HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.10230 of 2020

Date: 03.09.2020

BETWEEN

Mohd.Jaffar.

... PETITIONER

AND

The State of Telangana,
Rep. by its Principal Secretary to Government,
General Administration ((Spl.(Law & Order),
Secretariat, Hyderabad
and others.

...RESPONDENTS

Counsel for the petitioner : M/s. Pendya Swathi

Counsel for the respondents : Mr. T. Srikanth Reddy
GP for Home

The Court made the following:

ORDER: (Per Hon'ble Sri Justice B. Vijaysen Reddy)

The detention order vide 320/PD-4/HYD/2019, dated 01.02.2020 passed against Mohd. Nawaz @ Babulal, W/o. Mohd. Jaffar, by the 2nd respondent, Commissioner of Police, Hyderabad, in exercise of powers conferred under Sub-Section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, 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 (Amendment Act No.13 of 2018) (for short 'the Act') and as confirmed by the State vide G.O.Rt.No.661, General Administration (SPL) Law & Order Department dated 13.03.2020, are challenged in this Writ of Habeas Corpus as being illegal and arbitrary.

2. Heard Ms. Pendya Swathi, learned counsel for the petitioner and Mr. T. Srikanth Reddy, learned Government Pleader for Home for the respondents.

3. The learned counsel for the petitioner submitted that the detenu was falsely implicated in the crimes referred in the detention order. In all the referred crimes, the detenu was released on conditional bail and thereafter, neither he violated any of the conditions imposed by the Court nor involved any in any cases. The detaining authority passed the impugned detention order on flimsy ground without any basis in a mechanical manner, without application of mind. There is no material to substantiate and justify for treating the detenu as

'Goonda' within the meaning of Section 2(g) of the Act. The crimes wherein the detenu is allegedly involved can be dealt with under ordinary law. Further, the alleged activities of the detenu come within the purview of maintenance of law and order and not public order. Hence, the impugned detention order is unsustainable and liable to be set aside.

4. *Per contra,* the learned Government Pleader for Home submitted that the detenu answers the description of 'Goonda' as defined in Section 2(g) of the Act. The detenu is involved in series of theft cases and in the recent past the detenu was involved in committing theft of cash and mobile phones from the passengers travelling in sharing auto rickshaw in the limits of Hyderabad and Cyberabad Police Commissionerate along with his associates in an organized manner and he has been creating large scale fear and panic among the general public 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.

5. The detaining authority has considered five cases as grounds for his detention. The five ground cases with relevant details as reflected in the detention order are shown as below:

Sl. No.	Crime No. and Date	Police Station	Offence	Date of arrest	Particulars of Bail
1.	Cr.No.129 of 2019	Begumbazar	u/s 379 and 411 IPC	18.10.2019 through PT warrant	Detenu moved bail petition before the XVII ACMM, Hyderabad vide Crl.MP. No.2884 of 2019 and he was granted conditional bail on 05.11.2019.
2.	Cr.No.422 of 2019	Begumpet	u/s 379 and 411 IPC	18.10.2019 through PT warrant	Detenu moved bail petition before the XI ACMM, Secunderabad vide Crl.MP. No.3234 of 2019 and he was granted conditional bail on 13.11.2019.

3.	Cr.No.174 of 2019	Begumbazar	u/s 379 IPC	18.10.2019	Detenu moved bail petition before the XVII ACMM, Hyderabad vide Crl.MP. No.2900 of 2019 and he was granted conditional bail on 13.11.2019.
4.	Cr.No.490 of 2019	Patancheru	u/s 379	18.10.2019	Detenu moved bail petition before the Spl.Mobile JFCM Court, Sangareddy vide Crl.MP. No.368 of 2019 and he was granted bail on 25.11.2019.
5.	Cr.No.159 of 2019	Kalapathar	u/s.379 and 411 IPC	18.10.2019	Detenu moved bail petition before the Spl.JFCM-cum-Excise Court, Hyderabad vide Crl.MP. No.189 of 2019 and he was granted conditional bail on 11.11.2019.

6. As found from the impugned detention order, the detaining authority has considered the above five cases as basis to pass the impugned detention order. It is evident from the record that the detenu moved bail petitions in all the said crimes and the concerned Courts have granted conditional bails.

7. The detaining authority in the impugned detention order it is stated that the detenu made persistent efforts to come out of the prison by moving bail petitions in all the ground cases in which he was in judicial custody. Despite opposing the grant of bail he was granted conditional bails by the concerned Courts and he was released from jail within 62 days of his remand. Further it is also stated that there is an imminent possibility of his committing similar offences, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention.

8. It appears that in the above crimes the Prosecution opposed the grant of bail to the detenu and even after that the concerned Courts have granted conditional bails to the detenu. If the detaining authority feels that even after strongly opposing the bail, the concerned Courts have granted bail, it is always left open for the authorities to move an application for cancellation of bail either before the same Court or

higher Court. Without resorting to such steps, the State chose to invoke provisions of preventive detention law and the same amounts to arbitrary exercise of powers conferred under the preventive detention laws.

9. The detenu was granted conditional bails and there is no allegation of violation of bail conditions. In such circumstances, the State cannot be permitted to bypass the ordinary law and resort to provisions of preventive detention laws. It is only when normal law does not take care of the situation resort has to be taken under preventive detention laws. To be precise, it needs to be pointed out that the State cannot take advantage of its own lapses, whereby on one hand, the State does not effectively oppose the bail application or seeks cancellation of bail and on the other hand, State finds an easy way method to pass detention order by invoking preventive detention laws.

10. In **SUDHIR KUMAR SAHA v. THE COMMISSIONER OF POLICE, CALCUTTA**[1] it was held in para 7 as under:

> "**7.** The freedom of the individual is of utmost importance in any civilized society. It is a human right. Under our Constitution, it is a guaranteed right. It can be deprived of only by due process of law. The power to detain is an exceptional power to be used under exceptional circumstances. It is wrong to consider the same, as the executive appears to have done in the present case, that it is a convenient substitute for the ordinary process of law. The detention of the petitioner under the circumstances of this case appears to be a gross misuse of the power conferred under the Preventive Detention Act."

[1] 1970 (1) SCC 149

The High Court of Judicature for the State of Telangana and the State of Andhra Pradesh in **C. NEELA v. STATE OF TELANGNA**[2] held as under:

> "…Preventive detention of a person is an extreme measure resorted to by the State when ordinary criminal law is found not adequate to control his activities which cause disturbance to public order. Article 21 of the Constitution of India ordains that no citizen shall be deprived of his life or personal liberty except according to the procedure established by law. Under ordinary criminal laws, several safeguards are available to him such as, his arrest only in connection with cognizable/non-bailable offences and permitting him to apply for bail etc. The preventive detention laws have been conceived in order to control the activities of a person which tend to disturb public order as opposed to law and order and the procedural safeguards prescribed by the ordinary criminal laws are not available to the detenu under preventive detention laws.

In **SHASHI AGARWAL v. STATE OF UP**[3] it was held as under:

> "Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order."

11. An order of detention has to be resorted as an extreme and last step only when attempts made by the authorities to deal with and prosecute the detenu under ordinary law do not yield results. The preventive detention laws cannot be invoked as an easy way

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[2] 2017 (2) ALD (Crl.) 760
[3] (1998) 1 SCC 436

method bypassing the ordinary law and if detention order is passed, it is very much necessary for the detaining authority to apply its mind and arrive at a conclusion that ordinary law is not capable of acting deterrent against the detenu and thus, detention order needs to be passed.

12. The impugned order is vitiated also for the reason that under the above five crimes relate to specific individuals/victims and come within the ambit of maintenance of law and order and not public order. The difference between law and order and public order has been pointed out by various authoritative. In **RAM MANOHAR LOHIA v. STATE OF BIHAR**[4] the Supreme Court observed:

> "Does the expression "public order"' take in every kind of disorder or only some? 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."

In **PUSHKAR MUKHERJEE v. STATE OF WEST BENGAL**[5], the Supreme Court held as under:

> "The question to be considered in the present case is whether grounds (a), (b) and (e) served on Subhas Chandra Bose are grounds which are relevant to "the maintenance of public order". All these grounds relate to cases of assault on solitary

[4] AIR 1966 SC 740
[5] (1969) 1 SCC 10

individuals either by knife or by using crackers and it is difficult to accept the contention of the respondent that these grounds have any relevance or proximate connection with the maintenance of public order. In the present case we are concerned with detention under Section 3(1) of the Preventive Detention Act which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. Does the expression "public order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

"The difference between the concepts of 'public order' and law and order' is similar to the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr. Allen has distinguished 'public' and 'private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest 'and affect individuals only remotely. (*See* Dr. Allen's Legal Duties, p.249). There is a broad distinction along these lines, but differences naturally arise in the application of any such test. The learned author has pointed out that out of

> 331 indictable English offences 203 are public wrongs and 128 private wrongs."

In **ARUN GHOSH v. STATE OF WEST BENGAL**[6] the Supreme Court held as under:

> "…It means therefore 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 the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognized as meaning something more than ordinary maintenance of law and order."

13. In the light of the above discussion, the impugned detention order is unsustainable and liable to be set aside.

The Writ Petition is allowed. The impugned detention order dated 01.02.2020 passed by the respondent No.2, and the consequential confirmation order dated 13.03.2020 are, hereby, set aside. The respondents are directed to set the *detenu,* namely Mohd. Nawaz @ Babulal, S/o Mohd. Jaffar, at liberty forthwith, in case he is no longer detained in the criminal cases which have been registered so far against him.

As a sequel, the miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, CJ

B. VIJAYSEN REDDY, J

September 03, 2020
LSK

[6] (1970) 1 SCC 98