

HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE SMT. JUSTICE P. SREE SUDHA
WRIT PETITION No.6527 OF 2023

ORDER: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. Pothamshetti Manoj Kumar, learned counsel for the petitioner and Mr. Mujib Kumar Sadasivuni, learned Special Government Pleader representing learned Additional Advocate General appearing on behalf of the respondents.

2. This writ petition is filed to issue a writ of *Habeas Corpus* directing the respondents to release the Detenue, Bejawada Laxminarayana, son of Seetharamulu, aged about 45 years, Occ: Business, R/o Bethavolu Village of Chilkur Mandal, Suryapet District, Telangana State, who is now detained in Central Prison, Chenchalguda, Hyderabad, by setting aside the order of detention passed by respondent No.2 vide proceedings No.C1/206/2023, dated 09.02.2023 and approved by respondent No.1 vide G.O.Rt.490 of General Administration (Special Law & Order) Department, dated 31.03.2023 as illegal.

3. The order of detention was approved by respondent No.1 vide G.O.Rt. No.490, General Administration (Special Law & Order) Department, dated 31.03.2023. Therefore, the petitioner herein filed I.A. No.1 of 2023 to amend the prayer. He has filed copies of the said G.O. Rt. Considering the said facts, the said I.A. is also allowed.

4. Perusal of the impugned order of detention would reveal that the detention of detenu was on the ground that he was involved in four (04) crimes i.e., i) Crime No.95 of 2022; ii) Crime No.109 of 2022; iii) Crime No.110 of 2022 for the offences under Section - 420 of IPC and Section - 7 of the Essential Commodities Act, 1955 registered by the Chilukur Police Station; and iv) Crime No.298 of 2022 for the very same offences registered by the Kodad Rural Police Station.

5. In the grounds of detention, respondent No.2 mentioned the history of the detenu and evidence linking the detenu to the aforesaid crimes. However, as discussed above, all the aforesaid crimes were registered against the detenu for the offences punishable under Section - 420 of IPC and Section - 7 of the E.C. Act, 1955. Thus, the allegations against the detenu are that he has violated the provisions of the E.C. Act, 1955 in purchasing rice meant for Public Distribution from the Ration Cardholders.

6. The issue as to whether an order of detention can be passed against a person on the ground of violation of provisions of the E.C. Act, fell for consideration before a Division Bench of this Court in **Dhumpala Akhila v. The State of Telangana**¹. Paragraph Nos.11 and 12 are relevant and the same are extracted as under:

“11. As seen from the material placed on record, in Crime No. 3 of 2020, there is alleged recovery of 239.95 Kgs. of PDS Rice and the Investigation Officer did not opine that arrest and remand of the detenu is necessary to prevent the detenu from committing further similar offences. He has issued notice under Section 41A Cr.P.C. to the detenu. In the other crime i.e., in Crime No. 180 of 2020, there is alleged recovery of 239.95 kgs. of PDS Rice and in the said crime, the detenu was not arrested at the scene of offence and it was alleged that the detenu surrendered himself before the Investigation Officer and confessed that since 2015, he has been doing clandestine PDS Rice business. Later, he was arrested and remanded to judicial custody. Thereafter, the detenu was released on bail on 24.09.2020. Under these circumstances, the apprehension of the detaining authority that since the detenu was granted bail in Crime No. 180 of 2020, there is imminent possibility of his committing similar offence, which is detrimental to the 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 records available against the detenu. The police ought to have been vigilant in collecting the whole

¹. W.P. No.649 of 2021, decided on 23.04.2021

data against the detenu and to furnish the same to the Public Prosecutor/Additional Public Prosecutor to defeat the bail application/s of the detenu. Moreover, in the cases relied on by the detaining authority, the detenu alleged to have committed offences punishable under the Indian Penal Code and special law. So, it can be safely concluded that the said crimes can be dealt with under the provisions of the Indian Penal Code and special law. The detaining authority cannot be permitted to invoke the preventive detention laws as a substitute for criminal prosecution, in order to breach the liberty of an individual.

12. Grave as the offences may be, in the circumstances of the case, though they relate to purchase, hoarding, diverting and selling of PDS Rice, no inference of disturbance of public order can be drawn against the detenu. The subject cases can be tried under the normal criminal law. And, if convicted, can certainly be punished by the Court of law. Thus, these cases 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. Therefore, for the reasons stated above, the impugned orders are legally unsustainable”

7. Relying on the said principle, in **Aslam Baig v. The State of Telangana**², another Division Bench of this Court set aside the impugned detention order passed against the detenu, who involved in three (03) crimes on the allegation of violation of the provisions of the

². W.P. No.34828 of 2021, decided on 23.02.2022

E.C. Act in purchase of rice meant for Public Distribution from Ration Cardholders.

8. A similar view was taken by another Division Bench of this Court in **Mohd. Rizwan Ali v. The State of Telangana**³ and in **Bachu Ratnakar v. The State of Telangana**⁴.

9. The Hon'ble Supreme Court in **Ashok Kumar v. Delhi Administration**⁵ observed that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing.

10. In **Sushanta Kumar Banik v. State of Tripura**⁶, the Apex Court held that the preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments

³. W.P. No.16369 of 2022, decided on 14.10.2022

⁴. W.P. No.1910 of 2022, decided on 23.02.2022

⁵. (1982) 2 SCC 403

⁶. 2022 SCC OnLine SC 1333

authorizing such detention provide assume utmost importance and must be strictly adhered to.

11. In **Ram Manohar Lohia v. State of Bihar**⁷, the Apex Court held as under:

“...Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was

⁷. (1966) 1 SCR 709

said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

12. Similar view was reiterated by the Apex Court in **Arun Ghosh v. State of West Bengal**⁸.

13. In **Banka Sneha Sheela v. State of Telangana**⁹, the Apex Court held as under:

13. There can be no doubt that for 'public order' to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects 'law and order' but before it can be said to affect 'public order', it must affect the community or the public at large."

"24. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the Detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention

⁸. (1970) 1 SCC 98

⁹. (2021) 9 SCC 415

statute. We, therefore, quash the detention order on this ground. Consequently, it is unnecessary to go into any of the other grounds argued by the learned counsel on behalf of the Petitioner. The impugned judgment is set aside and the Detenu is ordered to be freed forthwith. Accordingly, the appeal is allowed.”

14. Mr. Mujib Kumar Sadasivuni, learned Special Government Pleader would submit that during the years 2016 to 2021, eight (08) cases were registered against the detenu for the contravention of the provisions of the E.C. Act and also under IPC. Even then, he has not changed his attitude. He has involved in four (04) cases in the year 2022. Therefore, there is no illegality in ordering detention of the detenu under the provisions of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act. The said contention of the learned Special Government Pleader cannot be accepted in view of the aforesaid discussion and the law laid down by the Apex Court and the Division Benches of this Court. Further, the respondents have to invoke/pass detention orders in rarest of rare cases.

15. In view of the aforesaid discussion, the respondents are not justified in passing the order of detention and approving the same.

16. The present Writ Petition is allowed and the impugned detention order dated 09.02.2023 approved by respondent No.1 vide G.O.Rt. No.490, General Administration (Special Law & Order) Department, dated 31.03.2023, are hereby set aside. The respondents are directed to set the Detenu, namely Mr. Bejawada Laxminarayana, son of Seetharamulu, aged about 45 years, Occ: Business, R/o Bethavolu Village of Chilkur Mandal, Suryapet District, Telangana State, who is now detained in Central Prison, Chenchalguda, Hyderabad, free forthwith if he is no longer required in any other criminal cases. In the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.

K. LAKSHMAN, J

P. SREE SUDHA, J

14th June, 2023

Note:

Furnish C.C. of order today itself.
(B/O.) Mgr