

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

AND

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

WRIT PETITION No.34984 of 2022

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

Smt. Nenavath Mounika, the wife of the detenu viz., Nenavath Hari, has filed the present Writ Petition, challenging the detention order *vide* No.136/PD-CELL/CCRB/RCKD/2022, dated 02.09.2022, passed by the respondent No.2-Commissioner of Police-cum-Additional District Magistrate, Rachakonda, whereby, the detenu was detained under Section 3 (2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (for short, 'the PD Act'), and the consequential confirmation order *vide* G.O.Rt.No.2002, General Administration (Spl. (Law & Order)) Department, dated 22.10.2022,

passed by the Secretary to Government (FAC), Government of Telangana.

2. Heard Mr. M.Amarnath, the learned counsel for the petitioner, Sri Mujib Kumar, the learned Special Government Pleader representing the learned Additional Advocate General appearing for the respondents and perused the record.

3. Learned counsel for the petitioner would submit that by relying on a solitary crime viz., Crime No.430 of 2022 of Meerpet Police Station, registered for the offence under Section 8 (C) r/w 20 (b) (ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, the respondent No.2 has passed the impugned detention order having reached to the satisfaction that the acts of the detenu are prejudicial to maintenance of public order. The two bail applications moved by the detenu in the solitary crime relied on by the detaining authority before the Sessions Court concerned were dismissed. Thereafter, the detenu has filed bail application before this Court and the same was also dismissed. 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 the case registered against the detenu under the ordinary law has no deterrent effect in curbing his

prejudicial activities and in the event of his release on bail, there is imminent possibility of the detenu indulging in similar activities again, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. The solitary crime relied on by the detaining authority does not add up to “disturbing the public order” and it is confined within the ambit and scope of the words “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 are legally unsustainable and ultimately, prayed to allow the Writ Petition, as prayed for.

4. On the other hand, the learned Special Government Pleader appearing for the respondents supported the impugned orders and submitted that the detenu is a ‘Drug Offender’. The detenu has been indulging in peddling of Ganja, a narcotic drug, among the innocent people in the limits of Rachakonda Commissoenrate, endangering the lives of youth and innocent people causing irreparable damage to their body organs including the central nervous system, thereby crippling the health of those addicted to drugs. Hence, the apprehension of the detaining authority that there is imminent possibility of his committing

similar offence, is not misconceived. The crime 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. 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.

5. 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:136/PD-CELL/CCRB/RCKD/2022, dated 02.09.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.2002, General Administration (Spl. (Law & Order)) Department, dated 22.10.2022, passed by the Secretary to Government (FAC), Government of Telangana are liable to be set aside?"

POINT:

6. 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 law 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.

7. 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.

8. 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

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

order', is a question of degree and extent of the reach of the act upon the Society.

9. In the present case, the detaining authority, based on a solitary crime indicated above, has passed the impugned detention order, dated 02.09.2022. 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
430/2022 of Meerpet Police Station	18.04.2022	18.04.2022	Section 20 (b) (ii) (C) of NDPS Act, 1985 Qty: 1) 190 kgs of ganja	Cognizable/ Non Bailable

10. As seen from the material placed on record, the impugned detention order is passed by placing reliance on the aforesaid solitary crime, which relates to peddling of Ganja.

11. Here, it is appropriate to refer to the decision rendered by the Honourable Supreme Court in **Vijay Narain Singh v. State of Bihar**³, wherein it was held that a single act or omission cannot be characterized as a habitual act because the idea of 'habit' involves an element of

³ (1984) 3 SCC 14

persistence and a tendency to commit or repeat similar offences, which is patently not present in the instant case.

12. The accusation levelled against the detenu in the aforesaid crime is that he was involved in a case of illegal possession of Ganja weighing about 190 Kgs in order to sell the same in Rachakonda Commissionerate limits. Though the bail applications filed by the detenu were dismissed by the Sessions Court concerned, the bail application filed by the detenu was dismissed by this Court. 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. Under these circumstances, the apprehension of the detaining authority that the case registered against the detenu under the ordinary law has no deterrent effect in curbing his prejudicial activities and in the event of his release on bail, there is imminent possibility of the detenu indulging in similar activities again, which would be detrimental to maintenance of public order, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. Since the detenu has allegedly committed the offence punishable under the NDPS Act, the said crime can be

effectively dealt with under the provisions of the said special law. The solitary crime relied on by the detaining authority 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.

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.136/PD-CELL/CCRB/RCKD/2022, dated 02.09.2022, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.2002 dated 22.10.2022, are hereby set aside. The respondents are directed to set the detenu, namely, Nenavath Hari S/o. Nariya, at liberty forthwith, in case he is no longer required in any other criminal case. However, it is made clear that in case the detenu involves in any other crime of similar nature, the authorities concerned are free to take necessary action including passing of detention order against him.

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

JUVVADI SRIDEVI, J

Date: 28.11.2022
ksk/va