

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

FRIDAY, THE TWENTY SIXTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY ONE

PRESENT

**THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY
AND**

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION NOS: 19296 AND 17307 OF 2020

WP NO.19296 OF 2020:

Between:

Sana Begum, W/o.Mohammed Nadeem, aged 22 years, R/o.Near Mohamooda Hotel, Rizwan Colony, BK Puram, Shastripuram, Mailardevpally, Rajendranagar, R.R.District.

AND

...PETITIONER

1. The State of Telangana, Rep. by its Principal Secretary to the Govt. (Political), General Administration Department, Telangana Secretariat, Hyderabad.
2. The Commissioner of Police, Cyberabad Commissionerate.
3. The Superintendent, Central Prison, Cherlapalli, Medchal District.

...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 of Habeas Corpus under Art.226 of the Constitution of India directing the respondents to produce Sri.Mohammed Nadeem S/o.Mohammed Aleem, now detained at Central Prison, Cherlapalli, Medchal District, before this Honble Court and he may be ordered to be released forthwith/set at liberty after declaring his detention vide No.19/PD CELL/CYB/2020, dated 21-06-2020 passed by the 2nd respondent and consequential confirmation orders passed by the 1st respondent vide G.O.Rt.No.1263 dated 27-08-2020 as illegal, unconstitutional and void

Counsel for the Petitioner: SMT. B. MOHANA REDDY

**Counsel for Respondents: SRI T. SRIKANTH REDDY, GOVERNMENT PLEADER
FOR ADDL ADVOCATE GENERAL**

WP NO: 17307 OF 2020

Between:

Mohammed Aleem, S/o. Late Shaik Hussain, aged 52 years, Occ. Pvt Service, R/o, Plot No. 58, Sy. No. 39, Akber Colony, Vottapally, Charminar, Hyderabad.

AND

...PETITIONER

1. The State of Telangana, Rep. by its Principal Secretary, General Administration (Spl. (Law and Order) Department, Secretariat, Hyderabad.
2. The Commissioner of Police and Addl District Magistrate (Executive), Cyberabad Commissionerate, Cyberabad.
3. The Superintendent, Central Prison Cherlapally, Medchal - Malkajgiri District

...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 an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Habeas Corpus, directing 3rd Respondent to produce the detenue viz., Mohammed Nadeem now detained in Central Prison Cherlapally, Medchal Malkajgiri District, before this Honourable Court and set-aside the impugned detention order passed by the 2nd Respondent No. 19/ PD-CELL/ CYB/ 2020, dt. 21/06/2020 and confirmation order passed by the 1st Respondent vide G.O.Rt.No. 1263, dated 27/08/2020 as being illegal, arbitrary, improper, unilateral, unconstitutional and violative of Article 21 and 22 of the Constitution of India, and to forthwith release the Detenue

Counsel for the Petitioner: SRI PASHAM TRIVIKRAM REDDY

**Counsel for Respondents: SRI T. SRIKANTH REDDY, GOVERNMENT PLEADER
FOR HOME FOR ADDL. ADVOCATE GENERAL**

The Court made the following: COMMON ORDER

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

&

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WP Nos. 19296 of 2020 & 17307 of 2020

COMMON ORDER :

WP No. 19296 of 2020 is filed by the wife of detenu (Mohammed Nadeem), the other WP No. 17307 of 2020 is filed by the father of the detenu. Though for the same cause two writ petitions are not maintainable, since the other one is filed by the father of the detenu, instead of dismissing the same it is clubbed with the other case as the decision in the writ petition filed by the wife of the detenu will abide by in the other writ petition. To adjudicate the lis, it would suffice if facts in WP No. 19296 of 2020 are adverted to.

02. The petitioner seeks to issue a writ of habeas corpus directing the respondents to produce the detenu before this Court and further order him to be released after declaring the order of detention passed by the 2nd respondent vide order of detention No. 19/PD-CELL/CVB/2020, dated 21-06-2020 in exercise of power conferred under Section 3(1) & (2) r/w Section 2(a) & 2(b) of Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goonda, 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 (Act 1 of 86), (for brevity, "the PD Act") and the consequential confirmation order passed by the 1st respondent as being illegal, unconstitutional and void and quash the same.

03. The 2nd respondent ordered the detention of the detenu on the ground that the detenu along with his associates has been indulging in acts of goondaism by committing property offences i.e. robbery and extortion in an organized manner and he is a "Goonda" as defined in Clause (g) of Section 2 of the Act and thereby creating panic and a feeling of insecurity among the general public affecting public order, apart from disturbing peace and tranquility in the society and accordingly the detention order. The Government accorded approval of the said detention order vide GO Rt.No.1055, dated 29-06-2020. Thereafter the matter was referred to the Advisory Board, which, on review, and after perusal of the grounds of detention and the record connected therewith opined that there was sufficient cause for detention of the detenu and considering the same the Government confirmed the order of detention passed by the 2nd respondent.

04. The order and the grounds of detention served on the detenu relied on six (6) offences alleged to have been involved by the detenu and the incidents happened in the years 2019-2020. The details of offences in which the detenu was involved is as follows:-

Sl. No.	Cr. No, Date of offence & Name of PS	Provision of Law	Property involved/ seized	Stage of the case
1.	Cr.No.1046/2019, 27.07.2019 of PS Rajendranagar	394 IPC	Causing hurt and extortion of cash of Rs.12,000/-	Trial pending, detenu on bail
2.	Cr.No.870/2019, 09/10-12-2019 of PS Mylardevpalle	384 IPC	Extortion of money of Rs.3,000/-	Trial pending, detenu on bail
3.	Cr.No.51/2020, 19/20-01-2020 of PS Shamshabad	384, 341 r/w.34 IPC	Snatching of mobile of the complainant	Trial pending, detenu on bail
4.	Cr.No.69/2020, 26-01-2020 of PS RGIA, Shamshabad	384 IPC	Snatching of mobile of the complainant	Trial pending, detenu on bail
5.	Cr.No.93/2020, 31-01-2020 of PS RGIA, Shamshabad	384 IPC	Snatching of mobile of the complainant	Trial pending, detenu on bail
6.	Cr.No.146/2020, 12/13-02-2020 of PS Mallardevpally	392 IPC	Robbery of three mobiles and net cash of Rs.1,400/-	Trial pending, detenu on bail

05. Counter affidavit is filed by 2nd respondent wherein *inter-alia* it is stated that impugned order of detention terming the detenu as 'Goonda' as been passed having regard to the fact of his habitually indulging in grave and dangerous activities such as robbery, extortion to get easy money for his lavishes and thereby creating panic and a feeling of insecurity among the general public, affecting the public order, apart from disturbing peace and tranquility in the society. That detention order has been approved by Government including the Advisory Board. That there is no basis muchless any merit in the allegation that the detention order was passed in a mechanical manner. That though the said crimes were registered in the year 2019, the detenu could be arrested only in the year 2020 and he was released on bail in all the 6 crimes. That as there is every likelihood of the detenu indulging in further such offences, the detention order was passed with a view to prevent him from indulging in such fresh offences. That detention order was passed based on the material placed and on arriving subjective satisfaction. That recourse to normal law may not be effective deterrent to prevent the detenu from indulging in such further activities which would be prejudicial to maintenance of the public order in the concerned area. That the order of detention passed is an exercise of precautionary power

of reasonable anticipation having regard to the criminal cases registered against the detenu.

06. Mrs.B.Mohana Redddy, the learned counsel for the petitioner advanced the following submissions:-i) the grounds referred to in the detention order are stale and not proximate to the order of detention; ii) the acts alleged to have been committed by the detenu would not fall within the wider spectrum of 'public order', but they are merely 'law and order' for which preventive detention measures cannot be invoked; iii) the offences alleged are punishable under IPC and the detenu can be tried and convicted under the provisions of IPC; iv) that the acts of the detenu did not fit in the definition of 'Goonda' as defined under Section 2(g) of the Act; v) that even after release on bail in the above crimes, for the last three months the detenu has not involved in any fresh crimes which goes to show that the detenu has not indulged in any other activities prejudicial to the public order. Thus there was no need to frame the detenu under the provisions of the draconian preventive detention laws and, therefore, the impugned order is liable to be quashed.

07. Sri T.Srikant Reddy, learned Government Pleader for Home appearing on behalf of learned Addl. Advocate General, on the other hand, submitted that the detenu was enlarged on bail in all the six crimes and inasmuch as there is every likelihood of the

detenu involving similar like offences and the detenu has already involved in a series of crimes, which are sufficient to cause a feeling of insecurity and fear in the minds of the people at large, the impugned order of detention was passed on subjective satisfaction of the detaining authority. It is submitted that the detenu has been involving in offences of extorting money from vulnerable victims and gullible public in some cases snatching away the mobile phones, disturbing public order and peace. It is also further stated that the detaining authority is legally justified in passing the impugned order which has the affect of curtailing the further mischievous acts of the detenu and is in the interest of public peace and tranquility.

08. The point that arises for consideration is whether the detention order dated passed by the 2nd respondent and confirmation order dated passed by the 1st respondent in the facts and circumstances of the case are sustainable in law ?

09. On a careful scrutiny of the grounds of detention, it is to be unreservedly observed that the detaining authority has taken into consideration six crimes mentioned in the table extracted above to arrive at subjective satisfaction which are registered based on the confession of the detenu. A perusal of the crimes registered are punishable under the penal laws of IPC and those six crimes pertains, affecting the specific individuals victims and not the

general public at large. It is borne out from record that the detenu has been granted bail in all the six crimes and was released on bail on 22-03-2020 the impugned detention order was passed on 21-06-2020 and for more than three months of his release, there is no record of his indulging in any fresh crimes. All the six crimes are registered for the offence punishable under the provisions of IPC, conviction in those cases can be secured by adducing appropriate evidence by the prosecution. The detenu involves in any fresh crime while on bail of prosecution nothing prevents the State from filing appropriate application for cancellation of bail on the ground of indulging in such fresh illegal activities. The provisions of the PD Act of preventive detention can be invoked against a person if his criminal activities are affecting public order. In almost all the crimes, they detenu involved in snatching of cell phones and in one case extracted money from a lorry driver. It is to be seen that the criminal law has already been set in motion and trial is on.

10. It is settled proposition of law as has been laid down by the Hon'ble Supreme Court as well as the High Courts that personal liberty is a precious right. Power conferred by such preventive detention law has to be exercised with extreme care and scrupulously within the bounds laid down in such a law. Preventive detention involves detaining of a person without trial in

order to prevent him from committing certain types of offences as such preventive detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes. When invoking the magical formula of preventive detention the detaining authority is required to firstly consider whether the offences allegedly committed by the detenu can be dealt with within the normal course of criminal justice system will not. (see **State of Maharashtra V. Bhaurao Punjabrao Gawande**¹, **Kishori Mohan Bera V. State of West Bengal**,² **Munagala Yadamma V. State of A.P.**³ & **Rapolu Mahalakshmi V. State of Telangana**⁴).

11. In the case of **Ram Manohar Lohia v. State of Bihar**,⁵ the Hon'ble Supreme Court has deprecated the invoking of the preventive law in order to tackle a law and order problem. The Hon'ble Supreme Court at para 54 has observed as under:-

"54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order.

¹ (2008) 3 SCC 613

² (1972) 3 SCC 845

³ (2012) 2 SCC 386

⁴ 2019 (2) ALD (Cr.) 950 (T.B.)

⁵ AIR 1966 SC 740

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."

12. In the case of *Kanu Biswas v. State of West Bengal*¹⁶, the Hon'ble 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 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 'ordre 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?

13. It is true that due to the incidents of robbery and extortion, the road users, commuters, drivers and the local people in the locality get panicked and scared to move out from their houses fearing extortion and robbery at knife point. People are frightened even to go to markets, shopping, thereby adversely affecting the public order and leaving large section of people specially women

¹⁶ 1972 3 SCC 831

and late night workers under grip of fear and shock as grave the offences are.

14. But in the instant case the offences are within the ambit and scope of the word 'law and order' and relates to snatching of mobile phones which can be adequately dealt with under the penal laws of IPC, the detenu can be tried and convicted for such offences. In the circumstances, we are of the considered view that there was no need for the detaining authority to invoke the draconian preventive detention law against the detenu.

15. On the above analysis of the matter, the order passed by the 2nd respondent vide order of detention No.19/PD-CELL/CYB/2020, dated 21-06-2020 Act") and the consequential confirmation order passed by the 1st respondent are not valid, as such they are quashed. The detenu is directed to be released from the preventive custody provided he is not required in connection with any other criminal case. The writ petition no.19296 of 2020 is allowed. In view of the orders passed in WP No.19296 of 2020, no further orders are necessary in WP No.17307 of 2020 and it is accordingly closed. Miscellaneous, if any pending, shall also stand disposed of. There shall be no order as to costs.

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Sd/- K. SAILESHI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Principal Secretary (Political), General Administration Department, State of Telangana, Telangana Secretariat, Hyderabad.
2. The Commissioner of Police, Cyberabad Commissionerate.
3. The Superintendent, Central Prison, Cheriapalli, Medchal District. (By Special Messenger)
4. One CC to Srmt. B Mohana Reddy Advocate [OPUC]
5. Two CCs to the Advocate General, High Court for the State of Telangana. [OUT]
6. Two CCs to GP For Home, High Court for the State of Telangana. [OUT]
7. One CC to Sri Pasham Trivikram Reddy, Advocate (OPUC)
8. Two CD Copies

MBC



HIGH COURT

ARR,J
&
Dr.SA,J

DATED: 26/02/2021



COMMON ORDER

WP NOS: 19296 AND 17307 OF 2020

ALLOWING THE WP NO.19296 OF 2020
&
CLOSING THE WP NO.17307 OF 2020

11
KMA
26/02/2021