

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

FRIDAY, THE TWENTY NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER
AND
THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI

WRIT PETITION NO: 14131 OF 2022

Between:

Cheerla Radha, W/o. Cheerla Eshwaraiah, aged 31 years, Occ. Labour, R/o. Peddagudem Village, Wanaparthy Mandal and District, Telangana State

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, General Administration (Spl. (Law and Order) Department, Secretariat, Hyderabad).
2. The Collector and District Magistrate (Executive), Wanaparthy District.
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 detenu i.e. Cheerla Eshwaraiah now detained in Central Prison Cherlapally, Medchal - Malkajgiri District before this Honble Court and set-aside the impugned detention order passed by the 2nd Respondent vide C.No.547/2021, dt. 12-06-2021 and Confirmation Order Vide G.O.Rt.No. 1982, dated 02-09-2021 passed by the 1st Respondent as being illegal, arbitrary, improper, unilateral, unconstitutional and violative of Article 21 and 22 of the Constitution of India and to forthwith release the Detenu and to grant

Counsel for the Petitioner: SRI. PASHAM TRIVIKRAM REDDY

Counsel for the Respondents: AGP FOR HOME REP.

ADDL. ADVOCATE GENERAL

The Court made the following:

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

WRIT PETITION No.14131 OF 2022

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

Smt Cheerla Radha, the petitioner, has filed this Habeas Corpus Petition on behalf of her husband, Cheerla Eswaraiah, S/o. Uppari Krishnaiah, the detenu, challenging the detention order vide C.Mo 547/2021, dated 12.06.2021, passed by the respondent No 2-Collector and District Magistrate, Wanaparthy District, whereby, the detenu 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.1982, General Administration (Spl. (Law & Order)) Department, dated 02.09.2021, passed by the respondent No.1-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 representing the learned Additional Advocate General appearing for the respondents and perused the record.

3. The case of the petitioner is that out of 22 crimes registered against the detenu during the years 2019 and 2020, basing on five crimes viz., Crime Nos.251, 252, 254 and 257 of 2020 of Wanaparthy Town Police Station and Crime No.189 of 2020 of Gopalpet Police Station of Wanaparthy District, registered for the offence under Section 379 of I.P.C., the respondent No.2 passed the impugned detention order, dated 12.06.2021. According to respondent No.2, the detenu is a 'Goonda', as he has been habitually committing series of offences of theft of two-wheeler vehicles in the limits of Wanaparthy District, thereby causing large scale fear and panic among the general public and thus, acting in a manner prejudicial to the maintenance of public order, apart from disturbing peace, tranquility and social harmony in the society. Subsequently, the impugned detention order was confirmed by the Government vide G.O.Rt.No.1982, dated 02.09.2021.

4. Learned counsel for the petitioner would contend that by relying on five cases registered against the detenu in the year 2020, the impugned detention order was passed. The alleged cases do not add up to "disturbing the public order". They are confined within the ambit and scope of the word "law and order".

Since the offence alleged is under the Indian Penal Code, the detenu can certainly be tried and convicted under the Indian Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law. Hence, the impugned orders tantamount to colourable exercise of power. Further, the detenu was granted bail by the Courts concerned in all the five crimes relied on by the detaining authority. But he was again sent to jail by invoking the draconian preventive detention law on the apprehension that there is imminent possibility of his committing similar offence, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention, which is unjustified. The impugned detention order has been passed without proper application of mind. Already criminal law was set into motion against the detenu. Since the offence alleged is under the Indian Penal Code, the detenu can certainly be tried and convicted under the Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law against the detenu. 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 detenu is a 'Goonda'. He has been habitually committing theft of two-wheeler vehicles in the limits of Wanaparthy District, thereby creating large scale fear and panic among the general public. The series of crimes allegedly committed by the detenu were prejudicial to the maintenance of public order, apart from disturbing the peace, tranquility, and social harmony in the Society. Since the *modus* of committing the crimes was theft of two-wheeler vehicles, it has created sufficient panic in the minds of 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 detenu and on considering the same along with the entire material, the Government confirmed the impugned detention order. 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 C.No.54/2021, dated 12.06.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1982, General Administration (Spl. (Law & Order)) Department, dated 02.09.2021, passed by the respondent No.1, 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 five crimes indicated above, passed the impugned detention order, dated 12.06.2021. We shall present them in a tabular form the date of occurrence, the date of registration of FIR, the offence

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

complained of and its nature, such as bailable/non-bailable or cognizable/nor-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
251/2020 of Wanaparthy Town PS	13.12.2020	20.12.2020	Section 379 of IPC	Cognizable/ Non Bailable
252/2020 of Wanaparthy Town PS	10.12.2020	21.12.2020	Section 379 of IPC	Cognizable/ Non Bailable
254/2020 of Wanaparthy Town PS	12.12.2020	21.12.2020	Section 379 of IPC	Cognizable/ Non Bailable
257/2020 of Wanaparthy Town PS	20.12.2020	24.12.2020	Section 379 of IPC	Cognizable/ Non Bailable
189/2020 of Gopalpet PS	20.12.2020	21.12.2020	Section 379 of IPC	Cognizable/ Non Bailable

11. As seen from the material placed on record, all the crimes relied upon by the detaining authority for preventively detaining the detenu relate to theft of two-wheeler vehicles. The detenu was arrested in connection with Crime No.257 of 2020 of Wanaparthy Town Police Station on 25.12.2020 and his arrest was regularized in the remaining four cases through PT warrants. Subsequently, the detenu got bail in all the five crimes relied on by the detaining authority by the Courts concerned and he was released from jail. It is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of the detenu and to handover the entire case record available against the detenu. The police are supposed to be vigilant in collecting the whole data

against the detenu and furnish the same to the Public Prosecutor/Additional Public Prosecutor to defeat the bail application/s of the detenu. Under these circumstances, the apprehension of the detaining authority that since the detenu was released on bail, there is imminent possibility of his committing similar offence, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. Moreover, criminal law was already set into motion against the detenu. Further, since the detenu has allegedly committed the offence punishable under the Indian Penal Code, the said crimes can be effectively dealt with under the provisions of the Penal Code and there was no need for the detaining authority to invoke the draconian preventive detention law. The offence allegedly committed by the detenu in all the crimes relied on by the detaining authority does not fall within the ambit of the words "public order" or "disturbance of public order". Instead, it falls within the scope of the word "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 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 C.No.547/2021, dated 12.06.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1982, General Administration (Spl. (Law & Order)) Department, dated 02.09.2021, passed by the respondent No.1, are hereby set aside. The respondents are directed to set the *detenu*, namely Cheerla Eshwaraiah, S/o. Uppar Krishnaiah, at liberty forthwith, if he 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.

**Sd/- N. CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR**

NOTE: That wrong fair copy has been put up to the order dated 29.04.2022 in W.P.No.14131 of 2022 while comparing and the same has been corrected *Suo Motu*. This amended order shall substitute the earlier order which has already been dispatched on 08.08.2022.

**Sd/- N. CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR**

//TRUE COPY//

**SD
SECTION OFFICER**

To,

1. The Principal Secretary, General Administration (Spl. (Law and Order) Department State of Telangana, Secretariat, Hyderabad
2. The Collector and District Magistrate (Executive), Wanaparthy District.
3. The Superintendent, Central Prison Cherlapally, Medchal - Malkajgiri District.
4. One CC to Sri. Pasham Trivikram Reddy, Advocate [OPUC]
5. Two CCs to GP for Home, High Court for the State of Telangana. [OUT]
6. Two CCs to the Advocate General, High Court for the State of Telangana. [OUT]
7. Two CD Copies

HIGH COURT

Dr.SA,J
&
JS,J

DATED:29/04/2022



AMENDED ORDER

WP.No.14131 of 2022

Allowing the WP
Without costs.

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MIA
14/6/23