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

+ Writ Petition No.18013 of 2020

% Date: 23.02.2021.

Charakonda Chinna Chennaiah

... Petitioner

Vs.

The State of Telangana and others

..Respondents

! Counsel for the Petitioner : Dr. B. Karthik Navayan

^ Counsel for the Respondent : Assistant Government Pleader for Home

>HEAD NOTE:

? Cases referred

1. AIR 1966 SC 740
2. (1972) 3 SCC 831
3. (1984) 3 SCC 14
4. AIR 1987 SC 2332

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.18013 of 2020

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

Sri Charakonda Chinna Chennaiah, the petitioner, has filed this present petition on behalf of his son, Charagonda Uday Kiran @ Uday, the *detenu*, challenging the detention order vide No.48/PD-CELL/CYB/2020, dated 28.09.2020, passed by the Commissioner of Police, Cyberabad Police Commissionerate, the respondent No.3,

2. Heard the learned counsel for the petitioner, the learned Assistant Government Pleader for Home appearing for the respondents and perused the record.

3. Briefly, the facts of the case are that by relying on a single criminal case registered against the *detenu* in the year 2020 (Crime No.452/2020 of Shadnagar Police Station), the Commissioner of Police, Cyberabad Police Commissionerate, the respondent No.3, passed the detention order dated 28.09.2020. According to the respondent No.3, the *detenu* is a 'Sexual Offender' as defined in clause (v) of Section 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 (Act 1 of 1986) and he has committed penetrative aggravated sexual assault on a minor girl by name Kum. G. Gouri, aged 13 years, for three times throughout the night on 26.06.2020, within the limits of Shadnagar Police Station of Cyberabad Police Commissionerate. Subsequently, by order dated 28.11.2020, the detention order was confirmed by the Principal Secretary to Government, General Administration (Spl. (Law and Order) Department, Government of Telangana. Hence, this writ petition before this Court.

4. Dr. B. Karthik Navayan, learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, that relying only on single case registered against the *detenu* in the year 2020, the impugned detention order is passed.

Secondly, the alleged case does not add up to "disturbing the public order". It is confined within the ambit and scope of the word "law and order". Since the offences alleged are under the Indian Penal Code and a special legislation, i.e., Protection of Children from Sexual Offences Act, 2012, the *detenu* can certainly be tried and convicted under the Penal Code and the said special legislation. Thus, there was no need for the detaining authority to invoke the draconian preventive detention

laws against the *detenu*. Hence, the impugned order tantamounts to the colourable exercise of power.

Thirdly, the detaining authority is not justified in invoking a draconian power under the preventive detention laws against the *detenu*. According to the learned counsel, the detaining authority has to be extremely careful while passing a detention order. For detention *ipso facto* adversely affects the fundamental right of personal liberty enjoyed by the people under Article 21 of the Constitution of India.

Lastly, that the impugned detention order was passed on stale grounds, in a mechanical manner and without application of mind. In the impugned detention order, though it was stated that the activities of the *detenu* is affecting the Public Order, but no reasons are assigned to come to such a conclusion. Thus, the impugned orders are legally unsustainable.

5. On the other hand, Sri G.Malla Reddy, learned Assistant Government Pleader for Home appearing on behalf of the Additional Advocate General for the respondents would submit that in the single case relied by the detaining authority for preventively detaining the *detenu*, the *detenu* managed to get bail from the Court concerned. The crime allegedly committed by the *detenu* was sufficient to cause a feeling of insecurity in the minds of the people at large. Since the *modus* of committing the crime was penetrated aggravated sexual assault on a minor girl of 13 years, it has created sufficient panic in the minds of the general public. Therefore, the detaining authority was

legally justified in passing the impugned orders. Since the *detenu* was involved in sexual offence against a minor girl, which is heinous in nature, it cannot be said that the impugned detention order was passed on stale grounds and without application of mind. Further, the Advisory Board constituted under Section 9 of Act 1 of 1986 reviewed the case and opined that there is sufficient cause for detention of the *detenu* and accordingly, the Government confirmed the detention order, vide G.O.Rt.No.1853, dated 28.11.2020. The impugned orders are legally sustainable. There are no grounds to grant the relief sought by the petitioner 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 detention order, dated 28.09.2020, passed by the respondent No.3 and the confirmation order, dated 28.11.2020, passed by the Principal Secretary to Government, General Administration (Spl. (Law and Order) Department, Government of Telangana, 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 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, is the conduct of a person 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 effects the fundamental right of personal liberty, which is protected and promoted by Article 21 of the Constitution of India. Hence, according to the Hon'ble Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

8. In the case of **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. The Hon'ble Supreme Court 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. 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

[1] AIR 1966 SC 740

> 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."

9. In the case of **Kanu Biswas v. State of West Bengal**[2], 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 '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?"

10. In the present case, the *detenu* is allegedly involved in a single criminal case in Crime No.452/2020. We shall present it in a tabular column the date of occurrence, the date of registration of FIR, the offences complained of and their nature, such as bailable/non-bailable and cognizable/non-cognizable.

Sl. No.	Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
1.	452/2020 of Shadnagar PS	Intervening night of 26/27.06.2020	27.06.2020	Sec.363, 376(2)(n) of IPC and Sec.5 r/w 6 of POCSO Act, 2012	Sections 363 & 376(2)(n) : Cognizable/ Non-Bailable Sec. 5 & 6 of POCSO Act: Cognizable/ Non-Bailable

[2] (1972) 3 SCC 831

11. Here, it is appropriate to refer the decision rendered by the Hon'ble Apex 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 the same kind when they are committed with a long interval of time between them, they cannot be treated as habitual ones.

12. A bare perusal of the impugned detention order clearly reveals that the detaining authority is concerned by the fact that in the case relied upon it for preventively detaining the *detenu*, the *detenu* was granted conditional bail by the Court concerned and he was released from prison on 22.07.2020. However, the apprehension of the detaining authority that since the *detenu* was already enlarged on bail, there is imminent possibility of his indulging in similar prejudicial activities unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. In the instant case, the *detenu* was remanded to judicial custody in the subject criminal case on 29.06.2020. His bail application vide Crl.M.P.No.456 of 2020 was allowed by the I Additional Sessions Judge, Mahabubnagar, vide order, dated 22.07.2020, on conditions, i.e., on executing a personal bond for a sum of Rs.20,000/- with two sureties for a like sum each to the satisfaction of learned Judicial Magistrate of First Class,

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[3] (1984) 3 SCC 14

Shadnagar and that he shall not leave the country without permission of the Court and that he shall not resort to any acts of influencing the witnesses or tampering with the evidence being collected by the prosecuting authority as part of the investigation. The impugned detention order was passed on 28.09.2020, i.e., after more than two months from the date of release of *detenu* on bail from judicial custody. Till the date of passing of the impugned detention order, there is no mention of violation of conditions of bail by the *detenu*. Here, it is apt to refer to Section 29 of the POCSO Act, 2012, which reads as under:

> **"29. Presumption as to certain offences:- When a person is prosecuted for committing or abetting or attenuating to commit any offence under Sections 3, 5, 7 and 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."**

13. In the instant case, a bare perusal of the bail order of the *detenu*, dated 22.07.2020, reveals that the prosecuting authority has not brought the aforementioned proviso to the notice of the learned Sessions Judge who granted bail to the *detenu*. For the inaction of the Police, the detaining authority cannot be permitted to invoke the draconian preventive detention laws, in order to breach the liberty of an individual. The detenu is being prosecuted for committing a heinous offence of penetrative aggravated sexual assault on a girl aged 13 years. He was granted bail by the Court of Session as indicated above on conditions. If the state of aggrieved by the grant of bail to the detenu, nothing prevented the State to move higher Court to

seek cancellation of bail. The State did not choose to resort to such cancellation of bail, instead passed the impugned detention order. All the cases under POCSO Act are being put on fast track. It is brought to the notice of this Court that no charge-sheet has been filed. The State could have expedited the investigation and filed charge-sheet. The minimum sentence of imprisonment prescribed for the alleged offence is ten years. As held in **Vijay Narain Singh**'s case (3 supra), a single act or omission cannot be characterized as a habitual act because, the idea of 'habit' involves an element of persistence and a tendency to commit or repeat similar offences, which is patently not present in the instant case. The *detenu* is second year intermediate student. In our opinion, the bald statement made in the grounds of detention that considering the *detenu*'s involvement in heinous activities and his release from prison on bail, there is imminent possibility of his indulging in similar shameful and inhuman acts of sexual assault on minor girls and women exploiting their innocence in a deceptive manner which are detrimental to public order, would not justify the impugned detention order.

14. Further, in **Gulab Mehra Vs. State of UP and others**[4], the Hon'ble Apex Court, relying on its earlier judgment rendered in **Kanchanlal Maneklal Chokshi Vs. State of Gujarat** {AIR 1979 SC 1945}, held as follows:

> "The ordinary criminal process is not to be circumvented or short-circuited by ready resort to preventive detention, but that the possibility of launching a criminal prosecution

[4] AIR 1987 SC 2332

> is not an absolute bar to an order of preventive detention. Nor is it correct to say that if such possibility is not present to the mind of the detaining authority the order of detention is necessarily bad. However, the failure of the detaining authority to consider the possibility of launching a criminal prosecution may, in the circumstances of a case, lead to the conclusion that the detaining authority had not applied its mind to the vital question whether it was necessary to make an order of preventive detention. Where an express allegation is made that the order of detention was issued in a mechanical fashion without keeping present to its mind the question whether it was necessary to make such an order when an ordinary criminal prosecution could well serve the purpose, the detaining authority must satisfy the court that the question too was borne in mind before the order of detention was made. If the detaining authority fails to satisfy the court that the detaining authority so borne the question in mind the court would be justified in drawing the inference that there was no application of the mind of the detaining authority to the vital question whether it was necessary to preventively detain the detenu."

15. In the present case, further, the detaining authority failed to demonstrate the necessity to pass the impugned detention order invoking the draconian preventive detention laws, when recourse to normal criminal justice system is available for curbing the alleged illegal activities of the *detenu*. Even otherwise, there is nothing on record to show that there is 'imminent possibility' of the *detenu* indulging in similar offence/s which are detrimental to public order. It is true that the offence alleged against the *detenu* is heinous in nature. But, it is also equally true that the *detenu* has no criminal antecedents or criminal history, which could have formed the basis for recording 'subjective satisfaction' while passing the order of detention. In the instant case, there is only a solitary case in Crime No.452 of 2020 of Shadnagar Police Station registered for the offences punishable under Sections 363, 376(2)(n) of IPC and Sections 5 & 6 of POCSO Act for which the *detenu* was arrested and

remanded to judicial custody and later released on conditional bail. Lastly, it is also relevant to state that the *detenu* developed acquaintance/friendship with the victim girl who is 13 years old as she was studying in the school, where the sister of the *detenu* was also studying. Due to the acquaintance/friendship, the *detenu* took the victim girl to a secluded place where he has committed sexual intercourse and thus fulfilled his sexual desire and on the next day morning, i.e., on 27.06.2020, he let off the victim girl. Therefore, it cannot be held that the *detenu* would indulge in similar prejudicial activities in future. Under these circumstances, the detaining authority is not justified in passing the order of detention, which tantamounts to colourable exercise of power.

16. Grave as the offence may be, it relates to penetrative aggravated sexual assault on a minor girl. So, no inference of disturbance of public order can be drawn. This case can be tried under the normal criminal law and/or special legislation. And, if convicted, can certainly be punished by the Court of law. Thus, the case does not fall within the ambit of the words "public order". Instead, it falls within the scope of the words "law and order". Hence, there was no need for the detaining authority to pass the detention order.

17. For the reasons stated above, the impugned orders are legally unsustainable and are liable to be set aside.

18. In the result, the Writ Petition is allowed. The impugned detention order vide No.48/PD-CELL/CYB/2020, dated

28.09.2020, passed by respondent No.3, and the consequential confirmation order, vide G.O.Rt.No.1853, dated 28.11.2020, passed by the Principal Secretary to Government, General Administration (Spl. (Law and Order) Department, Government of Telangana, are set aside. The respondents are directed to set the *detenu*, namely, Charagonda Uday Kiran @ Uday, at liberty forthwith, if he is no longer required in any other criminal case.

Miscellaneous petitions, if any, pending in this writ petition, stand disposed of in terms of this order. There shall be no order as to costs.

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A.RAJASHEKER REDDY, J

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Dr. SHAMEEM AKTHER, J

23rd February, 2021

Note:-

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