

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

TUESDAY, THE THIRD DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

**THE HONOURABLE SRI JUSTICE A.ABHISHEK REDDY
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT PETITION NO: 39166 OF 2022

Between:

Sabir Hussain @ Rahul, S/o. Noor Hussain Molla, aged 19 years, Occ. Pvt Service, R/o. Munshi Mondal Road, Chhai math, Barakpur, North Parganas, West Bengal State

...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 detinue i.e. Sabir Hussain @ Rahul now detained in Central Prison Cherlapally, Medchal - Malkajgiri District before this Honble Court and set-aside the impugned detention order passed by the 2nd Respondent vide No. 57/ PD-CELL/ CCRB/ RCKD/2022, dt. 01-04-2022 and " Confirmation Order Vide G.O.Rt No.1233, dated 16/06/2022" 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 Detenue

(Prayer is amended as per Court Order, dated 03/01/2022, Vide IA.No.1 of 2022, in WP.No.39166 of 2022)

Counsel for the Petitioner: SRI. PASHAM TRIVIKRAM REDDY

Counsel for the Respondents: ADDL ADVOCATE GENERAL

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO
WRIT PETITION No.39166 OF 2022**

ORDER: *(Per the Hon'ble Sri Justice A.Abhishek Reddy)*

One Sabir Hussain @ Rahul, S/o.Noor Hussain Molla, the petitioner, who is the *detenue*, has filed this Habeas Corpus petition, challenging the detention order vide No.57/PD-CELL/CCRB/RCKD/2022, dated 01.04.2022, passed by the respondent No.2, whereby, the *detenue* 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.1233, dated 16.06.2022.

2. Heard the learned counsel for the petitioner, learned Special Government Pleader representing 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 *detenue* viz., Crime No.842 of 2021 of Jawaharnagar Police Station, the respondent No.2 passed the impugned detention order, dated 01.04.2022. According to respondent No.2, the *detenue* is a 'Immoral Traffic Offender', and that he along with his associates has been indulging in Human Trafficking for the sake of prostitution and running organized

prostitution business with trafficked girls for his pecuniary benefits. He is procuring girls from Bangalore of Karnataka, Assam and other parts of Telangana State through his agents. He has been engaging himself in unlawful acts and indulging in the acts of organizing prostitution clandestinely by acting as a leader/member of criminal gang to make easy buck in a short period. The immoral activities of the *detenue* 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.1233, dated 16.06.2022.

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 *detenue*. Further, the *detenue* was granted statutory bail by the Court concerned in the solitary crime relied by the detaining authority and sureties have not been furnished yet. Without being released from the jail, the impugned detention order was passed against the *detenue* apprehending that that there is every possibility of the release of the *detenue* from jail after producing sureties and on such release, there is imminent possibility of his indulging in similar prejudicial activities again, unless he is

prevented from doing so by an appropriate order or detention. The subjective satisfaction reached by the detaining authority is tainted and illegal. 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 *detenue* 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 *detenue*. 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 Additional Advocate General appearing for the respondents supported the impugned orders and submitted that the *detenue* is an 'Immoral Traffic Offender'. He has been indulging in Human Trafficking for the sake of prostitution and running organized prostitution business with trafficked girls for his pecuniary benefits. He is procuring girls from Bangalore of Karnataka, Assam and other parts of Telangana State through his agents. He has been engaging himself in unlawful acts and indulging in the acts of organizing prostitution clandestinely by acting as a

leader/member of criminal gang to make easy buck in a short period. The immoral activities of the *detenue* lead to social unrest and widespread health hazards, thereby endangering public health and are thus prejudicial to the maintenance of 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 *detenue* and on considering the same along with the entire material, the Government confirmed the impugned detention order vide G.O.Rt.No.1233, dated 16.06.2022. 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.57/PD-CELL/CCRB/RCKD/2022, dated 01.04.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1233, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 16.06.2022, 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 in mind in view of what has been stated in the grounds of detention.

¹ AIR 1966 SC 740

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 01.04.2022. 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
842/2021 of Jawaharnagar PS	30.09.2021	30.09.2021	Section 370(A) (2) of IPC and 3, 4, 5 & 8 of PITA	Section 370(A) (2) of IPC: Cognizable/ Non Bailable Sections 3, 4, 5 & 8 of PITA : Cognizable

11. As seen from the material placed on record, the solitary crime relied upon by the detaining authority for preventively detaining the *detenue* relates to immoral trafficking. The crime was detected on 30.09.2021 and the *detenue* was remanded to judicial custody on

² [1972] 3 SCC 831

01.10.2021. Thereafter, the *detenue* filed statutory bail application before the Court concerned and the same was allowed on condition. The condition imposed in the statutory bail order is that the *detenue* shall appear before the Police Station on every Sunday till filing of the chargesheet. It is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of the *detenue* and to hand over the entire case record available against the *detenue*. The police are supposed to be vigilant in collecting the whole data against the *detenue* and furnish the same to the Public Prosecutor/Additional Public Prosecutor to defeat the bail application/s of the *detenue*. Even assuming that the bail conditions are violated by the *detenue* and he is involved in further crimes, nothing 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 *detenue* would be under surveillance of the Court and the police.

12. Further, this is a clear cut case of non-application of mind by the detaining authority. Subjective satisfaction for detaining a person under preventive detention laws should be based on existing and relevant material. If the detaining authority, with a clear application of mind to the documents and without reference to any extraneous matter, takes into consideration the material which is germane, relevant, not vague and not indefinite, then this Court would not

normally interfere with the same. Since the drastic power of preventive detention deprives the citizen of his/her freedom without a trial and full-fledged opportunity for him/her to prove his innocence, utmost care should be taken in recording the subject satisfaction to detain a person under preventive detention laws. In the instant case, the subjective satisfaction of the impugned detention order is extraneous and irrelevant. Further, it is legal right of every accused to move higher Courts seeking relaxation/modification of the conditions imposed by the trial Court while granting bail. In any event, the subject satisfaction of detention order should not and cannot form part of the subjective satisfaction for passing a detention order against the *detenue*.

13. Under these circumstances, the apprehension of the detaining authority that since the *detenue* was granted statutory bail, there is imminent possibility of him committing similar offence/s, which is detrimental to the 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 *detenue*. Further, there is no antecedent criminal history against the *detenue*. Since the *detenue* 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.

14. 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.

15. 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.

16. In the result, the Writ Petition is allowed. The impugned detention order vide No.57/PD-CELL/CCRB/RCKD/2022, dated 01.04.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1233, dated 16.06.2022, passed by the Secretary to Government, General Administration (Spl. (Law &

³ (1984) 3 SCC 14

Order)) Department, Government of Telangana, are hereby set aside. The respondents are directed to set the *detenue*, namely, Sabir Hussain @ Rahul S/o.Noor Hussain Molla, at liberty forthwith, in case 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/-A.V.S.PRASAD
ASSISTANT REGISTRAR
SECTION OFFICER

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To,

1. The Principal Secretary. General Administration (Spl. (Law and Order) Department, Secretariat, State of Telangana, Hyderabad.
2. The Commissioner of Police and Addl District Magistrate (Executive), Rachakonda.
3. The Superintendent, Central Prison Cherlapally, Medchal - Malkajgiri District.
4. Two CCs to ADDL 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

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HIGH COURT

DATED:03/01/2023

ORDER

WP.No.39166 of 2022



**ALLOWING THE WRIT PETITION
WITHOUT COSTS**

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