

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: 21994, 18581, 20305 AND 24476 OF 2020

WP NO.21994 OF 2020:

Between:

Ahmed Khan (F/o. (Detenu) Amer Khan), S/o. Late. Abdul Basith Khan, Aged about 55 years, Occ. Ladies Tailor, R/o H.No.20-5-398 to 401, Roop Lal Bazar, Shah Ali Banda, Hyderabad, Telangana State.

AND

...PETITIONER

1. The State of Telangana, Represented by its Principal Secretary, General Administration Department Law and Order, Secretariat, Hyderabad.
2. The Commissioner of Police and Additional District Magistrate Executive, Hyderabad District.
3. The Superintendent Central Prison, Chanchalguda, Hyderabad.

...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 Orders more particularly one in the nature Writ of Habeas Corpus directing the respondents to release the Detenu forthwith by setting aside the order of detention passed by the 2nd respondent vide proceedings SB (I) No.138/PD-6/HYD/2020, dated 21/09/2020, and its consequential Proceedings Vide G.O.R.T. No.1938 General Administration (Spl (Law and Order) Department, Dated 14.12.2020 Passed by 1st Respondent declaring the detention order dated 21.09.2020 and its Consequential Confirmation Order dated 14.12.2020 are illegal, arbitrary, discriminatory and unsustainable in the eye of law as it is contrary to the Article 21 of the Constitution of India

(Prayer is Amended as per Court Order Dated 28/1/2021 in IA No1 of 2021 In WP No 21994 of 2020)

Counsel for the Petitioner: SRI MOHAMMED HABEEBUDDIN

Counsel for Respondents: SRI T. SRIKANTH REDDY, GP FOR HOME FOR ADDL ADVOCATE GENERAL

WP NO: 18581 OF 2020

Between:

Syed Rafi, W/o. Syed Thaisin, Aged 24 yrs., Occu. Private employee, R/o. H.No.23-1-689/A, Moghal pura, Near Fire station, Charminar, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary (Pol), GAD Secretariat, Hyderabad.

2. The Commissioner of Police, Hyderabad city.
3. The Superintendent, Central Prison, Chanchalguda, Hyderabad.

...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 the nature of WRIT OF HABEAS CORPUS, declaring the Detention Order passed by the 2nd Respondent herein in S.B.(1) No.137/PD-6/HYD/2020 dt. 21.9.2020 as Confirmed by the 1st Respondent in G.O.RT.No.1851 General Administration (Spl Law and Order) Department dt 28/11/2020 as illegal, arbitrary and violative of Art.21 of Constitution of India and consequently direct the Respondents to set the detenu Syed Fayaz Imran @ Fayaz @ Fajju s/o Syed Thaisin, aged 25 yrs, Occ. Auto Driver R/o H.No.22-3-736, Lane beside Iqbal Hotel, Purani Havelli, Hyderabad at liberty forthwith who is lodged in Central Prison, Chanchalguda, Hyderabad;

(Prayer is amended as per Court Order Dated 05/02/2021 Vide IA No 2 of 2020 in WP No 18581 of 2020)

Counsel for the Petitioner: SRI RAJ KUMAR RUDRA

Counsel for Respondents: SRI T. SRIKANTH REDDY, GP FOR HOME FOR ADDL ADVOCATE GENERAL

WP NO: 20305 OF 2020

Between:

Syed Mustafa Hussain, S/o Syed Khaliq Hussain, A/a. 24 yrs, Occ. Technician at Dental Clinic, R/o H.No. 23-1-688, Near Fire Station, Moghalpura, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Spl. Chief Secretary (Pol), GAD Department, Secretariat, Hyderabad.
2. The Commissioner of Police, Hyderabad Commissionerate.
3. The Superintendent, Central Prison, Chanchalguda, Hyderabad.

...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 the nature of Writ of Habeas Corpus directing the respondents to produce Syed Abdul Khader Hussain @ Faisal S/o. Syed Khaliq Hussain, now detained at central prison, Chanchalguda, Hyderabad, before this Honourable Court and he may be ordered to be released forthwith, set at liberty after declaring his detention vide No.SB (1) No. 140/PD-6/HYD/2020, dated. 21-09-2020 passed by the 2nd Respondent as illegal and arbitrary unconstitutional and void.

Counsel for the Petitioner: SRI MIRZA SAFIULLA BAIG

Counsel for Respondents: SRI T. SRIKANTH, GP FOR HOME FOR ADDL ADVOCATE GENERAL

Between:

Syed Feroz Pasha, S/o. Syed Chand Pasha Aged about 31 years, Occ. Cook,
R/o. H.No.18-7-423/A/918, Aman Nagar-B, Talabkatta, Hyderabad,
AND

...PETITIONER

1. The State of Telangana, Through General Administration (SPL.(Law and Order)) Department, Rep. by its Principal Secretary, Secretariat buildings, Hyderabad.
2. The Commissioner Of Police, Hyderabad City, Hyderabad, Telangana.

...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 or any other appropriate Writ Order or direction, declaring the detention order bearing SB(I) No.136/PD-6/HYD/2020, dated 21.09.2020 of the 2nd respondent, which is confirmed by the 1st respondent vide G.O. Rt No.1884 dated 05.12.2020, against Syed Farooq Pasha S/o. Syed Chand Pasha, as illegal, unconstitutional and consequently direct the respondents to produce detenue namely Syed Farooq Pasha S/o. Syed Chand Pasha, before this Honble Court, who is illegally detained at Chanchalguda Central Prison, Hyderabad District, Telangana, and set him free forthwith

Counsel for the Petitioner: SRI MOHD ISLAMUDDIN ANSARI

**Counsel for Respondents: SRI T. SRIKANTH, GP FOR HOME
ADDL ADVOCATE GENERAL**

The Court made the following: COMMON ORDER

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

**WRIT PETITION Nos.21994, 18581, 20305 AND
24476 OF 2020**

COMMON ORDER: (Per Hon'ble Dr.SA,J)

Though the petitioners in these Writ Petitions are different, the issue involved is same and therefore, all the Writ Petitions are being taken up together and disposed of by way of this common order.

2. W.P.No.21994 of 2020 is filed by Ahmed Khan, who is the father of the detenu, namely, Amor Khan; W.P.No.18581 of 2020 is filed by Syed Rañ, who is the mother of the detenu, namely, Syed Fayaz Imran @ Fayaz @ Fajju; W.P.No.20305 of 2020 is filed by Syed Mustafa Hussain, who is the brother of the detenu, namely, Syed Abdul Khader Hussain @ Faisal; and W.P.No.24476 of 2020 is filed by Syed Feroz Pasha, who is the elder brother of the detenu, namely, Syed Farooq Pasha. The petitioners herein filed the present Habeas Corpus petitions challenging the separate detention orders of even date, dated 21.09.2020, passed by the respondent No.2, Commissioner of Police, Hyderabad, and the consequential confirmation orders, dated 14.12.2020, 28.11.2020, 18.11.2020 and 05.12.2020, respectively passed by the respondent No.1, Principal Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana.

3. We have heard the submissions of Sri Mohammed Habeebuddin, learned counsel for the petitioner in W.P.No.21994 of 2020, Sri Raj Kumar Rudra, learned counsel for the petitioner in W.P.No.18581 of 2020, Sri Mirza Saifiulla Baig, learned counsel for the petitioner in W.P.No.20305 of 2020 and Sri Mohd. Islamuddin Ansari, learned counsel for the petitioner in W.P.No.24476 of 2020 and Sri T.Srikanth Reddy, learned Government Pleader for Home, appearing on behalf of the respondents, in all these writ petitions and perused the record.

4. Briefly, the facts of the case are that by relying on a single criminal case registered against the detenus in Crime No.223 of 2020 of Afzalgunj Police Station, Hyderabad City, the respondent No.2-Commissioner of Police, Hyderabad, passed the separate impugned detention orders of even date, dated 21.09.2020. According to the respondent No.2, the detenus are 'Dacoits' and they have committed a dacoity along with their associates in an organized manner in the limits of Hyderabad Police Commissionerate by creating large scale fear, terror and panic in the minds of general public. With a view to prevent the detenus from acting in a manner prejudicial to the maintenance of public order, the impugned detention orders of even date, dated 21.09.2020, were passed. The impugned detention orders were confirmed by the respondent No.1-Principal Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, vide orders dated

14.12.2020, 28.11.2020, 18.11.2020 and 05.12.2020 respectively.

Hence, these Writ Petitions before this Court.

5. Learned counsel for the petitioners jointly contended that the impugned detention orders were passed against the detenus by relying on a single criminal case i.e., Crime No.223 of 2020 of Afzalgunj Police Station, Hyderabad, registered for the offence punishable under Section 395 read with 397 of I.P.C. The detenus were released on bail in the aforesaid crime on 30.07.2020, 29.07.2020, 29.07.2020 and 31.07.2020 respectively on certain conditions. There is no allegation that during this period the detenus involved in any prejudicial activity or that they have violated the bail conditions. The State never sought cancellation of their bails at any point of time. The detaining authority, without appreciating the material on record, mechanically passed the impugned detention orders. The criminal case registered against the detenus cannot be termed as disturbance to public order. The detaining authority, without there being any material on record, was of the apprehension that since the detenus were released on bail in the aforesaid criminal case, there is every possibility of the detenus violating the bail conditions and committing similar offences. The ordinary law was already invoked against the detenus to curb their illegal activities and invoking the preventive detention law, as an alternative method, is abuse of process of law. The impugned detention orders and the consequential confirmation orders are unsustainable and the same are liable to be set aside.

6. On the other hand, learned Government Pleader for Home, would submit that the detenus have committed a dacoity along with their associates in an organized manner in the limits of Hyderabad Police Commissionerate and thereby created large scale fear, terror and panic in the minds of general public, apart from disturbing the peace and tranquility in the society. The detaining authority considering the facts that the criminal case registered against the detenus under the ordinary law had no deterrent effect in curbing their prejudicial activities; that they were already granted bail in the aforesaid case and that there is every possibility of their indulging in similar prejudicial activities, passed the impugned detention orders in the interest of public at large. Further, the aforesaid crime was registered against the detenus for the offence punishable under Section 395 read with 397 of IPC and therefore, the detenus are 'Dacoits'. The cases of the detenus were referred to the Advisory Board. After hearing the detenus and the investigating officer, the Advisory Board rendered its report/opinion, whereby and whereunder, the Advisory Board opined that there is sufficient cause for detention of the detenus. The Government, upon receipt of the report/opinion from the Advisory Board and upon considering the entire material, confirmed the impugned detention orders of even date, dated 21.09.2020. The detaining authority was legally justified in passing the impugned detention orders. There are no grounds to grant the relief sought by the petitioners and ultimately prayed to dismiss the Writ Petitions.

7. In view of the submissions made by both the sides, the point that arises for determination in these Writ Petitions is:

"Whether the detention orders of even date, dated 21.09.2020, passed by the respondent No.2 and the confirmation orders, dated 14.12.2020, 28.11.2020, 18.11.2020 and 05.12.2020, passed by the respondent No.1, are liable to be set aside?"

POINT:

8. 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 which are committed against a particular individual fall within the ambit of "law and order". It is only when the public at large is adversely affected by the criminal activities of a person, the conduct of a person is 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. For the invoking of such law adversely affects the fundamental right of personal liberty which is protected and promoted by Article 21 of the Constitution of India. Hence, according to the Honourable Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

9. In the case of **Ram Manohar Lohia v. State of Bihar¹**, the Honourable Supreme Court has, in fact, deprecated the invoking of the preventive law in order to tackle a law and order problem. The Hon'ble Supreme Court has observed as under:

¹ AIR 1966 SC 740

"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. 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."

10. In the case of **Kanu Biswas v. State of West Bengal**², the Honourable Supreme Court has opined as under:

7

"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 '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?"

11. In the present case, the detaining authority relied on a single case vide Crime No.223/2020 of Afzalgunj Police Station, Hyderabad City, for preventively detaining the detenus. We shall present it in a tabular column, 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
Crime No. 223/ 2020 of Afzalgunj Police Station	05.07.2020	05.07.2020	395 read with 397 of IPC.	Non-bailable/ cognizable

12. It is appropriate to refer 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 or omission because, the idea of 'habit' involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omission in question are not of the same kind or even if they are of

³ (1984) 3 SCC 14

the same kind when they are committed with a long interval of time between them, they cannot be treated as habitual ones.

13. A bare perusal of the impugned detention orders clearly reveal that the detenus were granted bail in the aforesaid crime. The detention orders were passed on even date, dated 21.09.2020 i.e., about two months after the release of the detenus on bail. As per the submissions made on behalf of the detenus, bails were granted to them on certain conditions and those conditions were not violated by them. There is also no allegation that after their release on bail in the aforesaid crime, the detenus have involved in any crime or criminal activity. However, the apprehension of the detaining authority that even in future the detenus would indulge in similar prejudicial activities unless they are 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 an accused and to handover the history-sheet of the accused. If the Police were vigilant enough to collect the data on the alleged offenders, and to furnish the relevant information to the learned Public Prosecutors, the same could be placed by the learned Public Prosecutors before the concerned Court. However, it is the Police that have to take required measures to inform the Public Prosecutor about the criminal history of the offender. For the inaction of the Police, the detaining authority cannot be permitted to invoke the preventive detention laws, in order to breach the liberty of an individual.

14. Grave as the offence may be, they relate to dacoity and robbery, with attempt to cause death or grievous hurt. So, no inference of disturbance of public order can be drawn against the detenus. The instant case can be tried under the normal criminal law.

15. Under these circumstances, there was no need for the detaining authority to pass the impugned detention orders. The impugned detention orders of even date, dated 21.09.2020, suffer from non-application of mind. Therefore, for the reasons stated above, the impugned detention orders and the consequential confirmation orders are legally unsustainable.

16. In the result, the Writ Petition Nos.21994, 18581, 20305 and 24476 of 2020 are allowed. The impugned detention orders vide SB(I) No.138/PD-6/HYD/2020, dated 21.09.2020; SB(I) No.137/PD-6/HYD/2020, dated 21.09.2020; SB(I) No.140/PD-6/HYD/2020, dated 21.09.2020 and SB(I) No.136/PD-6/HYD/2020, dated 21.09.2020 respectively, passed by respondent No.2, and the consequential confirmation orders vide G.O.Rt.No.1938, General Administration (Spl. (Law & Order)) Department, dated 14.12.2020; G.O.Rt.No.1851, General Administration (Spl. (Law & Order)) Department, dated 28.11.2020; G.O.Rt.No.1799, General Administration (Spl. (Law & Order)) Department, dated 18.11.2020 and G.O.Rt.No.1884, General Administration (Spl. (Law & Order)) Department, dated 05.12.2020 respectively, passed by the respondent No.1, are hereby set aside. The respondents are directed to set the *detenus*, namely, Amer Khan, S/o Ahmed Khan,

Syed Fayaz Imran @ Fayaz @ Fajju, S/o Syed Thaisin, Syed Abdul Khader Hussain @ Faisal, S/o Syed Khalid Hussain and Syed Farooq Pasha, S/o Syed Chand Pasha, at liberty forthwith, if they are no longer required in any other criminal case.

The miscellaneous petitions pending in these writ petitions, if any, shall stand closed. There shall be no order as to costs.

SD/-K.VENKAIAH
ASSISTANT REGISTRAR

GP
//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, General Administration Department Law and Order, State of Telangana Secretariat, Hyderabad.
2. The Commissioner of Police and Additional District Magistrate Executive, Hyderabad District.
3. The Principal Secretary (Poll), GAD Department, State of Telangana, Secretariat, Hyderabad.
4. The Spl. Chief Secretary (Poll), GAD Department, State of Telangana, Secretariat, Hyderabad.
5. The Superintendent Central Prison, Chanchalguda, Hyderabad.
6. One CC to Sri Mohammed Habeebuddin Advocate [OPUC]
7. Two CCs to the Advocate General, High Court for the State of Telangana. [OUT]
8. Two CCs to GP For Home, High Court for the State of Telangana. [OUT]
9. One CC to Sri Mirza Saifullah Baig, Advocate (OPUC)
10. One CC to Sri Raj Kumar Rudra, Advocate (OPUC)
11. One CC to Sri Mohd. Islamuddin Ansari, Advocate (OPUC)
12. Two CD Copies

MBC

HIGH COURT

DATED: 26/02/2021



COMMON ORDER

**WP NOS: 21994, 18581, 20305 AND
24476 OF 2020**

ALLOWING THE WRIT PETITIONS

WITHOUT COSTS

15
26/02/2021
08/04/2021