

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

TUESDAY, THE THIRTY FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE K. SUJANA

WRIT PETITION NO: 25315 OF 2023

Between:

Ramappa, S/o. Hulagappa, Aged 54 years, Occ. Fruit Business, R/o. PNT Colony, Station Bazar Police Station, Gulbarga, Yadagir District, Karnataka State.

...PETITIONER

AND

1. The State of Telangana, Rep. by Principal Secretary to Government, General Administration Department Spl (Law and Order), Telangana Secretariat, Hyderabad.
2. The Director General of Police, Telangana State, Hyderabad.
3. Commissioner of Police, Cyberabad Commissionerate, Hyderabad.
4. The Superintendent of Central Prisons, Central Prison Cherlapally, Medchal-Malkajgiri Dist.

...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 in the nature of writ of Habeas Corpus directing the Respondents to produce the Rahul S/o. Ramappa, aged 19 years, PNT Colony, Station Bazar, Police Station, Gulbarga, Yadagir District, Karnataka State (Who is herein referred as Detenu No. 2142) by virtue of order of detention passed by the Respondent No.1 vide Detention order G.O. Rt. No. 1082, G.A. (Spl.(Law and Order) Department , dt. 02-08-2023 and consequently direct the Superintendent Jail i.e., 4th Respondent to forthwith release him by declaring his detention is illegal, arbitrary, unconstitutional and in violation of the Fundamental Rights guaranteed under Art.. 19, 21, and 22 of the Constitution of India.

Counsel for the Petitioner : SRI CH.VIDYA SAGAR RAO,
rep., SRI P.SRIHARINATH

Counsel for the Respondents: SRI MUJIB KUMAR SADASIVUNI, SPL. GP,
rep., ADDL ADVOCATE GENERAL

The Court made the following: ORDER

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HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE K. SUJANA

WRIT PETITION No.25315 OF 2023

ORDER: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. Ch. Vidya Sagar Rao, learned counsel representing Mr. P. Sriharinath, learned counsel for the petitioner and Mr. Mujib Kumar Sadasivuni, learned Special Government Pleader representing learned Additional Advocate General appearing on behalf of the respondents.

2. This writ petition is filed to issue a writ of *habeas corpus* directing the respondents to produce detenu *viz.*,, Rahul S/o Ramappa, now detained in Central Prison, Cherlapally, Medchal - Malkajgiri District, by setting aside the order of detention dated 16.04.2023 passed by respondent No.3 and the consequential confirmation order passed by respondent No.1 vide G.O.Rt.No.1082, GA (Spl. Law & Order) Department, dated 02.08.2023, declaring it as illegal.

3. Respondent No.3 had passed the impugned detention order dated 16.04.2023 against the detenu under the provisions of Section - 3 (2) of the Telangana Prevention of Dangerous Activities of Boot-

leggers, 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 (for short 'Act No.1 of 1986'), under the category of 'Goonda' defined under Section - 2 (g).

4. The impugned detention order was passed by respondent No.3 - detaining authority relying on four (04) crimes committed by the detenu within a span of two (02) days i.e., 25.07.2022 to 26.07.2022.

5. Mr. Ch. Vidya Sagar Rao, learned counsel for the petitioner, would submit that the impugned detention order was issued without application of mind. In all the above cases, the bails were granted to the detenu. The detaining authority did not consider the entire material properly including the role played by the detenu in the alleged crimes. The allegations levelled against the detenu will not fall under the category of 'goonda'. The detaining authority did not serve the entire material to the detenu by translating the same into his

mother tongue which is mandatory as per the provisions of Act No.1 of 1986. Even then, the detention order was passed which is illegal. Further, the apprehension of detaining authority that the detenu may commit similar offences and his acts would disturb 'public order' is baseless. Without considering all the said aspects, respondent No.3 passed the impugned order of detention and the same was confirmed by respondent No.1 which are illegal and, therefore, the same are liable to be set aside.

6. On the other hand, Mr. Mujib Kumar Sadasivuni, learned Special Government Pleader representing learned Additional Advocate General appearing on behalf of the respondents would submit that the allegations levelled against the detenu are serious and grave in nature. To prevent him from doing similar acts in future, respondent No.3 has passed the impugned order of detention. The detaining authority, considering the entire material available on record and after arriving at the subjective satisfaction only, passed the detention order. Thus, there is no error in it.

7. Perusal of detention order dated 16.04.2023, grounds of detention, counter filed by respondent No.3 and the record would reveal that the detaining authority passed the impugned detention

order relying upon the following four (04) crimes, which were committed within a span of two (02) days i.e., from 25.07.2022 and 26.07.2022.

i) Crime No.550 of 2022 was registered by R.C. Puram Police Station for the offences punishable under Sections - 307 and 332 IPC and Sections - 25 (1B) (a) read with 3, 25 (IB) (b) read with 4 and 27 of the Indian Arms Act, 1959. The allegation levelled against the detenu and his associate is that they committed chain snatchings from lone women pedestrians moving on Pulsar bike in the limits of Gachibowli, Kukatpally and R.C. Puram Police Stations on 25.07.2022.

a) The detenu confessed to have committed the aforesaid offence. During investigation, the detenu confessed to have committed three (03) more offences *viz.*, i) Crime No.548 of 2022 of R.C. Puram Police Station; ii) Crime No.557 of 2022 of Kukatpally Police Station and iii) Crime No.977 of 2022 of Miyapur Police Station, which were relied upon by the detaining authority while issuing impugned detention order apart from Crime No.550 of 2022. He also confessed that accused No.1 is his childhood friend and both of them used to

hand out together. The detenu and his associate hatched a plan to earn easy money by committing robberies carrying firearms.

b) In the month of April, 2022, the associate of detenu informed him about the plan of committing robbery in a jewellery shop in Gulbarga and asked the detenu to join with him. Accordingly, the detenu agreed and both of them went to Uttar Pradesh, where they purchased one *Tapancha* (country-made pistol) and 13 rounds for Rs.80,000/- and left for Hyderabad on a Pulsar bike carrying a revolver, 2 rounds and one *Tapancha* and 13 rounds and committed the said offence.

c) During investigation, the police seized one Bajaj Pulsar (without number plate); one Country-made pistol; one knife; 2 Revolver live rounds; and 13 *Thapancha* live rounds. The detenu was arrested and sent to judicial custody. However, the detenu was granted conditional bail. The Investigating Officer has filed petition seeking cancellation of bail and the same is pending. After completion of investigation, the police laid charge sheet and the same was taken on file as C.C.No.75 of 2022, which is pending. The detenu is arraigned as accused No.2 in the said crime.

ii) Crime No.548 of 2022 registered for the offence punishable under Section - 392 of IPC by the very same police. The police seized two pieces of gold chain with red colour locket weighing about 22.450 grmas. The detenu is arraigned as accused No.2. The arrest of the detenu was regularized through P.T. warrant in this crime. However, the detenu was granted conditional bail. The Investigating Officer had filed a petition seeking cancellation of bail and the same is pending. After completion of investigation, the police laid charge sheet and the same was taken on file as C.C.No.2406 of 2022, which is pending.

iii) Crime No.557 of 2022 registered for the offence punishable under Section - 392 of IPC by Kukatpally Police Station. The police seized gold chain weighing 16.670 grams. The arrest of the detenu was regularized through P.T. warrant in this crime. However, the detenu was granted conditional bail. After completion of investigation, the police laid charge sheet and the same was taken on file as C.C.No.6182 of 2022, which is pending.

iv) Crime No.977 of 2022 registered for the offence punishable under Section - 392 of IPC by Miyapur Police Station. The police seized gold chain weighing 7.10 grams. The arrest of the detenu was regularized through P.T. warrant in this crime. However, the detenu

was granted conditional bail. After completion of investigation, the police laid charge sheet and the same was taken on file as C.C.No.1192 of 2023, which is pending.

8. The statements of eye-witnesses recorded under Section - 161 of the Cr.P.C. corroborated the victim's version to the effect that the detenu and his associate attempted to kill one of the eye-witnesses with a knife in order to escape from criminal liability, and thereby they were frightened and panicked by seeing the commotion and knife.

9. Apart from the aforesaid crimes, the detenu also committed the following crimes during the year 2022:

- i) Crime No.835 of 2022 was registered by Gachibowli Police Station against the detenu for the offence punishable under Section - 392 of IPC.
- ii) Crime No.978 of 2022 was registered by Miyapur Police Station for the offence punishable under Section - 398 IPC.
- iii) Crime No.89 of 2022 was registered by Ashok Nagar Police Station of Gulbarga, Karnataka State for the offences punishable under Sections - 324, 332, 353 and 307 read with 34 IPC.

iv) Crime No.92 of 2022 was registered by the very same Police Station for the offence punishable under Section - 379 of IPC.

10. The *modus operandi* adopted by the detenu and his associate is that they addicted to bad vices moving together. Both of them planned to earn easy money by committing robberies and extortion and, therefore, they bought fire arms from Pune and Uttar Pradesh. They used to move on a two-wheeler, identify the targeted women pedestrians on roads and streets and snatch their gold chains by following them from behind. If victims resist, they would threaten them with weapons and flee away from the spot. Accordingly, the detenu and his associate had moved R.C. Puram, Miyapur and Kukatpally areas of Cyberabad Commissionerate on bike and committed three chain snatchings in the said areas on 24th and 25th July, 2022. On 26th of July, 2022, while the detenu and his associate moving in R.C. Puram area near HIG Colony, two police constables tried to apprehend the detenu, but the associate of the detenu had stabbed the police personnel with knife and in a bid to escape from him. But, the police personnel managed to apprehend them with the assistance of local people.

11. In the past, the detenu had also attacked one security guard and patrolling police personnel in Karnataka State with knife and escaped.

12. Thus, the aforesaid facts would reveal that the detenu and his associate (accused No.1) were repeatedly engaging in unlawful activities by committing bodily and property offences *viz.*, robberies i.e., gold chain snatchings from lone women carrying country-made firearms and attempt to murder on a police personnel under the limits of Cyberabad Police Commissionerate and thus, acting in a manner prejudicial to the maintenance of public order thereby disturbing peace and tranquility in the area.

13. The detaining authority considering that the detenu involved in series of bodily and property offences; pendency of petitions filed seeking cancellation of bails and the detenu may commit similar offences in his limits in a manner prejudicial to the maintenance of 'public order' arrived at a conclusion that his acts terrorized all sections of people and a sense of fear prevailed among the public in the city and accordingly passed the detention order against the detenu. It is also considered by the detaining authority that the release of detenu from jail again triggered panic among the public

fearing similar offences affecting 'public order' and disturbing tranquility and peace in the society at large. Thus, the said acts committed by the detenu would certainly disturb the public order.

14. The acts committed by the detenu come under the category of 'goonda'. The object of the Act No.1 of 1986 is to provide for preventive detention of Bootleggers, Dacoits etc. including 'Goonda'. Section - 2 (g) of the Act No.1 of 1986 defines "**Goonda**", which means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter - XVI or Chapter - XVII or Chapter XXII of the IPC.

15. While passing the detention order, the detaining authority not only considered the commission of offences committed by the detenu and his associate, but also considered its impact disturbing 'public order' and also the *modus operandi* adopted by him in commission of offences. Therefore, in order to prevent the detenu from committing similar offences, the impugned detention order was passed.

16. It is not in dispute that the detaining authority shall consider the nature of offence and the manner in which it was committed. He has to consider the entire material on record and come to a subjective satisfaction while issuing detention order. The detaining authority has to draw a distinction between 'law and order' and 'public order' and disturbance to the public order due to the acts committed by detenu. In the present case, the detaining authority on consideration of entire material arrived at the subjective satisfaction with regard to causing disturbance to 'public order' on account of the acts committed by the detenu.

17. The Hon'ble Supreme Court in **Ashok Kumar v. Delhi Administration**¹ observed that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing.

18. In **Ram Manohar Lohia v. State of Bihar**², the Apex Court held as under:

“...Does the expression “public order” take in every kind of disorder or only some? The answer

¹. (1982) 2 SCC 403

². AIR 1966 SC 740

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. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those

affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

19. Perusal of record would reveal that on the request made by the detenu, the entire material was furnished to him in English language. Therefore, there is procedural irregularity committed by the detaining authority.

20. Learned counsel for the petitioner relied on the decision in **Pesala Nookaraju v. The Government of Andhra Pradesh³**. The facts of the said case are different to the facts of the present case and therefore, the same is inapplicable to the petitioner.

21. The detaining authority while invoking powers under Section - 3 (2) of the Act No.1 of 1986, has to consider the entire material on record and come to a subjective satisfaction that the acts

³. 2023 SCC OnLine SC 1003

committed by the detenu, nature of offence and the manner in which the same was committed would disturb the public order. To prevent the detenu from committing similar offences, the detaining authority shall issue preventive detention order against the detenu. This Court has to consider facts and circumstances of each case on case to case basis.

22. As discussed above, the detenu is a notorious offender and had committed the aforesaid four (04) offences of robbery, chain snatchings and an attempt to kill a police constable with country-made firearms in public places during day time within two (02) days i.e., 25.07.2022 and 26.07.2022 creating panic and scare among the public in an organized way. Thus, he had engaged in unlawful activities by committing the said bodily and property offences, which are serious and grave in nature, and thereby acting in a manner prejudicial to the maintenance of 'public order' as it disturbs peace and tranquility in the society. Further, the police also seized motorbike, country-made pistol and knife used in commission of offence committed in Crime No.550 of 2022.

23. In view of the same, it is clear that the said acts committed by the detenu would certainly create large scale panic in general

public, more particularly women folk. All the said aspects were considered by the detaining authority while passing detention order. The aspects of *modus operandi* adopted by the detenu and his associate in commission of offences and filing of petitions by the police seeking cancellation of bail granted to the detenu were also considered by the detaining authority while passing detention order. Therefore, viewed from any angle, we are of the considered view that there is no error in the impugned detention order dated 16.04.2023 passed by respondent No.3 and the consequential confirmation order dated 02.08.2023 passed by respondent No.1 vide G.O.Rt.No.1082. Thus, the writ petition fails and the same is liable to be dismissed.

24. The present writ petition is accordingly dismissed. In the circumstances of the cases, there shall be no order as to costs.

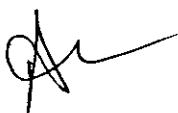
As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.

SD/- T. JAYASREE
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. One CC to SRI PALLE SRIHARINATH, Advocate. [OPUC]
2. One CC to SRI Mujib Kumar Sadasivuni, Spl. G.P, representing ADDL ADVOCATE GENERAL, High Court for the State of Telangana at Hyderabad. [OUT]
3. Two CD Copies.

BSK
GJP



HIGH COURT

DATED:31/10/2023



ORDER

WP.No.25315 of 2023

**DISMISSING THE WRIT PETITION
WITHOUT COSTS**

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PLANO
13/11/2023