

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

**MONDAY, THE ELEVENTH 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: 37458 OF 2021

Between:

RAJESH SINGH (F/o. Detenu Sagar Singh alias Sagar), S/o. Late. Salyanarayan Singh, Aged .49 Years, Occ. Business, R/o. 13-1-1020/1, Khari Bowli, Dhoolpot, 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. Sagar Singh alias Sagar, S/o. Rajesh Singh, who is now detained in Central Prison Chanchal guda. Hyderabad, by setting aside the order of detention passed by the respondent No.2 vide proceedings No.SB(I)No.351/PD-2/HYD/2021, dated.23/11/2021, which was approved by the Respondent No.1 vide G.O.Rt.No.2646, dated.01/12/2021, and **Consequently Confirmation order vide G.O. Rt.No. 367, dated 15.02.2022** 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.

(Prayer is amended as per Court Order dated 31.3.22 vide IA.No. 1 of 2022.)

IA NO: 1 OF 2021

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 detenu i.e. Sagar Singh alias Sagar S/o. Rajesh Singh forthwith by revoking the order of detention vide proceedings No. SB(I)No.351/PD-2/HYD/2021, dated.23/11/2021.

Counsel for the Petitioner: SRI. UMESH SINGH

Counsel for the Respondents: AGP FOR HOME/ADDL ADVOCATE GENERAL

The Court made the following:

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

WRIT PETITION No.37458 OF 2021

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

Sri Rajesh Singh, the petitioner, has filed this Habeas Corpus petition on behalf of his son, Sagar Singh @ Sagar, the detenu, challenging the detention order vide SB(I)No.351/PD-2/HYD/2021, dated 23.11.2021, 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.367, General Administration (Spl. (Law & Order)) Department, dated 15.02.2022, passed by the respondent No.1.

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 a recent solitary crime registered against the detenu viz., Crime No.143 of 2021 of Mangalhat Police Station, Hyderabad Commissionerate, registered for the offence punishable under Section 8(c) read with 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances

Act, 1985 (for short, 'NDPS Act'), the respondent No.2 passed the impugned detention order, dated 23.11.2021. According to respondent No.2, the detenu is a 'Drug Offender', and his illegal and highly dangerous activities of peddling of 'ganja', a narcotic substance among the innocent people in the limits of Hyderabad Police Commissionerate have been endangering the lives of youth and innocent people, causing irreparable damage to their body organs, including the central nervous system and crippling the mental and physical health of the people addicted to drugs. Peddling of narcotic drugs is instrumental in causing death or in inflicting life threatening conditions to a number of innocent victims, who are vulnerable and it causes deleterious effects, deadly impact and hazard to the society. The detenu developed widespread network using cell phones and other information technology devices to escape from the police surveillance and acting in a manner prejudicial to maintenance of public order. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.367, dated 15.02.2022.

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. The detenu got conditional

bail in the solitary crime relied upon by the detaining authority *vide* order, dated 18.08.2021, passed in CrI.P.No.6281 of 2021 by this Court. Further, 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 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.

5. 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'. He has been indulging in unlawful activities as a leader/member of a criminal gang and committed an offence of peddling of 'ganja', a narcotic substance, endangering the lives of youth causing irreparable damage to their body organs including the central nervous system, thereby crippling the health of those addicted to drugs. The detenu got conditional bail in the solitary crime relied upon by the detaining authority. Therefore, the

apprehension of the detaining authority that there is imminent possibility of the detenu indulging in similar offence, is not misconceived. The crime 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.367, dated 15.02.2022. 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 SB(1) No.351/PD-2/HYD/2021, dated 23.11.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.367, dated 15.02.2022, passed by respondent No.1 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.

9. In **Kanu Biswas v. State of West Bengal**², the Hon'ble Apex Court, while discussing the meaning of word 'public order,'

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

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 23.11.2021. 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
143/2021 of Mangalhat PS	29.06.2021	29.06.2021	Section 8(c) read with 20 (b)(ii)(C) of NDPS Act Qty: 22 Kgs of Ganja	Cognizable/ Non Bailable

11. As seen from the material placed on record, the solitary crime relied upon by the detaining authority for preventively detaining the detenu relate to peddling of ganja. The detenu was arrested in connection with the said crime and subsequently, he moved a bail petition in the said crime before the I Additional Metropolitan Sessions Judge, Hyderabad, but the same was dismissed by the said Court. Thereafter, the detenu filed Criminal

Petition No.6281 of 2021 before this Court and this Court vide order, dated 18.08.2021 passed in the said Criminal Petition, granted conditional bail to the detenu and he was released on bail on 19.08.2021. Under these circumstances, the apprehension of the detaining authority that the detenu may violate the bail conditions and commit similar offences, which would be detrimental to the public order and public health at large, 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. Further, in the instant case, since the detenu was granted bail by this Court, if it is found that the detenu is involved in further crimes, the prosecution can apprise the same to this Court and seek cancellation of bail. Further, the conditional order of bail restricts to 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.

1 Moreover, criminal law was already set into motion against the
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detenu. Further, there is no antecedent criminal history against the detenu. 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. Since the detenu has allegedly 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. 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.351/PD-2/HYD/2021, dated 23.11.2021, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.367, General Administration (Spl. (Law & Order)) Department, dated 15.02.2022, passed by the respondent No.1, are hereby set aside.

³ (1984) 3 SCC 14

The respondents are directed to set the *detenu*, namely Sagar Singh @ Sagar, S/o Rajesh 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/-K.SAILESHI
ASSISTANT 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 GP for Home, High Court for the State of Telangana. [OUT]
6. Two CCs to Advocate General, High Court for the State of Telangana. [OUT]
7. Two CD Copies.
8. One Spare Copy

PM 
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HIGH COURT

DATED:11/04/2022

ORDER

WP.No.37458 of 2021



Allowing the WP
Without costs.

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MA
17/8/22