THE HON'BLE THE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. RAJASHEKAR REDDY

WRIT PETITION NO.44808 OF 2018

ORDER: (Per the Hon'ble the Acting Chief Justice)

The petitioner has filed this habeas corpus writ petition on behalf of her brother-in-law, B. Ajay Singh, in order to challenge the detention order 22-05-2018 passed by the Commissioner of Police, Hyderabad City, the respondent No.2, and the conformation order dated 31-07-2018 passed by Principal Secretary to Government (Poll), the respondent No. 1. By the former order, B. Ajay Singh was detained under Section 3 (2) r/w Section 2(a) (f) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 ("the Act", for short). By the latter order, the respondent No. 1 has confirmed the detention order of the detenu.

Briefly, the facts of the case are that the police had registered three different cases against the detenu under the Narcotic Drugs and Psychotropic Substance Act ('the NDPS Act', for short) during 2016-2017. Crime No. 948/2016 was registered for offences under Sections 8(c) r/w 20(b)(ii)(e) of the NDPS Act. Crime No. 90/2017 was also registered against the detenu for offences under Section 8(c) r/w 20 (b)(ii)(B) of the NDPS Act on the file of Excise Dhoolpet Police Station. Lastly, Crime No. 268/2017 was also registered against the detenu for offences under Sections 8(c) read with 20 (b) (ii) (c) of the NDPS Act at the Shahinayath Gunj Police Station. Relying on the two criminal cases registered

in 2017, the Commissioner of Police passed a detention order on 22.05.2018 against the detenu. According to the respondent No.2, since the detenu was peddling "Ganja", he falls under the definition of "drug offender" as defined in Clause (f) of Section 2 of the Act. Since he has been repeatedly violating the provisions of the NDPS Act, since peddling of drugs adversely affects the youth, his conduct has become prejudicial to the maintenance of public order. Moreover, while in Crime No.90 of 2017 allegedly "Ganja" weighing 2.2kg was recovered from the possession of the detenu, in Crime No.268 of 2017, 21.5kg of "Ganja" was recovered from the detenu's possession. Thus, the amount of "Ganja" being carried by the detenu was only increasing. Thereby making the detenu as a potential threat to the maintenance of public order. Lastly, considering the fact that the detenu was also granted bail in two cases, the chances of his being granted bail in the other cases was too high. Therefore, in order to prevent the detenu from disturbing the public order, the said preventive detention order was passed by the respondent No.2. The said preventive detention order was subsequently confirmed by the respondent No. 1 by its order dated 31.07.2018. Hence, the present habeas corpus petition before this Court.

Mr. A. Prabhakar Rao, the learned counsel for the petitioner, has raised the following contentions before this court: -

Firstly, all the three cases registered against the detenu are under a special Act namely, the NDPS Act. Therefore, the detenu can be tried, convicted, and sentenced under the provisions of the

said Act. Hence, the draconian law of preventive detention should not have been invoked against the detenu.

Secondly, there is a vast difference between the "law and order" and "public order". While a "law and order" case adversely affects an individual, a "public order" case adversely affects a large segment of the society. The alleged sale of drug does not adversely affect a large segment of society. Therefore, mere sale of drugs does not amount to an act "prejudicial to the maintenance of a public order". Therefore, the respondent Nos.1 and 2 were not justified in passing and confirming the preventive detention order.

Lastly, the detaining authority did not consider the fact that the detenu was released on bail, and the bail order itself contains certain conditions. These conditions are sufficient to keep the detenu under control. These conditions also prevent the detenu from further violating the law. Hence, the preventive detention orders are legally unsustainable.

On the other hand, Mr. S. Sharath, the learned Special Government Pleader, has submitted the following counter-arguments:-

Firstly, relying on the case of **Haradhan Saha v. The State of West Bengal and others**[1], the learned counsel has pleaded that there is a vast difference between "punitive detention" and "preventive detention". While under a punitive detention, a person is detained for an alleged offence already committed, for which he

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[1] AIR 1974 SC 2154

has been convicted and sentenced, preventive detention is a precautionary power exercised in reasonable anticipation of a person likely to commit an offence, if he were not prevented from doing so. Such a detention may or may not relate to an offence. An order of preventive detention may be made before or during prosecution. Such an order may be made with or without prosecution or in anticipation or after discharge or even after acquittal. Therefore, the pendency of a prosecution is no bar to an order of preventive detention. Hence, merely because three criminal cases are pending against the detenu, would not prevent the detaining authority from passing the detention order.

Secondly, relying on the case of **Arun Ghosh v. State of West Bengal**[2], the learned counsel has pleaded that what in a given situation may be a matter covered by "law and order", on account of its "impact on the society" may really turn out to be one of 'public order'. Relying on the case of **Kanu Biswas v. State of West Bengal**[3], the learned counsel has pleaded that the test to be applied is: "Does the act lead to disturbance of current of life of the community so as to amount to a disturbance of the public order, or does it affect merely an individual leaving the tranquillity of society undisturbed?"

Thirdly, according to the learned counsel, the free sale of drugs not just impacts an individual, but most importantly, adversely affects the society at large. For the youth gets caught in

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[2] (1970) 1 SCC 98

[3] (1972) 3 SCC 831

the trap of drug addiction, begins to disobey the law, potentially begins to commit petty crimes, in order to sustain constant supply of drugs to himself/herself, and eventually becomes physically and financially a burden on the society itself. Therefore, the sale of drugs by drug offender adversely affects a large segment of the society. Hence, it disturbs the maintenance of public order.

Lastly, even if the detenu were granted a bail on the previous occasion, it has not prevented him from subsequently committing an offence under the NDPS Act. Therefore, the detaining authority has reached a subjective satisfaction that if the detenu were to be released on bail, again he will indulge in the same activity of distributing and selling "Ganja" to the public at large. The fact that he had increased the quantity of "Ganja" to be sold in the open market was a clear indication of his repetitive behaviour of selling "Ganja" to the young in the society. Hence, it is imperative that the detenu be detained by respondent No.2 and respondent No.1. Therefore, the learned counsel has supported the impugned orders.

Heard the learned counsel for the parties and perused the impugned orders.

In the case of **Ram Manohar Lohia v. State of Bihar**[4], the Hon'ble Supreme Court has demarcated the distinction between "public order" and "law order" in the following words:

> *"54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits*

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[4] AIR 1966 SC 740

apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order' take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances"

In **Arun Ghosh** (supra), the Hon'ble Supreme Court has clearly opined that *what in a given situation may be a matter covered by law and order, on account of its impact on the society*

may really turn out to be one of 'public order'. It has further observed as under:

> *"Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies."*

In the case of **Madhu Limaye v. Sub-Divisional Magistrate**[5], the Apex Court had clearly opined that *acts which disturb public tranquility or are breaches of the peace should not be given a narrow meaning, but should be given a liberal interpretation. For the expression 'in the interest of public order' is very wide amplitude.* In the case of **Kanu Biswas** (supra), the Supreme Court has opined as under:

> *"The question whether a man has only committed a breach of law and order or has acted in a manner likely to*

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[5] (1970) 3 SCC 746

cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call 'order publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

Therefore, while deciding the present case, the above mentioned principles would necessarily have to be kept in mind.

The menace of drug abuse and the proliferation of drug trade is an open secret. Drug abuse is not only confined to the urban centres, but has spread its tentacles even to the rural areas. It is common knowledge that drug problems are rampant amongst the young, be they from the urban or the rural area. The easy availability of drugs has warped the lives of the young men and women in our society. In order to ensure a steady supply of drugs, these young men and women are prone to commit petty offences. Thus, the substance abuse triggers of a series of petty crimes being committed by the young. On the other hand, the proliferation of drug strengthens the drug trade, the drug mafia and the underworld. The amount of money earned by the underworld fuels nefarious activities like prostitution and terrorism. Therefore, what may appear, on the surface, to be "a law and order problem", on a deeper analysis, emerges as "a public order" problem. Hence, while dealing with preventive detention cases *qua* offences committed under the NDPS Act, the court has to be alive to the "impact of the offence" on the society at large.

Thus, the learned counsel for the petitioner is unjustified in claiming that the three cases registered against the detenu should be seen as “law and order” problem and not as a “public order” one.

In the cases of **N. Meera Rani v. State of Tamil Nadu**[6] and **Kamarunnissa v. Union of India**[7], the Apex Court has observed that as preventive detention is intended to prevent a detenu from acting in any manner prejudicial to public order, ordinarily it need not be resorted to, if the detenu is in custody, unless the detaining authority has reason to believe that the subsisting custody of the detenu may soon terminate on his being released on bail. And having regard to his recent antecedents the detenu is likely to indulge in similar prejudicial activities, unless he is prevented from doing so by an appropriate order of preventive detention.

Moreover, the Hon'ble Supreme Court has insisted that the detention order must indicate firstly that the detaining authority is well aware of the fact that the detenu is already in a subsisting custody. Secondly, compelling reasons must be stated for passing the detention order while the detenu is already in custody. In case of **Dharmendra Suganchand Chelawat V. Union of India**[8], the Apex Court defined the expression "*compelling reasons*" as there must be cogent reasons before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, (b) taking into account the nature of the antecedent of the activities of the detenu, it is

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[6] (1989) 4 SCC 418
[7] (1991) 1 SCC 128
[8] (1990) 1 SCC 746

likely that, after he is released from custody, he would indulge in prejudicial activities, and (c) it is necessary to detain him to prevent him from engaging in such activities. In the case of **Kamarunnissa** (supra), the Apex Court has held that if the authority passes an order, after recording his satisfaction, such an order cannot be struck down ostensibly on the ground that the proper course for the authority was to oppose the bail, and if bail were granted notwithstanding such opposition, the detaining authority could question it before a higher court.

The learned counsel for the petitioner is unjustified in claiming that the detaining authority has not considered the existence of the bail order passed in Crime No. 90 of 2017 and in Crime No.268 of 2017. A bare perusal of the impugned order dated 22.05.2018 clearly reveals that the detaining authority had, indeed, considered these two bail orders. However, despite the bail order dated 13.06.2017 in Crime No.90 of 2017, the detenu had again violated the provisions of the NDPS Act on 22.11.2017 in Crime No. 268 of 2017. Therefore, even the privilege of bail was violated by the detenu. Therefore, considering the fact that on 28.02.2018 the detenu was again released on bail in Crime No. 268 of 2017, considering his previous conduct, the detaining authority was certainly justified in concluding that "*there is a imminent possibility of your indulging in similar prejudicial activities, which are detrimental to public order, unless you are prevented from doing so by an appropriate order of detention*".

The learned counsel for the petitioner submitted that the conditions imposed in the bail order have not been considered and

the detention order has to be invalidated on that ground. In support of his contention, he relied on the judgments reported in ***M.Ahmedkutty v. Union of India***[9] and judgments of this Court in WP No.38082 of 2018, dated 18.02.2019. But a close scrutiny of the judgment in ***M.Ahmedkutty (supra)*** goes to show that the issue before the Hon'ble Supreme Court was whether the detaining authority considered the Supreme Court's interim order in pending appeal against High Court's quashing of a previous order of detention against the same detenu was considered or not. While dealing with the said issue, the Hon'ble Supreme Court held as under:

> *"25. Non-consideration of the bail order would have, therefore, in this case amounted to non-application of mind. In Union of India v. Manoharlal Narang [(1987) 2 SCC 241] the Supreme Court's interim order in pending appeal against High Court's quashing of a previous order of detention against the same detenu was not considered by the detaining authority while making the impugned subsequent order against him. It was held that non-consideration of the interim order which constituted a relevant and important material was fatal to the subsequent detention order on ground of non-application of mind. If the detaining authority considered that order one could not state with definiteness which way his subjective satisfaction would have reacted and it could have persuaded the detaining authority to desist from passing the order of detention."*

In the said case, the Supreme Court was not dealing with the issue regarding consideration of conditions imposed in the bail order by the detaining authority. But that aspect was not brought to the notice of the Division Bench in WP No.38082 of 2018, to which one of us (Justice A.Rajasheker Reddy) was party and that the said order was passed basing on the order in WP No.32398 of 2018, dated 09.11.2018. The said distinction was not noticed by

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[9] (1990) 2 SCC 1

the Division Bench in WP No.32398 of 2018. In the present case, as stated supra, the bail orders passed in favour of the detenu were considered by the detaining authority. When bail orders were considered, it cannot be said that the conditions imposed in the said orders were not considered.

Hence, for the reasons stated above, this court does not find any merit in the present writ petition. It is, hereby, dismissed. No order as to costs.

Pending Miscellaneous Petitions, if any, stand closed.

RAGHVENDRA SINGH CHAUHAN, ACJ

A. RAJASHEKAR REDDY, J

Date: 29.05.2019

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