

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

*** HON'BLE SRI JUSTICE K. LAKSHMAN**

AND

HON'BLE SMT. JUSTICE P. SREE SUDHA

+ WRIT PETITION Nos.8486, 8487 AND 8497 OF 2023

% Delivered on: 14-06-2023

Between in W.P. No.8486 OF 2023:

Sk. Nafeesa W/o B. Anil Kumar

.. Petitioner

Vs.

\$ The State of Telangana, rep.by its Principal
Secretary to Govt. (Political), GAD, Telangana
State, Hyderabad & 2 others.

.. Respondents

! For Petitioner

: Mrs. B. Mohana Reddy

^ For Respondents

: Mr. Mujib Kumar Sadasivuni,
Ld. Spl. Govt. Pleader rep.
Ld. Additional Advocate General

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> Head Note

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? Cases Referred

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1. (1982) 2 SCC 403
2. 2022 SCC OnLine SC 1333
3. (1966) 1 SCR 709
4. (1970) 1 SCC 98
5. (1972) 3 SCC 831
6. (2021) 9 SCC 415
7. 2022 SCC OnLine SC 424
8. 2022 LiveLaw (SC) 559

HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE SMT. JUSTICE P. SREE SUDHA
WRIT PETITION Nos.8486, 8487 AND 8497 OF 2023

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

Heard Mrs. B. Mohana Reddy, learned counsel for the petitioners and Mr. Mujib Kumar Sadasivuni, learned Special Government Pleader representing learned Additional Advocate General appearing on behalf of the respondents.

2. All these writ petitions are filed to issue a writ of *Habeas Corpus* directing the respondents to produce the detenus and to order for their release forthwith by declaring their detentions vide proceedings Nos.16, 15 and 14/PD-CELL/RCKD/2023, all dated 08.03.2023 passed by respondent No.2 as illegal.

3. The Detentions were approved by respondent No.1 vide G.O.Rt. No.389, General Administration (Special Law & Order) Department, dated 13.03.2023. Therefore, the petitioners herein have filed I.A. No.1 of 2023 to amend the prayer in all the writ petitions. He has filed copies of the said G.Os. Considering the said facts, the said I.A. is also allowed today.

4. Perusal of the impugned orders of detention would reveal that the detention of detenus were on the ground that they were involved in two (02) crimes i.e., i) Crime No.14 of 2023 and ii) Crime No.46 of 2023 registered for the offences under Section - 392 of IPC by Maheshwaram and Adibatla Police Stations, respectively.

5. In the grounds of detention, respondent No.2 mentioned the history of the detenus and evidence linking the detenus to the aforesaid crimes. However, as discussed above, all the aforesaid crimes were registered against the detenus for the offence punishable under Section - 392 of IPC.

6. The allegation in Crime No.14 of 2023 is that on 09.01.23 at about 17.00 hours, while complainant Smt. Kasula Lingamma was going her home from Maheshwaram Main road, the detenus came to her on motorcycle, pretended as commuters and asked her the way for Sirigiripuram Village. While she was informing the address of village, they forcibly snatched her nuptial gold chain from her neck. Similar offence occurred in Crime No.46 of 2023.

7. The Hon'ble Supreme Court in **Ashok Kumar v. Delhi Administration**¹ 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.

8. In **Sushanta Kumar Banik v. State of Tripura**², 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 authorizing such detention provide assume utmost importance and must be strictly adhered to.

9. In **Ram Manohar Lohia v. State of Bihar**³, 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

¹. (1982) 2 SCC 403

². 2022 SCC OnLine SC 1333

³. (1966) 1 SCR 709

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 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."

10. Similar view was reiterated by the Apex Court in **Arun Ghosh v. State of West Bengal**⁴.

11. In **Kanu Biswas v. State of W.B.**⁵, the Apex Court relying on **Ram Manohar Lohia**³ noted that preventive detention can only be invoked in cases of breach of law and order. The Court explained the difference between law and order and public order by stating that public order is said to be affected when the action of the detenu is in the nature of adversely affecting the even tempo of life of the community which causes a general disturbance of public tranquility.

The relevant paragraphs are extracted below:

7. 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, according to the dictum laid down in the above case, is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call “order publique” and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?

8. The principle enunciated above has been followed by this Court in the case of *Nagendra Nath Mondal v. State of West*

⁴. (1970) 1 SCC 98

⁵ (1972) 3 SCC 831

Bengal [(1972) 1 SCC 498] , and *Nandlal Roy alias Honda Dulal Roy alias Pagea v. State of West Bengal* (WP No. 15 of 1972, decided on April 11, 1972) [(1972) 2 SCC 524] . In the light of what has been observed above, we have no doubt that each one of the incidents of September 26, 1971 and November 4, 1971, was prejudicial to the maintenance of public order. When two passengers are robbed at the point of knife while travelling in a third class compartment of a running train the act of the miscreants affects not only the passengers who are deprived of their valuables but also the other passengers who watch the whole thing in fear as helpless spectators. There is bound to be consequent terror and panic amongst the travelling public. Likewise, attack directed against a police party on the platform of a railway station by exploding bombs is bound to create panic and confusion among the passengers at the railway station. The acts in question in the very nature of things would adversely affect the even tempo of life of the community and cause a general disturbance of public tranquillity.

12. In **Banka Sneha Sheela v. State of Telangana**⁶, 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**

⁶. (2021) 9 SCC 415

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 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.”

13. In **Mallada K. Sri Ram v. The State of Telangana**⁷, the Apex Court held that a mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the "maintenance of public order". Referring to the principle laid down by it in **Ram Manohar Lohia**³ and **Banka Sneha Sheela**⁶, the distinction between a disturbance to law and order and a disturbance to public order was discussed.

14. It was observed by the Apex Court that for the last five years, the Apex Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public order and relying on stale materials while passing the orders of detention. At least ten detention orders

⁷. 2022 SCC OnLine SC 424

under the Telangana Act of 1986 have been set aside by the Apex Court in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent - State. Therefore, the Apex Court directed the respondents therein to take stock of challenges to detention orders pending before the Advisory Board, High Court and the Apex Court and evaluate the fairness of the detention order against lawful standards.

15. The said judgment was delivered on 04.04.2022. Even then, the respondents have passed order of detention in the present writ petitions on 08.03.2023.

16. In **Shaik Nazneen v. The State of Telangana**⁸, the Apex Court set aside the order passed by the Division Bench of this Court confirming the detention order, approved by the State. The said detention order was passed on the ground of detenu involving in four chain snatching cases. It was held that the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely

⁸. 2022 LiveLaw (SC) 559

seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case. Referring to the observations made in **Mallada K. Sri Ram**⁷ and on examination of the facts of the case, the Apex Court held in paragraph No.12 which is as follows:

“12. There is absolutely no doubt in our mind that the facts and circumstances of the case as alleged in the detention order dated 28.10.2021 though does reflect a law and order situation which can be dealt with under the ordinary law of land, and there was absolutely no occasion for invoking the extraordinary powers under the law of Preventive Detention. The reasons assigned by the authority in its detention, justifying the invocation of the provisions of the detention law are that the detenu has been granted bail in all the four cases and since he is likely to indulge in similar crime, hence the order of preventive detention.”

17. In the present case, the second crime was registered against the detenus basing on confessional statement of one of the detenus. Therefore, in both the cases, detenus are on bail. On completion of investigation, the Investigating Officers have already laid charge sheets against the detenus and the same were taken on file vide C.C.

No.59/23 on the file of VII AMM, Maheshwaram and C.C. No.223/23 pending on the file of XV AMM, Ibrahimpatnam. Both the said C.Cs. are pending.

18. It is relevant to note that the Investigating Officers have not filed applications seeking cancellation of bail of the detenus. They have not challenged the bail orders in Higher Court. In the counter, there is no mention with regard to the information furnished to the Public Prosecutor to oppose bail applications of the detenus. Without availing the said remedies, respondent No.2 cannot mechanically pass orders of detention and respondent No.1 cannot approve the same. Thus, there is no consideration of the aforesaid aspects and the principle laid down by the Apex Court and the Division Benches of this Court in the aforesaid decisions. Further, the respondents have to invoke/pass detention orders in rarest of rare cases.

19. In view of the aforesaid discussion, the respondents are not justified in passing the order of detention and approving the same and, therefore, they are liable to be set aside.

20. All the writ petitions are accordingly allowed and the impugned orders of detention dated 03.03.2023 approved by

respondent No.1 vide G.O.Rt. No.389, General Administration (Special Law & Order) Department, dated 13.03.2023, are hereby set aside. The respondents are directed to set the Detenus, namely 1) Mr. Butti Anil Kumar S/o Yadaiah; 2) Mr. Patti Sai Teja W/o P. Nagabushanam; and 3) Mr. Patti Prasanna Kumar S/o P. Nagabushanam, who are now detained in Central Prison, Cherlapally, Medchal - Malkajgiri District, free forthwith if they are no longer required in any other criminal cases. In the circumstances of the case, there shall be no order as to costs.

21. At this juncture, this Court would like to highlight the observations made by the Supreme Court in **Mallada K. Sri Ram**⁷ wherein the action of the authorities in the State of Telangana in invoking the provisions of preventive detention was deprecated. The relevant paragraph is extracted below:

17. It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public order and relying on stale materials while passing the orders of detention. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of

challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards.

22. It is extremely unfortunate that despite the orders of the Supreme Court, preventive detention is mechanically invoked by the authorities in the State of Telangana. As stated supra, preventive detention shall be invoked in rarest of the rare cases. Only when the actions of a person have a tendency to effect public order, preventive detention can be invoked. This Court has noticed time and again that the authorities fail to distinguish actions affecting law and order and actions affecting public order. Therefore, it is expedient that the concerned officers involved in issuing the detention orders are properly sensitized towards the harsh nature of preventive detention. Further, it is expected that the authorities before ordering detention rightly distinguish a law-and-order situation from a public order situation.

23. This Court would like to further state that every in-built safeguard provided under the Telangana Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration

Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986, is strictly followed.

24. In this context, the following directions are issued:

- i. The authorities before ordering detention shall distinguish between a law and order situation and a public order situation keeping in view the aforesaid discussion;
- ii. Grounds of detention shall be informed to the detenu at the earliest including the opportunity such detenu has to make a representation to the Advisory Board against the order of detention;
- iii. The detention order shall be placed for review before the Advisory Board at the earliest including the representation of the detenu, if any;
- iv. The Advisory Board before preparing its report on the validity of the detention order shall consider the entire material placed

before it and shall record a finding how public order will be affected if the detention is not confirmed;

- v. The Advisory Board shall also hear the detenu, if such detenu seeks a hearing. This Court would like to further stress that the detenu shall be informed about his right to be heard before the Advisory Board;
- vi. The Advisory Board's report shall state reasons for its conclusions as it performs a quasi-judicial function.

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

K. LAKSHMAN, J

P. SREE SUDHA, J

14th June, 2023

Note:

1. Furnish C.C. of order today itself.
2. L.R. Copy be marked.
3. The Registry is directed to mark copy of this order to the following Departments:
 - a) The Principal Secretary, General Administration [Special (Law & Order)] Department, Secretariat Building, Telangana State, Hyderabad.
 - b) The Principal Secretary, Home Department, Secretariat Building, Telangana State, Hyderabad.

(B/O.) Mgr