

**THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT PETITION No.41745 OF 2022

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

Mrs.Badavath Koti, the petitioner, has filed this Habeas Corpus petition on behalf of her son, Badavath Ravi @ Nani @ Krishna, S/o.Late Biksham, the detenu, challenging the detention order vide No.120/PD-CELL/CCRB/RCKD/2022, dated 10.08.2022, 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.1946, dated 17.10.2022.

2. Heard the learned counsel for the petitioner, the 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 solitary crime registered against the detenu viz., Crime No.185 of 2022 of Ghatkesar Police Station, the respondent No.2 passed the impugned detention order, dated 10.08.2022. According to respondent No.2, the detenu is a 'Drug Offender', as he along with his associates has been indulging in illegal and highly dangerous activities of peddling ganja in an organized manner and thereby acting in a manner

prejudicial to the maintenance of public order and health as well. He along with his associates have been procuring ganja from Bhadrachalam, Chintur of Andhra Pradesh State at cheaper rate and transporting the same to Zaheerabad via Rachakonda limits and selling the same at higher prices. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.1946, dated 17.10.2022.

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 moved two bail petitions in the subject crime and the same were dismissed by the Courts concerned. Thus, the detenu continues to be in judicial custody as on the date of passing of the impugned detention order. Under these circumstances, the apprehension that there is every likelihood of grant of bail to the detenu in further bail applications to be moved by the detenu in due course and on such release on bail, there is imminent possibility of the detenu again resorting to similar prejudicial activities, which are detrimental to the public order and widespread danger to the public life unless he is prevented from doing so by an appropriate order or detention, is highly misplaced. 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 Special Government Pleader for the respondents supported the impugned orders and submitted that the detenu is a ‘Drug Offender’. He along with his associates has been indulging in illegal and highly dangerous activities of peddling ganja in an organized manner and thereby acting in a manner prejudicial to the maintenance of public order and health as well. He along with his associates have been procuring ganja from Bhadrachalam, Chintur of Andhra Pradesh State at cheaper rate and transporting the same to Zaheerabad via Rachakonda limits and selling the same at higher prices. The detenu moved two bail applications in the subject crime, which were dismissed by the Courts concerned. In view of the huge quantity of ganja (102 kgs) seized in the subject crime, the ill effects of ganja on the health of public at large and the persistent efforts of the detenu to come out from the jail, the apprehension of the detaining authority that there is every

likelihood of grant of bail to the detenu and on his release on bail, there is imminent possibility of the detenu indulging in similar prejudicial activities, is not misconceived. The crimes 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.1946, dated 17.10.2022. 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.120/PD-CELL/CCRB/RCKD/2022, dated 10.08.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1946, dated 17.10.2022, 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 Bihar¹, 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 Bengal², 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

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

‘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 the solitary crime indicated above, has passed the impugned detention order, dated 10.08.2022. 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
185/2022 of Ghatkesar PS	13.03.2022	13.03.2022	Section 20(b)(ii)(C) of NDPS Act Qty: 102 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 subject crime and subsequently, he moved two bail petitions in the subject crime and the same were dismissed by the Courts concerned. Thus, the detenu continues to be in judicial custody as on the date of passing of the impugned detention order. Under these circumstances, the apprehension of the detaining authority that there is every likelihood of grant of bail to the detenu in the subject crime by the Court concerned and his release from

judicial custody and on such release, there is imminent possibility of his committing similar offences, 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 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. Further, no bail application of the detenu is pending before the Court concerned as on the date of passing of the impugned order. Here, it is appropriate to refer to the decision of the Hon'ble Apex Court in **Rekha Vs. State of Tamil Nadu**³, wherein it is held as follows:

"Where a detention order is served on a person already in jail, there should be a real possibility of release of a person on bail who is already in custody, provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence, the detention order will be illegal."

Moreover, criminal law was already set into motion against the detenu. Since the detenu has allegedly committed offence punishable under NDPS Act, the said crime can be effectively dealt with under the provisions of the said special law and there was no need for the detaining authority to invoke draconian preventive detention laws.

³ (2011) 5 SCC 244

The instant case does not fall within the ambit of the words “public order” or “disturbance of 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. The detaining authority cannot be permitted to subvert, supplant or substitute the punitive law of land, by ready resort to preventive detention.

12. Even while passing the confirmation order, dated 17.10.2022, the Principal Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, has failed to notice that the detenu continue to languish as under-trial in the jail. Once the detenu was already confined, the question of confirming the detention order would not even arise.

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

14. In the result, the Writ Petition is allowed. The impugned detention order *vide* No.120/PD-CELL/CCRB/RCKD/2022, dated 10.08.2022, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.1946, dated 17.10.2022, are hereby set aside. The respondents are directed to set the *detenu*, namely, Badavath Ravi @ Nani @ Krishna, S/o.Late Biksham, 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.

A.ABHISHEK REDDY, J

NAMAVARAPU RAJESHWAR RAO, J

10th January, 2023
PNS