

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

WRIT PETITION No.9615 OF 2022

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

Sri Koppurapu Sampath Kumar Reddy, the petitioner, has filed this Habeas Corpus petition on behalf of his mother Smt. Ramishetty Sandya W/o.Kommineni Sridher, the detenue, challenging the detention order vide No.48/PD CELL/CCRB/RCKD/2021, dated 25.05.2021, passed by the respondent No.2, whereby, the detenue 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.1714, General Administration (Spl. (Law & Order)) Department, dated 31.07.2021, passed by the Principal 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. The case of the petitioner is that basing on a recent solitary crime registered against the detenue viz., Crime No.148 of 2021

of Chaitanyapuri Police Station, Rachakonda Commissionerate, the respondent No.2 passed the impugned detention order, dated 25.05.2021. According to the respondent No.2, the detainee is an 'Immoral Traffic Offender', as she has been indulging in trafficking of women/girls for the sake of prostitution and running prostitution business with them for her pecuniary benefits to lead luxurious life at large. The detainee has been inducing innocent girls in the pretext of livelihood/employment taking advantage of their poverty and later force them to do prostitution clandestinely by acting as a leader/ member of criminal gang to make easy buck in a short period and thus running online and offline brothel den in the limits of Chaitanyapuri PS of Rachakonda Commissionerate and thus the activities of the detainee are prejudicial to maintenance of public order and public health at large. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.1714, dated 31.07.2021.

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. In the solitary crime relied by the detaining authority, the detainee was granted bail by the Court concerned. But she was again sent to jail by invoking the

draconian preventive detention laws. The apprehension of the detaining authority that there is imminent possibility of the detainee indulging in similar prejudicial activities again, which would be prejudicial to the maintenance of public order, unless she is prevented from doing so by an appropriate order of detention, is highly misplaced. The alleged crime does not add up to “disturbing the public order” and it is confined within the ambit and scope of the word “law and order”. Since the offence alleged is under the Indian Penal Code and The Immoral Traffic (Prevention) Act, 1956 (for short, ‘PITA’), the detainee 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 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 Assistant Government Pleader for Home appearing for the respondents supported the impugned orders and submitted that the detainee is an ‘Immoral Traffic Offender’. She along with her associates has been indulging in trafficking of women/girls for the sake of prostitution and running prostitution business to lead luxurious life in an organized

fashion in the police station limits of Rachakonda Commissionerate and thereby acting in a manner prejudicial to the maintenance of public order and widespread danger to public health at large. Since the detainee got bail in the solitary crime relied upon by the detaining authority, the apprehension of the detaining authority that there is imminent possibility of detainee indulging in similar offences, is not misconceived. The crime allegedly committed by the detainee created a panic and embarrassment in the locality. The criminal activities of the detainee not only endanger the family system but also create social unrest causing widespread health hazards to 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 detainee and on considering the same along with the entire material, the Government confirmed the impugned detention order vide G.O.Rt.No.1714, dated 31.07.2021. 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.48/PD CELL/CCRB/RCKD/2021, dated 25.05.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1714, General Administration (Spl. (Law & Order)) Department, dated 31.07.2021, passed by the Principal 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 a solitary crime indicated above, has passed the impugned detention order, dated 25.05.2021. 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.

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
559/2021 of Chaitanyapuri PS	06.03.2021	06.03.2021	Section 370A(2) of IPC and 4 & 5 of PITA	Section 370A(2) of IPC: Cognizable/ Non Bailable Sections 4 & 5 of PITA : Cognizable

11. As seen from the material placed on record, the solitary crime relied upon by the detaining authority for preventively detaining the detainee relate to immoral trafficking. Further, the detainee was arrested in connection with the said crime and subsequently, she moved bail application in the said crime and was granted bail by the Court concerned and released from judicial custody. Under these circumstances, the apprehension of the detaining authority that there is imminent possibility of the detainee indulging in similar prejudicial activities again, which would be prejudicial to the maintenance of public order, unless she 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 detainee and to handover the entire case record available against the detainee. The police are supposed to be vigilant in collecting the whole data against the detainee and furnish the same to the Public Prosecutor/ Additional Public Prosecutor to defeat the bail application/s of the

detenue. Further, in the instant case, since the detenue was granted bail by the Court concerned, if it is found that the detenue involved in further crimes, the prosecution can apprise the same to the Court concerned and seek cancellation of bail. Further, as held in **Vijay Narain Singh v. State of Bihar**³, a single act or omission cannot be characterized as a habitual act because, the idea of 'habit' involves an element of persistence and a tendency to commit or repeat similar offences, which is patently not present in the instant case. Moreover, criminal law was already set into motion against the detenue. Further, since the detenue has allegedly committed offence punishable under the Indian Penal Code and PITA, the said crime can be effectively dealt with under the provisions of 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 detenue in the solitary crime relied by the detaining authority do 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

³ (1984) 3 SCC 14

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.48/PD CELL/CCRB/RCKD/2021, dated 25.05.2021, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.1714, General Administration (Spl. (Law & Order)) Department, dated 31.07.2021, passed by the Principal Secretary to Government, General Administration (Spl. ((Law & Order)) Department, Government of Telangana, are hereby set aside. The respondents are directed to set the *detenue*, namely Smt.Ramishetty Sandya W/o. Kommineni Sridher, at liberty forthwith, if she 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: 13th April, 2022
SSP/SCS