

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

**TUESDAY, THE TENTH 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: 43639 OF 2022

Between:

Asma Begum, W/o.Late.Mohd Shareef, aged 32 years, R/o.H.No.8-4-371/184,
Prabhath Nagar, Yousufguda, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary to Government GAD Spl.(Law and Order), Telangana Secretariat, Hyderabad.
2. The Commissioner of Police, Cyberabad Commissionerate.
3. The Superintendent, Central Prison. Cherlapalli, Medchal 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 a Writ of Habeas Corpus under Art.226 of the Constitution of India directing the respondents to produce Sri.Mohammed Jeelani Pasha S/o.Mohammed Nawab, now detained at Central Prison, Cherlapalli, Medchal District, before this Honourable Court and he may be ordered to be released forthwith/set at liberty after declaring his detention vide No.42/PD-CELL/CYB/2022, dated 11/11/2022 passed by the 2nd respondent and consequential confirmation orders, if any, passed by the 1st respondent as illegal, unconstitutional and void.

Counsel for the Petitioner : SRI.B.MOHANA 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.43639 of 2022**

ORDER: {Per the Hon'ble Sri Justice A.Abhishek Reddy}

Asma Begum, W/o.Late Mohd Shareef, the petitioner has filed this Habeas Corpus petition on behalf of her brother, Mohammed Jeelani Pasha, the detenu, challenging the detention order *vide* No.42/PD-CELL/CYB/2022, dated 11.11.2022, 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.2164, dated 17.11.2022.

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

3. The case of the petitioner is that basing on a solitary crime i.e., Crime No.773 of 2022 of Madhapur Police Station registered for the offences under Sections 307, 302, 120-B r/w 34 IPC and Sections 25 (1B) (a), 27(3) of the Arms Act, 1959, the respondent No.2 passed the impugned detention order, dated 11.11.2022. According to respondent

No.2, the detenu is an 'Arms Offender, as he along with his associates had engaged in unlawful activities of committing a Brutal Murder of Mohammed Ismail using fire arms in an organized way under the limits of Madhapur Police Station, Cyberabad Police Commissionerate causing panic and fear among the general public thus acting in a manner prejudicial to the maintenance of public order, thereby disturbing peace and tranquility in the area. The said acts adversely affected the maintenance of public order. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.2164, dated 17.11.2022.

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 three bail petitions before the courts concerned and all of them were dismissed. Under these circumstances, the mere apprehension of the detaining authority that there is imminent possibility of the detenu committing similar offences, which would be detrimental to public order unless he is prevented from doing so by an appropriate order of detention, which is unjustified. The alleged crime does 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 offence alleged is under the Indian Penal Code and Arms Act, 1959, the detenu 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 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 an 'Arms Offender'. He along with his associates had engaged in unlawful activities of committing a Brutal Murder of Mohammed Ismail using fire arms in an organized way under the limits of Madhapur Police Station, Cyberabad Police Commissionerate causing panic and fear among the general public thus acting in a manner prejudicial to the maintenance of public order, thereby disturbing peace and tranquility in the area. The said acts adversely affected the maintenance of public order. The detenu moved three bail petitions before the courts concerned and all of them were dismissed. Therefore, the apprehension of the detaining authority that there is imminent possibility of his committing

similar offences, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention, is not misconceived. The unlawful activities of the detenu have created sufficient panic in the minds of the general public. 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, the Government confirmed the impugned detention order *vide* G.O.Rt.No.2164, dated 17.11.2022. 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.42/PD-CELL/CYB/2022, dated 11.11.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.2164, dated 17.11.2022, 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

¹ AIR 1966 SC 740

‘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 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 the solitary crime indicated above, has passed the impugned detention order, dated 11.11.2022. We shall present the crime 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
773/2022 of Madhapur PS	01.08.2022	01.08.2022	Sections 307, 302, 120-B r/w 34 IPC and 25 (1B) (a), 27(3) of the Arms Act, 1959	Cognizable/ Non Bailable

² (1972) 3 SCC 831

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 brutal murder of Mohd. Ismail using fire arms in an organized way under the limits of Madhapur Police Station. The detenu moved three bail petitions before the courts concerned and all of them were dismissed. Under these circumstances, the apprehension of the detaining authority that there is imminent possibility of his committing similar offences, which would be detrimental to 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 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. Moreover, criminal law was already set into motion against the detenu. Further, since the detenu has allegedly committed offences punishable under the Indian Penal Code and Arms Act, the said crime can be effectively dealt with under the provisions of the Penal code and the said special law and there was no need for the detaining authority to invoke the draconian preventive

detention law. Thus, the offences allegedly committed by the detenu in the said crime relied upon by the detaining authority 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* No.42/PD-CELL/CYB/2022, dated 11.11.2022, passed by the respondent No.2, the consequential confirmation order *vide* G.O.Rt.No.2164, dated 17.11.2022, are hereby set aside. The respondents are directed to set the *detenu*, namely Mohammed Jeelani Pasha S/o.Mohammed Nawab, at liberty forthwith, in case he is no longer required in any other criminal case.

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

//TRUE COPY//

SECTION OFFICER

To

1. The Principal Secretary, Government GAD Spl.(Law and Order), Telangana Secretariat, State of Telangana at Hyderabad.
2. The Commissioner of Police, Cyberabad Commissionerate.
3. The Superintendent, Central Prison. Cherlapalli, Medchal District.
4. Two CC to Advocate General, High Court for the State of Telangana at Hyderabad. (OUT)
5. One CC to SRI.B.MOHANA REDDY, Advocate [OPUC]
6. Two CD Copies
7. One spare copy

S.A.

BS

BSR

HIGH COURT

DATED:10/01/2023

ORDER

WP.No.43639 of 2022



**ALLOWING THE W.P
WITHOUT COSTS.**

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13/03/23
BSR