

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

**WEDNESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND TWENTY TWO**

PRESENT

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

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION NO: 26222 OF 2022

Between:

Vanarula Sai Kiran, S/o. Late Raju, aged 21 years, R/o. H.No.29-781, Vinayak Nagar, Neredmet, Medhcal-Malkajgiri District.

...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), Rachakonda.
3. The Superintendent, Central Prison Cherlapally, Medchal - Malkajgiri 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 appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Habeas Corpus, directing 3rd Respondent to produce the detenu i.e Vanarula Sai Kishore now detained in Central Prison for Cherlapally, Medhcal-Malkajgiri District before this Hon'ble Court and set-aside the impugned detention order passed by the 2nd Respondent vide No. 47/ PD-CELL/ CCRB/ RCKD/2022, dt. 19/03/2022 and Consequential Orders by 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 Detenu.

Counsel for the Petitioner : SRI.PASHAM TRIVIKRAM REDDY

**Counsel for the Respondents : SRI.S.MUJIB KUMAR, SPL GOVT PLEADER REP BY 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.26222 OF 2022

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

Mr. Vanarula Sai Kiran, the petitioner, has filed this Habeas Corpus petition on behalf of his cousin, Vanarula Sai Kishore, S/o. Late V. Raju, the detenu, challenging the detention order vide No.47/PD-CELL/CCRB/RCKD/2022, dated 19.03.2022, 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.1120, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 30.05.2022.

2. Heard Sri Pasham Trivikram Reddy, learned counsel for the petitioner, Sri S.Mujib Kumar, learned Special Government Pleader representing the learned Additional Advocate General for the respondents, and perused the record.

3. The case of the petitioner is that basing on a recent solitary crime registered against the detenu viz., Crime No.141 of 2022 of Jawaharnagar Police Station, Rachakonda Commissionerate, the respondent No.2 passed the impugned detention order, dated

19.03.2022. According to respondent No.2, the detenu is an 'Immoral Traffic Offender', as he, along with his associates, has been indulging in human trafficking for the sake of prostitution and running organized prostitution business with trafficked women for pecuniary benefits. His activities are endangering the family ecosystem and are causing social insecurity among the women living in the locality and embarrassment to their families. The immoral activities of the detenu lead to social unrest and widespread health hazards, thereby endangering public health and are thus prejudicial to the maintenance of public order. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.1120, dated 30.05.2022.

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. Already criminal law was set into motion against the detenu. Further, there is no material to connect the detenu with the alleged crime. The subjective satisfaction arrived at by the detaining authority for preventively detaining the detenu is tainted and illegal. Further, the detenu was granted conditional bail by the Court concerned in the solitary crime relied by the detaining authority. But he was again sent to jail by invoking the draconian preventive detention laws on the

apprehension that there is imminent possibility of the detenu indulging in similar prejudicial activities, which is unjustified. 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 Indian Penal Code and The Immoral Traffic (Prevention) Act, 1956 (for short, 'PITA'), the detenu can certainly be tried and convicted under the penal code and 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 Special Government Pleader appearing for the respondents supported the impugned orders and submitted that the detenu is an 'Immoral Traffic Offender'. He indulged in human trafficking for the sake of prostitution and running an organized prostitution business with trafficked women for pecuniary benefits. He has been procuring women from Andhra Pradesh State and other parts of the Telangana State through known agents and engaging himself in unlawful acts of organizing prostitution clandestinely by acting as a leader/member

of criminal gang for making quick money in a short period, thereby created large scale panic and insecurity among the public and thereby affecting the public order. The immoral activities of the detenu are leading to social unrest, causing spread of sexually transmitted diseases like HIV, Syphilis, Gonorrhea, etc., and thus endangering the public health at large. 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, the Government confirmed the impugned detention order vide G.O.Rt.No.1120, dated 30.05.2022. 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 No.47/PD-CELL/CCRB/RCKD/2022, dated 19.03.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1120, General Administration (Spl. (Law & Order)) Department, Government of

Telangana, dated 30.05.2022, 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

¹ AIR 1966 SC 740

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 a solitary crime indicated above, has passed the impugned detention order, dated 19.03.2022. 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.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
141/2022 of Jawaharnagar PS	15.02.2022	15.02.2022	Section 370(A)(2) of IPC and 3, 4, 5 and 7 of PITA	Section 370(A)(2) of IPC: Cognizable/ Non Bailable Sections 3, 4, 5 & 7 of PITA : Cognizable

² (1972) 3 SCC 831

11. As seen from the material placed on record, the solitary crime relied upon by the detaining authority for preventively detaining the detenu relates to immoral trafficking. The detenu was arrayed as A3 in the subject crime. The crime was detected on 15.02.2022 and the detenu was arrested and remanded to judicial custody on the same day, i.e., 15.02.2022. Thereafter the detenu moved bail petition before the Court concerned and the Court concerned, vide order, dated 17.03.2022, granted bail to the detenu imposing certain conditions and he was released from judicial custody on bail. The conditions imposed in the bail order are that the detenu shall execute a personal bond for Rs.10,000/- with two sureties; after release, he shall appear before the SHO, Jawaharnagar Police Station on every Thursday between 10:00 AM and 02:00 PM for 90 days or until filing of charge sheet, whichever is earlier. It is stated in the counter affidavit that at present, the case is under investigation. 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. Even assuming that the bail conditions

are violated by the detenu and he is involved in further crimes, noting prevents the prosecution to apprise the same to the concerned Court and seek cancellation of bail. By virtue of the conditions imposed in the bail order, the detenu would be under surveillance of the Court and the police. Under these circumstances, the apprehension of the detaining authority that since the detenu was granted bail, there is imminent possibility of his indulging in similar prejudicial activities which are detrimental to the maintenance of public order, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. Moreover, criminal law was already set into motion against the detenu. Further, there is no antecedent criminal history against the detenu. Since the detenu has allegedly committed offences punishable under the Indian Penal Code and PITA, the said crime can be effectively dealt with under the provisions of the Penal Code and the special law and there was no need for the detaining authority to invoke draconian preventive detention laws. The detaining authority cannot be permitted to subvert, supplant or substitute the punitive law of land, by ready resort to preventive detention.

12. As held in **Vijay Narain Singh's** case (3 supra), 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.

13. Grave as the offence may be, it relates to immoral trafficking. So, no inference of disturbance of public order can be drawn. The subject case can certainly be tried under the Penal Code and special law. Thus, this case does not fall within the ambit of the words "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.

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

15. In the result, the Writ Petition is allowed. The impugned detention order *vide* No.47/PD-CELL/CCRB/RCKD/2022, dated 19.03.2022, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.1120, General Administration (Spl. (Law & Order)) Department, dated 30.05.2022, passed by the respondent No.1, are hereby set aside. The respondents are directed to set the *detenu*, namely, Vanarula Sai Kishore, S/o late V. Raju, 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/-K.SAILESHI
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),
Rachakonda.
3. The Superintendent, Central Prison Cherlapally, Medchal - Malkajgiri District.
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
BS



HIGH COURT

DATED:03/08/2022

ORDER

WP.No.26222 of 2022



ALLOWING THE W.P
WITHOUT COSTS.

BS
9/12/22