

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

**MONDAY, THE THIRTY FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

**THE HONOURABLE SRI JUSTICE A.ABHISHEK REDDY
AND
THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI**

WRIT PETITION NO: 24094 OF 2022

Between:

Kalakolla Alias Takkari @ Mukku Mahesh, S/o. Late Uppalaiah, aged 32 years, Occ. Auto Driver, R/o. H.No. 20-4-100, SC Wada, West Fort, Khila Warangal.

...PETITIONER

AND

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), Warangal 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 detenue i.e. Kalakolla @ Takkari @ Mukku Mahesh now detained in Central Prison Cherlapally, Medchal - Malkajgiri District before this Hon'ble Court and set-aside the impugned detention order passed by the 2nd Respondent vide C.No. 91/WRC/CSB-XI/2022, dt.09-02-2022 and Consequential order passed by 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 Detenue.

IA NO: 1 OF 2022

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 permit me to amend the prayer in the main writ affidavit, by removing words "Consequential order" and by adding words as "confirmation Order vide G.O.Rt. No. 991, dated 09/05/2022" in its place, in the interest of justice.

Counsel for the Petitioner: M/s. R.SOWMYA REDDY

Counsel for the Respondents: ADDL ADVOCATE GENERAL

The Court made the following: ORDER

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

THE HON'BLE SMT JUSTICE JUVVADI SRIDEVI

WRIT PETITION No.24094 of 2022

ORDER: {Per the Hon'ble Sri Justice A.Abbhishek Reddy}

Sri Kalakotla @ Takkari @ Mukku Mahesh, S/o. late Uppalaiah, the detenu, has filed this Habeas Corpus petition, challenging the detention order *vide* C.No.91/WRC/CSB-XI/2022, dated 09.02.2022, passed by the respondent No.2-Commissioner of Police & Additional District Magistrate, Warangal, whereby, the detenu was detained under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, 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 (for short, 'the PD Act'), and the consequential confirmation order *vide* G.O.Rt.No.991, dated 09.05.2022, 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 petitioner and the learned Special Government Pleader appearing on behalf of the learned Additional Advocate General for the respondents and perused the record.

3. The case of the petitioner is that basing on four crimes viz., Crime Nos.163 and 192 of 2021 of Geesugonda Police Station and Crime Nos.328 and 329 of 2021 of Mills Colony Police Station, the respondent No.2 passed the impugned detention order, dated 09.02.2022. According to the respondent No.2, the detenu is a 'Goonda', as he has been habitually committing offences including stalking, burglaries and extortion in the limits of Waranga Police Commissionerate. The detenu has been creating widespread fear and panic among the people by committing such offences and thus, he has been acting in a manner prejudicial to the maintenance of public order apart from disturbing the peace, tranquility and social harmony in the society. Subsequently, the impugned detention order was confirmed by the Government vide G.O.Rt.No.991, dated 09.05.2022.

4. Learned counsel for the petitioner would contend that the impugned detention order has been passed in a mechanical manner and without application of mind. Already criminal law was set in motion against the detenu. The detenu was granted conditional bail by the Court concerned

in Crime No.328 of 2021, but, he has not moved any bail application in the remaining three crimes. Thus, as on the date of passing of the impugned detention order, the alleged detenu continues to be in judicial custody. Therefore, the apprehension of the detaining authority that there is imminent possibility of the detenu again indulging in similar offences is unjustified. The alleged crimes do not add up to "disturbing the public order" and they are confined within the ambit and scope of the word "law and order". Since the offences alleged are under the Indian Penal Code and Prevention of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act'), the detenu can certainly be tried and convicted under the penal code and the said special law. 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 appearing for the respondents supported the impugned orders and submitted that the detenu is a 'Goonda', as he has been habitually committing offences including stalking, burglaries and extortion in the limits of Warangal Police Commissionerate, thereby, creating widespread

fear and panic among the general public and thus, he has been acting in a manner prejudicial to the maintenance of public order apart from disturbing the peace, tranquility and social harmony in the society. Therefore, the apprehension of the detaining authority that there is imminent possibility of the detenu indulging in similar offences is not misconceived. The series of crimes allegedly committed by the detenu were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crime was stalking, burglaries and extortion, it has created widespread fear and panic among 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 *vide* G.O.Rt.No.991, dated 09.05.2022. 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:91/WRC/CSB-XI/2022, dated 09.02.2022, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.991, dated 09.05.2022, 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 nature of the act upon the Society.

10. In the present case, the detaining authority, basing on four crimes indicated above, has passed the impugned detention order, dated 09.02.2022. We shall present them in a tabular form 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.

¹AIR 1966 SC 740

²(1972) 3 SCC 83

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
163/2021 of Geesugonda PS	06.07.2021	07.07.2021	Sections 454 and 380 of IPC	Cognizable/ Non Bailable
192/2021 of Geesugonda PS	10.08.2021	10.08.2021	Sections 454 and 380 of IPC	Cognizable/ Non Bailable
328/2021 of Mills Colony PS	11.09.2021	11.09.2021	Sections 354-D, 509, 506 of IPC and Section 11 r/w Section 12 of POCSO Act	Section 354-D & 509: Cognizable/ Bailable Section 506: Non Cognizable/ Bailable Section 11 of POCSO: Cognizable/ Non Bailable
329/2021 of Mills Colony PS	22.07.2021	12.09.2021	Sections 384 of IPC and Section 102 of Cr.P.C.	Cognizable/ Bailable

11. As seen from the material placed on record, the crimes relied upon by the detaining authority for preventively detaining the detenu relate to stalking, burglaries and extortion. Though the detenu has moved bail application in Crime No.328 of 2021 and was granted conditional bail by the Court concerned, in the remaining three crimes i.e., Crime Nos.163, 192 and 329 of 2021, the detenu had not moved any bail applications. Thus, the

detenu continues to be in judicial custody. Under these circumstances, the apprehension of the detaining authority that there is imminent possibility of the detenu involving in similar offences, which would be detrimental to public order, unless he is 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 the detenu and to hand over the entire case record available against the detenu. Moreover, criminal law was already set in motion against the detenu. Further, since the detenu has allegedly committed offences punishable under the Indian Penal Code and POCSO Act, the said crimes can be effectively dealt with under the provisions of the Penal code and the said special law and there was no need for the detaining authority to invoke the draconian preventive detention law. Thus, the offences allegedly committed by the detenu in the four crimes relied upon by the detaining authority do not fall within the ambit of the words "public order" or "disturbance of public order". Instead, they fall within the scope of the words "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.91/WRC/CSB-XI/2022, dated 09.02.2022, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.991, dated 09.05.2022, passed by the respondent No.1, are hereby set aside. The respondents are directed to set the *detenu*, namely Kalakotla @ Takkari @ Mukku Mahesh, S/o. late Uppalaiah, 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.

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SD/-P.GOWRI SHANKAR
ASSISTANT REGISTRAR

SECTION OFFICER

To

1. The Principal Secretary, General Administration (Spl. (Law and Order) Department, Secretariat, Hyderabad, State of Telangana.
2. The Commissioner of Police and Additional District Magistrate (Executive), Warangal District.
3. The Superintendent, Central Prison Cherlapally, Medchal - Malkajgiri District.
4. Two CC to THE ADDITIONAL ADVOCATE GENERAL, High Court for the State of Telangana, at Hyderabad. [OUT]
5. One CC to SRI R.SOWMYA REDDY, Advocate [OPUC]
6. Two CD Copies

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HIGH COURT

DATED:31/10/2022

ORDER

WP.No.24094 of 2022



ALLOWING THE WRIT PETITION
WITHOUT COSTS.

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