

**THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO
WRIT PETITION No.43649 of 2022**

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

Shaik Shareef, the petitioner has filed this Habeas Corpus petition on behalf of his brother, Mohammed Mujahid @ Mujju S/o.Mohammed Sadhad, the detenu, challenging the detention order *vide* No.41/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.2165, 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.2165, 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 two bail petitions before the courts concerned and the same were dismissed. Again, he moved third bail petition before the Court concerned and the same was allowed on condition and subsequently, he was released from jail on 04.11.2022. 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 two bail petitions before the courts concerned

and the same were dismissed. Again, he moved third bail petition before the Court concerned and the same was allowed on condition and subsequently, he was released from jail on 04.11.2022. 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.2165, 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.41/PD-CELL/CYB/2022, dated 11.11.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.2165, 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

¹ AIR 1966 SC 740

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 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 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.

² (1972) 3 SCC 831

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

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 bail petition moved by the detenu was granted and immediately, Preventive Detention Act was invoked against the detenu. 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.41/PD-CELL/CYB/2022, dated 11.11.2022, passed by the respondent No.2, the consequential confirmation order *vide* G.O.Rt.No.2165, dated 17.11.2022, are hereby set aside. The respondents are directed to set the *detenu*, namely Mohammed Mujahid

@ Mujju S/o.Mohammed Sadhad, at liberty forthwith, if 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.

A.ABHISHEK REDDY, J

NAMAVARAPU RAJESHWAR RAO, J

Date: 10.01.2023
PNS