

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

WRIT PETITION No.18832 OF 2022

ORDER: (Per Hon'ble Dr. Justice Shameem Akther)

Smt.Mohammed Naseem Begum, the petitioner, has filed this Habeas Corpus petition on behalf of her son, Mohammed Atiq Ahmed @ Fardeen, S/o Mohd. Nadeem Ahmed, the detenu, challenging the detention order *vide* SB(I) No.333/PD-4/HYD/2021, dated 03.12.2021, 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.744, General Administration (Spl. (Law & Order)) Department, dated 30.03.2022, passed by the Chief Secretary to Government, General Administration (Spl. Law & Order)) Department, Government of Telangana.

2. Heard the learned counsel for the petitioner, learned Assistant Government Pleader for Home appearing for the respondents and perused the record.

3. Learned counsel for the petitioner would submit that the impugned detention order was passed by relying on four crimes registered against the detenu viz., 1) Crime No.187/2021 of

Begumpet Police Station, 2) Crime No.83/2021 of Karkhana Police Station, 3) Crime No.174/2021 of Ramgopalpet Police Station and 4) Crime No.312/2021 of Bowenpalli Police Station of Hyderabad Police Commissionerate. Subsequently, the impugned detention order was confirmed by the Government, *vide* G.O.Rt.No.744, dated 30.03.2022. The alleged cases do not add up to “disturbing the public order”. They are confined within the ambit and scope of the word “law and order”. Since the offences alleged are under the Indian Penal Code, the detenu can certainly be tried and convicted under the Indian Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law. Hence, the impugned orders tantamount to colourable exercise of power. Further, the detenu was granted bail by the Courts concerned in all the four cases relied upon by the detaining authority. But he was again sent to jail by invoking the draconian preventive detention laws on the apprehension that there is imminent possibility of the detenu committing similar offences in future, which would be detrimental to the public order, unless he is prevented from doing so by an appropriate order of detention. The subjective satisfaction recorded by the detaining authority in preventively detaining the detenu is tainted and

illegal. Thus, the impugned orders are legally unsustainable and ultimately, prayed to allow the Writ Petition, as prayed for.

4. On the other hand, the learned Assistant Government Pleader for Home appearing for the respondents supported the impugned orders and submitted that the detenu is a 'Goonda'. He has been habitually committing theft of two wheeler vehicles and mobile phone in the limits of Hyderabad Police Commissionerate and causing widespread fear and panic among the people by committing such offences and thus acting in a manner prejudicial to the maintenance of public order apart from disturbing the peace, tranquility and social harmony in the society. The detenu was granted bail/conditional bail in all the four crimes relied on by the detaining authority. Further, the detenu had violated the bail conditions and therefore, the Investigating Officer concerned filed a petition before the Magistrate concerned seeking cancellation of bail in Crime No.174 of 2021 of Ramgopalpet Police Station and the same is pending. Therefore, the apprehension of the detaining authority that there is imminent possibility of the detenu committing similar offences, is not misconceived. The series of crimes allegedly committed by the detenu were sufficient to cause a feeling of insecurity in the minds of the people at large. Therefore, the detaining authority and the Government are

justified in passing the impugned orders. 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 SB(I) No.333/PD-4/HYD/2021, dated 03.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.744, General Administration (Spl. (Law & Order)) Department, dated 30.03.2022, passed by the Chief Secretary to Government, General Administration (Spl. Law & Order)) Department, Government of Telangana, 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.

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 four crimes indicated above, has passed the impugned detention order, dated 03.12.2021. 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.

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
Cr.No.187/2021 of Begumpet PS	18.05.2021	19.05.2021	Section 379 IPC	Cognizable/ Non Bailable
Cr.No.83/2021 of Karkhana PS	19.05.2021	19.05.2021	Section 379 IPC	Cognizable/ Non Bailable
Cr.No.174/2021 of Ramgopalpet PS	08.08.2021	08.08.2021	Sections 420 and 379 IPC	Cognizable/ Non Bailable
Cr.No.312/2021 of Bowenpalli PS	21.09.2021	22.09.2021	Section 379 IPC	Cognizable/ Non Bailable

11. As seen from the material placed on record, the crimes relied upon by the detaining authority for preventively detaining the detenu relate to theft of two wheeler vehicles and mobile phone. Further, the detenu was arrested in connection with the said crimes and subsequently, he moved bail petitions in the said crimes and he was granted bail in all the crimes relied by the detaining authority by the Courts concerned and he was released from jail. Learned Assistant Government Pleader for Home would submit that the detenu had violated the bail conditions and therefore, the Investigating Officer concerned filed a petition before the Magistrate concerned seeking cancellation of bail in Crime No.174 of 2021 of Ramgopalpet Police Station and the same is pending. Since it is alleged that the detenu had violated the bail conditions, the prosecution can apprise the same to the Magistrate concerned in the pending application and seek cancellation of bail. Under these circumstances, the apprehension of the detaining authority

that since the detenu was released on bail, 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 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 committed offences punishable under the Indian Penal Code, the said crimes can be effectively dealt with under the provisions of the Penal Code and there was no need for the detaining authority to invoke the draconian preventive detention law. Thus, the offences committed by the detenu in the four crimes relied 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* SB(I) No.333/PD-4/HYD/2021, dated 03.12.2021, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.744, General Administration (Spl. (Law & Order)) Department, dated 30.03.2022, passed by the Chief Secretary to Government, General Administration (Spl. Law & Order)) Department, Government of Telangana, are hereby set aside. The respondents are directed to set the *detenu*, namely Mohammed Atiq Ahmed @ Fardeen, S/o Mohd. Nadeem Ahmed, 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.

Dr. SHAMEEM AKTHER, J

JUVVADI SRIDEVI, J

Date: 08.06.2022
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