

**THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY  
AND  
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO  
WRIT PETITION No.43060 OF 2022**

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

Shaik Shabeena, the petitioner, has filed this Habeas Corpus petition on behalf of her husband, Sk.Ghouse, S/o.Ghafoor, the detainee, challenging the detention order vide C.No.439/WRC/CSB-XI/2022, dated 31.07.2022, passed by the respondent No.2, whereby, the detainee 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.1876, dated 30.09.2022.

2. Heard the learned counsel for the petitioner, the learned Special Government Pleader representing Additional Advocate General for the respondents and perused the record.

3. The case of the petitioner is that basing on six (6) crimes viz., Crime Nos.289/2022, 291/2022, 292/2022, 301/2022 of Mills Colony Police Station, registered for the offences under Sections 420, 464 read with 34 IPC, Crime No.324/2022 of Subedari Police Station, registered for the offences under Section 420, 464 read with 34 IPC and Crime No.176/2022 of Kazipet Police Station of Police Commissionerate, registered for the offence under Sections 420 and

506 IPC, the respondent No.2 passed the impugned detention order, dated 31.07.2022. According to respondent No.2, the detainee is a 'White Collar Offender'. He had been habitually cheating the gullible people especially un-employed youth promising employment in government offices, including railways, along with his associates, in an organized manner making easy and huge illegal money, in the limits of Warangal Police Commissionerate. The unlawful activities of the detainee are creating large scale fear and panic among the general people, thus adversely affecting the public order.

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 detainee. The detainee was granted conditional bail by the Courts concerned in all the crimes. But he was again sent to jail by invoking the draconian preventive detention laws on the apprehension that there is imminent possibility of the detainee indulging in similar prejudicial activities again, which would be detrimental to maintenance of public order. The alleged crimes do not add up to "disturbing the public order" and they are confined within the ambit and scope of the word "law and order". Since the offences alleged are under the Indian Penal Code and special laws, the detainee can certainly be tried and convicted under the penal

code and special laws. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law against the detainee. 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 detainee is a 'White Collar Offender'. He had been habitually cheating the gullible people especially un-employed youth promising employment in government offices, including railways, along with his associates, in an organized manner making easy and huge illegal money, in the limits of Warangal Police Commissionerate. The unlawful activities of the detainee are creating large scale fear and panic among the general people, thus adversely affecting the public order. Since the detainee was granted bail in all the crimes relied by the detaining authority, the apprehension of the detaining authority that there is imminent possibility of the detainee indulging in similar offences, is not misconceived. The series of crimes allegedly committed by the detainee were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crimes was cheating the gullible people especially unemployed youth promising employment in government offices including railways, it has created sufficient panic in the minds of the

general public. Therefore, the detaining authority was legally justified in passing the impugned detention order. Further, this writ petition is filed even before the matter is considered by the Advisory Board and hence, this writ petition is premature and is liable to be dismissed. 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 C.No.439/WRC/CSB-XI/2022, dated 31.07.2022, passed by the respondent No.2, and the consequential confirmation orders passed by the Government 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 a recent judgment in **Banka Sneha Sheela Vs. State of Telangana**<sup>1</sup>, the Hon'ble Apex Court held as follows:

"12. While it cannot seriously be disputed that the Detenue may be a "white collar offender" as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a Preventive Detention Order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. Public order is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.

15. There can be no doubt that what is alleged in the five FIRs pertain to the realm of 'law and order' in that various acts of cheating are ascribed to the Detenue which are punishable under the three sections of the Indian Penal Code set out in the five FIRs. A close reading of the Detention Order would make it clear that the reason for the said Order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenue was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenue, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case.

32. 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 Detenue, 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..."

(emphasis supplied)

9. In another recent judgment in **Mallada K Sri Ram Vs. State of Telangana**<sup>2</sup>, the Hon'ble Apex Court, while referring to its earlier

<sup>1</sup> (2021) 2 Supreme Court Cases 415

<sup>2</sup> 2022 SCC Online SC 424

decisions in **Banka Sneha Sheela's** case (1 supra), **Sama Aruna Vs. State of Telangana**<sup>3</sup> and **Ram Manohar Lohia Vs. State of Bihar**<sup>4</sup> held as follows:

"15. 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". In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detainee was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detainee are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detainee are capable of being dealt by the ordinary course of criminal law."

(emphasis supplied)

**10.** In the present case, the detaining authority, basing on six (6) crimes indicated above, has passed the impugned detention order, dated 31.07.2022. We shall present them 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                   |
|-----------------------------|---------------------|-----------------------------|---------------------------------|--------------------------|
| 289/2022 of Mills Colony PS | Prior to 21.06.2022 | 21.06.2022                  | Sections 420, 464 r/w 34 of IPC | Cognizable/ Non Bailable |
| 291/2022 of Mills Colony PS | Prior to 22.06.2022 | 22.06.2022                  | Section 420, 464 r/w 34 of IPC  | Cognizable/ Non Bailable |

<sup>3</sup> (2018) 12 Supreme Court Cases 150

<sup>4</sup> AIR 1966 SC 740

|                             |                     |            |                                 |                          |
|-----------------------------|---------------------|------------|---------------------------------|--------------------------|
| 292/2022 of Mills Colony PS | Prior to 22.06.2022 | 22.06.2022 | Sections 420, 464 r/w 34 of IPC | Cognizable/ Non Bailable |
| 301/2022 of Mills Colony PS | Prior to 26.06.2022 | 26.06.2022 | Sections 420, 464 r/w 34 IPC    | Cognizable/ Non Bailable |
| 324/2022 of Subedari PS     | Prior to 22.06.2022 | 22.06.2022 | Sections 420, 464 r/w 34 of IPC | Cognizable/ Non Bailable |
| 176/2022 of Kazipet PS      | Prior to 20.11.2021 | 20.11.2021 | Sections 420, 506 of IPC        | Cognizable/ Non Bailable |

**11.** As seen from the material placed on record, all the six (6) crimes relied upon by the detaining authority for preventively detaining the detenu relate to cheating, criminal breach of trust, etc. The detenu was arrested in connection with the said crimes and subsequently, he was granted bails by the Courts concerned in all the crimes. The subjective satisfaction was also recorded by the detaining authority in the impugned detention order. If the State is aggrieved by granting of bail to the detenu, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. Mere obtaining of bail orders cannot be a substantial ground for invoking draconian preventive detention law against a person. Further, a mere apprehension of 'breach of law and order' is not sufficient to meet the standard of adversely affecting the 'maintenance of public order'. In the instant case, if it is apprehended that the detenu, if set free, will continue to cheat gullible persons, that 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 the preventive detention statute. Moreover, criminal law was already set into motion against the detainee. Since the detainee has allegedly committed offences punishable under the Indian Penal Code and Special laws, the said crimes can be effectively dealt with under the provisions of the Penal Code and Special laws and there was no need for the detaining authority to invoke draconian preventive detention laws. The subject 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. 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 C.No.439/WRC/CSB-XI/2022, dated 31.07.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1876, dated 30.09.2022, are hereby set aside. The respondents are directed to set the *detenue*,

namely Sk.Ghouse, S/o.Ghafoor, 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.

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**A.ABHISHEK REDDY, J**

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**NAMAVARAPU RAJESHWAR RAO, J**

19<sup>th</sup> January, 2023  
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