent No.2 by relying on two cases viz., Crime Nos.224 and 234 of 2021 of Mangalhat Police Station, Hyderabad, passed the impugned detention order, dated 08.12.2021. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.523, dated 04.03.2022. In Crime No.224 of 2021 of Mangalhat Police Station, the bail applications moved by the detenu before the Sessions Court concerned were dismissed. In Crime No.234 of 2021, the detenu was arrayed as an accused based on the confession made by the co-accused. The detenu has not moved any bail application in Crime No.234 of 2021. Hence, 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 moving bail petitions in both the crimes, granting of bail and on his release from jail, 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 two 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 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. Further, the detention order as well as the confirmation order passed against the co-accused (Raja Singh) in Crime No.224 of 2021 of Mangalhat Police Station was already set aside by this Court vide order, dated 26.04.2022, passed in W.P.No.5399 of 2022. 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 'Drug Offender'. His illegal and highly dangerous activities in peddling of 'ganja', a narcotic drug, along with his associates among the innocent people in Hyderabad City have been endangering the lives of youth and innocent people, causing irreparable damage to their body orders, including the central nervous system and crippling the mental and physical health of the people, especially the youth addicted to drugs. The apprehension of the detaining authority that there is every possibility of the detenu moving bail

petitions in the two crimes and granting of bail by the Court concerned and on his release from judicial remand, there is imminent possibility of his committing similar offences, is not misconceived. The crimes allegedly committed by the detenu are prejudicial to the maintenance of public order and public health. The satisfaction recorded by the detaining authority is based on the material on record. Therefore, the detaining authority was legally justified in passing the impugned detention order. 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 SB(I).No.354/PD-2/HYD/2021, dated 08.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.523, General Administration (Spl. (Law & Order)) Department, dated 04.03.2022, 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.

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

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

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 two crimes indicated above, has passed the impugned detention order, dated 08.12.2021. We shall present them in a tabular form the date of occurrence, the date of registration of FIRs, the offences 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
224/2021 of Mangalhat PS	27.09.2021	27.09.2021	Section 8 (c) read with 20 (b) (ii) (C) of NDPS Act Qty: 1) 21 kgs. of ganja	Cognizable/ Non Bailable
234/2021 of Mangalhat PS	03.10.2021	03.10.2021	Section 8 (c) read with 20 (b) (ii) (B) of NDPS Act Qty: 1) 1.1 kg. of ganja	Cognizable/ Non Bailable

10. 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 Crime No.224 of 2021 of Mangalhat Police Station on 27.09.2021 and remanded to judicial custody. The detenu was arrayed as an accused in Crime No.234 of 2021 of Mangalhat Police

Station, based on the confession made by the co-accused. The arrest of the detenu was regularized in Crime No.234 of 2021 through P.T. warrant. The bail applications moved by the detenu before the Sessions Court concerned in Crime No.224 of 2021 of Mangalhat Police Station were dismissed. The detenu has not moved any bail application in Crime No.234 of 2021. Therefore, the detenu continues to be in judicial custody. Under these circumstances, the apprehension of the detaining authority that the detenu would be released from jail and on such release, 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 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. Moreover, criminal law was already set into motion against the detenu. Since the detenu has committed the offences punishable under the 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 the draconian preventive detention law. The offences committed by the detenu in the two 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". 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. Further, the detention order as well as the confirmation order passed against the co-accused (Raja Singh) in Crime No.224 of 2021 of Mangalhat Police Station were already set aside by this Court vide order, dated 26.04.2022, passed in W.P.No.5399 of 2022. The facts and circumstances of the case on hand are akin to the facts and circumstances in W.P.No.5399 of 2022.

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.354/PD-2/HYD/2021, dated 08.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.523, General

Administration (Spl. (Law & Order)) Department, dated 04.03.2022, passed by the respondent No.1, are hereby set aside. The respondents are directed to set the *detenu*, namely Santosh Singh, S/o. late Digamber Singh, 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/-T.KRISHNA KUMAR
DEPUTY REGISTRAR

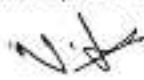
//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, General Administration (Spl.(Law and Order), Department State of Telangana, Secretariat building, Hyderabad.
2. The Commissioner of Police, Hyderabad City, Hyderabad.
3. The Superintendent, Central Prison Chanchalguda, Hyderabad.
4. One CC to SRI UMESH SINGH, Advocate [OPUC]
5. Two CCs to the 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 CCs to GP for General Administration, High Court for the State of Telangana at Hyderabad. [OUT]
8. Two CD Copies.
9. One Spare Copy

MP
PS



HIGH COURT

DATED:30/06/2022

ORDER

WP.No.21652 of 2022



**ALLOWING THE WRIT PETITION
WITHOUT COSTS**

BS
13
2/12/22