

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION NO: 3905 OF 2021

Between:

Gaddam Mallaiah, S/o Bheemaiah, aged 60yrs, r/o H.No.10-52, C.C.C.
Township, CCC Naspur, Mancherla District.

...PETITIONER

AND

1. State of Telangana, Home Department, Secretariat Buildings, Hyderabad,
Rep.by its Principal Secretary.
2. Director General of Police, Lakdikapool, Hyderabad
3. The Inspector General of Police, North Zone, Hyderabad.
4. The District Inspector General of Police, Karimnagar, Karimnagar District.
5. The Commissioner of Police, Ramagundem, Superintendent of Police,
Mancherla, Mancherla District.
6. The Circle Inspector of Police, Mancherla Rural, Mancherla.
7. The Superintendent, Central Prison, Warangal.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order, or Direction, more particularly one in nature of Writ of HABEAS CORPUS to direct the release the petitioner's wife the Detenu by name Gaddam Susheela, by setting aside the order of the 5th respondent dt. 30.12.2021 in C.No.43/PDCELL/CCRB/RGM/2020, dt. 30.12.2020, issued by exercising power under Sec.3(2) of Telangana Prevention of Dangerous Activities of Boot-Leggars, 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 as approved by the 1st respondent vide G.O.Rt.No.47 General Administration (Spl. L and O) Department, dt 06.01.2021 and confirmed the impugned orders of the detention dt. 30.12.2020, for a period of 12 months from the date of the detention vide G.O.Rt.No.493 General Administration (Spl. L & O) Department dt. 3.3.2021 after declaring the same as illegal arbitrary, on state consideration, without taking the crimes in proper perspective and in a routine manner and without application of mind and further declare that the Detenu is not a White collared offender.

(Prayer is amended as per Court Order dated 30.04.2021 Vide I.A.No.02 of 2021 in W.P.No.3905 of 2021.)

IA NO: 1 OF 2021

Petition under Section 151 CPC., praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased To order release of the wife of the petitioner by name Smt.G.Susheela, who is detained in pursuance of the orders of the 5th respondent, dt. 30.12.2021 in C.No.43/PDCELL/CCRB/RGM/2020, dt. 30.12.2020, issued by exercising power under Sec.3(2) of Telangana Prevention of Dangerous Activities of Boot-Leggars, 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, by suspending the orders, pending disposal of the above Writ petition.

Counsel for the Petitioner: M/s. SUJATHA KURAPATI

**Counsel for the Respondents: SRI T. SRIKANTH REDDY, AGP FOR HOME /
THE ADDITIONAL ADVOCATE GENERAL**

The Court made the following: ORDER

ORDER: (Per Hon'ble Sri Justice B. Vijaysen Reddy)

This Writ of Habeas Corpus is filed challenging the order of detention dated 30.12.2020 detaining Gaddam Susheela, W/o. Mallalah, passed by the Commissioner of Police, Ramagundam, in exercise of powers conferred under Sub-Section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer 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 (Amendment Act No.13 of 2018) (for short 'the Act'), treating her as a 'White Collar Offender' as defined in clause (x) of Section 2 of the Act and as confirmed by the Government vide G.O.Rt.No.493 dated 03.03.2021, as being illegal, arbitrary and unconstitutional.

2. Heard Ms. Sujatha Kurapati, the learned counsel for the petitioner and Mr. T. Srikanth Reddy, the learned Government Pleader for Home.

3. The learned counsel for the petitioner submits that detaining authority got influenced by law and order crimes, which formed the basis for its satisfaction to pass the detention order. Thus, the detaining authority, without proper application of mind, treated the detenu as 'white collar offender'. For, the crimes registered against the detenu at the most affect specific individuals and not public at large. Hence, the infraction of law is bound in some measure to lead to disorder but every infraction of law does not necessarily result in

affecting public order and thus, the detention order is illegal and unconstitutional.

4. Per contra, the learned Government Pleader for Home submits that the detenu has cheated innocent and unemployed job seekers, created a feeling of insecurity among them and disturbed peace and tranquility in the area and thus, her activities adversely affected maintenance of public order. The detenu has cheated the job seekers by collecting more than Rs.15 lakhs promising to provide jobs to them in Power Plant of SCCL at Jaipur of Mancherla in the limits of Ramagundam Police Commissionerate. Hence, the detention order was passed on reasonable probability of the detenu acting in a manner similar to her past acts, thereby, to prevent her by detention from doing the same. Further, the detaining authority has arrived at subjective satisfaction that the activities of the detenu disturbed public order and created a situation of panic and fear among the public. As such, the order of detention is not violative of Article 21 of the Constitution of India.

5. In the impugned detention order, the detaining authority has referred to three criminal cases, which form the basis of the detention order. The same with relevant details is shown as under:

Sl. No	Crime No. & Date	Police Station	Offence	Date of arrest	Particulars of Bail
1.	Cr.No.248 of 2020 Dt.09.09.20	PS CCC Naspur	U/s 420 and 506 read with Section 34 IPC	04.11.2020	Detenu moved bail application vide CRLMP.No.526 of 2020 and was released on bail.
2.	Cr.No.300 of 2020 Dt.12.11.20	PS CCC Naspur	U/s 420 read with Section 34 IPC	04.11.2020 in Cr.No.248 of 2020	Detenu moved bail application vide CRLMP.No.543 of 2020 and was released on bail.

3.	Cr.No.313 of 2020 Dt.20.11.20	PS CCC Naspur	U/s 420 and 468 read with Section 34 IPC	04.11.2020 in Cr.No.248 o 2020	Detenu moved bail application vide CRLMP.No.547 of 2020 and was released on bail.
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6. According to the record, in all the three complaints, it is alleged that the detenu collected money from job seekers. The detenu could not provide jobs to the complainants, as promised by her and thus, cheated them. The detenu was arrested in all the three cases; remanded to judicial custody and later released on bail.

7. The detention order points out that the incidents under the above referred crimes have caused loss of faith and trust among job seekers. They are hesitant to consult any consultants or persons fearing similar cheating in the guise of providing jobs and thus, prejudicial activities of the detenu have caused disturbance in job placement organization and big companies. It is further opined that free movement of such offender is not safe in the interest of the society and there is imminent possibility of the detenu indulging in similar prejudicial activities, which is detrimental to public order, unless she is prevented from doing so by an appropriate order of detention.

8. In **RAM MANOHAR LOHIA V, STATE OF BIHAR**¹ it was held that contravention of law always affect order, but before it can be said to affect public order, it must affect community at large. The Apex Court considered three concepts law and order, public order and security of State and observed that to appreciate the scope and extent of each one of them one should imagine three concentric circles. The largest of them represented law and order, next represented

¹ AIR 1966 SC 740

public order and smallest represented the security of State.

The Supreme Court held as under:

"Does the expression 'public order' take in every kind of disorder or only some? 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.

In **ARUN GHOSH v. STATE OF WEST BENGAL**² the Supreme Court held that:

"It means therefore 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 the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as *ordre publique*. The latter expression has been recognized as meaning something more than ordinary maintenance of law and order."

9. All the incidents in the above crimes relate to specific individuals (job seekers) and there is absolutely no material on record to show that the activities of the detenu created a panic situation created and they are prejudicial to the maintenance of public order.

10. The detaining authority has to keep in mind that the order of detention needs to be passed as an extreme step when all other legal remedies and avenues are exhausted. The detenu was involved in

² 1970(1) SCC 98

offences of cheating and breach of trust. The detenu was arrested and released on bails in the three crimes referred to above. When trial is commenced, after filing of the charge sheet, the detenu has to regularly appear before the Court. If the detenu is found to be involved in similar crimes or there is violation of bail conditions, the concerned police or Public Prosecutor can file an application seeking cancellation of bail. Hence, without resorting to such step, it may not be expected of the detaining authority to pass the detention order as an easy route method. The High Court of Judicature for the State of Telangana and the State of Andhra Pradesh in **C. NEELA v.**

STATE OF TELANGNA³ held as under:

"The State cannot find an easy way out by choosing to invoke the draconian provisions of preventive detention laws against every criminal as a substitute for his prosecution. As discussed supra, the Supreme Court has drawn a clear distinction between disturbance to public order on one side and disturbance to law and order on the other and held that only in the former case the State is permitted to invoke the powers under the preventive detention laws."

12. Right to life and personal liberty guaranteed under Article 21 of the Constitution of India cannot be deprived without following due process of law. The detenu/accused has got human right and fundamental right, unless she is subjected to due process of law. Since the activities of the detenu, as pointed out supra, do not come within the scope of public order, invoking the provisions of the Act for passing the detention order is violative of Article 21 of the Constitution of India. The law does not permit the detaining authority to pass the detention order for activities relating to maintenance of law and order and when there is no element of public order involved.

³ 2017 (2) ALD (Cr.) 760

13. In view of the above, this Court finds that the Impugned detention order deserves to be set aside and accordingly set aside.

The writ petition is allowed. The impugned detention order dated 30.12.2020 and the confirmation order dated 03.03.2021 are hereby set aside. The respondents are directed to set the *detenu*, namely Smt. Gaddam Susheela, W/o. Mallalah, at liberty forthwith, in case she is no longer detained in the criminal cases which have been registered so far against her.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

SD/-K.VENKAIAH
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, Home Department, State of Telangana, Secretariat Buildings, Hyderabad.
2. The Director General of Police, Lakdikapool, Hyderabad
3. The Inspector General of Police, North Zone, Hyderabad.
4. The District Inspector General of Police, Karimnagar, Karimnagar District.
5. The Commissioner of Police, Ramagundem, Superintendent of Police, Mancherial, Mancherial District,
6. The Circle Inspector of Police, Mancherial Rural, Mancherial.
7. The Superintendent, Central Prison, Warangal.
8. One CC to M/s. Sujatha Kurapati, Advocate [OPUC]
9. Two CCs to the Advocate General, High Court for the State of Telangana at Hyderabad. [OUT]
10. Two CCs to GP for Home, High Court for the State of Telangana at Hyderabad. [OUT]
11. Two CD Copies

CHR



VACATION COURT

HIGH COURT

DATED:27/05/2021

ORDER

W.P.No.3905 of 2021



**ALLOWING THE WRIT PETITION
WITHOUT COSTS**

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P. N. A.
2021/6/2021