

HIGH COURT FOR THE STATE OF TELANGANA

Writ Petition No.19999 of 2020

Between:

Smt. Farhat Kausar

... Petitioner

and

The State of Telangana,
Rep. by its Principal Secretary to Home Dept.,
Secretariat Buildings, Hyderabad
and others

... Respondents

DATE OF JUDGMENT PRONOUNCED: **14.06.2021**

SUBMITTED FOR APPROVAL:

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

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|----------|--|---------------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Lordships wish to see the fair copy of the Judgment? | Yes/No |

A. RAJASHEKER REDDY, J

Dr. SHAMEEM AKTHER, J

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

AND

*** THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

+ Writ Petition No.19999 of 2020

% Date: 14th June, 2021

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Smt. Farhat Kausar

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Rep. by its Principal Secretary to Home Dept.,

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... Respondents

! Counsel for the Petitioner : Sri K.Venu Madhav

**^ Counsel for the Respondents : Sri G. Malla Reddy, Assistant
Government Pleader for Home**

>HEAD NOTE:

? Cases referred

1. (1970) 3 SCC 746
2. (2004) 7 SCC 467
3. (2006) 6 SCC 14

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.19999 OF 2020

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

Smt. Farhat Kausar, the petitioner, has filed this Habeas Corpus petition on behalf of her husband, Mohd. Jumman, S/o Mohd. Alam, aged about 33 years, the detenu, challenging the detention order, dated 21.08.2020, passed by the Commissioner of Police, Cyberabad Commissionerate, the respondent No.2, wherein, 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, 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 & White Collar or Financial Offenders Act, 1986 (for short "P.D. Act") and the confirmation order vide G.O.Rt.No.1631, General Administration (Spl. (Law & Order)) Department, dated 28.10.2020, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order) Department, Government of Telangana.

2. Heard the submissions of Sri K.Venu Madhav, learned counsel for the petitioner, Sri G.Mallareddy, learned Assistant Government Pleader for Home representing the learned Additional Advocate General for the respondents, and perused the record.

3. The learned counsel for the petitioner would submit that the impugned detention order is illegal, arbitrary, unconstitutional, improper and against the principles of natural justice and has been passed in a mechanical manner and without application of mind. The detenu is implicated in the solitary case relied upon by the detaining authority for preventively detaining him basing upon his confession. Admittedly, in the solitary case relied upon by the detaining authority, the detenu was granted bail by the Court concerned. But, the detenu was again sent to judicial remand by invoking the draconian preventive detention laws. Preventive detention shall not be made a substitute for punitive detention. There is no prejudicial activity attributed to the detenu after his release on bail in the alleged criminal case. The material papers served on the detenu were not in the language known to the detenu and as such, the detenu is unable to know the contents of the same so as to make an effective representation. The detaining authority erroneously formed an opinion and came to conclusion that the activities of the detenu are creating large scale fear and panic among the general public and adversely affecting the public order. Further, the criminal case alleged against the detenu 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 the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO' Act) and Epidemic Diseases Act, 1987, the said case can certainly be dealt with under the Penal Code and the said special legislations. Thus, there was no need for the detaining authority to invoke the draconian

preventive detention laws. Hence, the impugned order tantamount to the colourable exercise of power. The detaining authority has to be extremely careful while passing the detention order, since the detention *ipso facto* adversely affects the fundamental right of personal liberty enjoyed by the people under Article 21 of the Constitution of India. Further, the detenu was not supplied with the documents relied upon by the detaining authority in the language known to him, i.e., Hindi. Thus, the impugned orders are legally unsustainable and ultimately prayed to set aside the same and allow the writ petition as prayed for.

4. On the other hand, Sri G.Mallareddy, learned Assistant Government Pleader for Home appearing for the respondents would submit that the detenu is a 'Sexual offender'. He has engaged himself in a heinous offence of penetrative sexual gang assault on mentally challenged minor girl in the limits of Cyberabad Police Commissionerate, in an organized way and acted in a manner prejudicial to the maintenance of public order. The heinous offence committed by the detenu was sufficient to create large scale fear and insecurity in the minds of the people at large, which certainly affects the even tempo of the society. Further, in the criminal case relied upon by the detaining authority for detaining the detenu, the detenu made persistent efforts for getting bail and he was granted bail by the Court concerned. Since there is an imminent possibility of the detenu committing similar offences which are prejudicial to the maintenance of public order, the impugned detention order was passed. All the mandatory provisions and the safeguards envisaged under the Constitution of India were strictly followed while passing

the impugned detention order and hence, the impugned detention order does not suffer from illegality or impropriety. Launching criminal prosecution is not an absolute bar to pass an order of detention. The order of detention together with grounds of detention and the material referred to and relied upon in the grounds of detention were supplied to the detenu in the language known to him. Further, the Advisory Board, in its review meeting, upon hearing the detenu and the concerned investigating officials and upon considering the entire material placed before it, rendered its opinion that there is sufficient cause for detention of the detenu. On considering the opinion of the Advisory Board and upon considering the entire material, the Government confirmed the impugned detention order, vide G.O.Rt.No.1631, General Administration (Spl. (Law & Order)), Government of Telangana, dated 28.10.2020. Therefore, the detaining authority was legally justified in passing the impugned detention order and ultimately, prayed to dismiss the writ petition.

5. In view of the submissions made by both sides, the point that arises for determination in this Writ Petition is:

“Whether the impugned detention order, dated 21.08.2020, passed by the Commissioner of Police, Cyberabad Commissionerate, respondent No.2, and the confirmation order, dated 28.10.2020, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order) Department, Government of Telangana, are liable to be set aside?”

POINT:

6. Briefly, the facts of the case are that by relying on a solitary case registered against the detenu in Crime No.290 of 2020 of Dundigal Police Station, the respondent No.2-Commissioner of Police, Cyberabad Commissionerate, passed the detention order, dated 21.08.2020. According to the respondent No.2, the detenu is a "Sexual Offender" and he engaged himself in a heinous crime of penetrative sexual gang assault on mentally challenged minor girl in the limits of Dundigal Police Station of Cyberabad Police Commissionerate in an organized way and created fear, panic and a feeling of insecurity among the innocent minor girls, school going girls, their parents, relatives, locality people and general public, thereby adversely affecting the public order leaving large section of people under the grip of fear and trauma, and disturbing peace and tranquility in the society, which are prejudicial to the maintenance of public order. In the solitary case relied by the detaining authority for preventively detaining the detenu, the detenu got bail from the Court concerned. In order to prevent the detenu from indulging in similar shameful and inhuman acts of sexual assault on minor girls and women exploiting their innocence in a deceptive manner in due course, which is detrimental to the public order, the impugned detention order, dated 21.08.2020, was passed, which was confirmed by the Government by order, dated 28.10.2020.

7. The material placed on record reveals that the detenu-Mohd. Jumman, S/o. Mohd. Alam, who is a 'sexual offender', has committed a heinous offence of penetrative sexual gang assault on

mentally challenged minor girl in the limits of Dundigal Police Station of Cyberabad Police Commissionerate. The detaining authority relied on a solitary case registered against the detenu for preventively detaining him. We shall present it in a tabular column, the date of occurrence, the date of registration of FIR, the offences complained of and its nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
290/2020 of Dundigal PS	23.04.2020	23.04.2020	Sections 376 DA, 363, 188, 269, 270 of IPC, Section 5(l)(g) read with Section 6 of POCSO Act read with Section 3 of Epidemic Diseases Act, 1897	Section 376-DA IPC and Section 5(l)(g) read with Section 6 of POCSO Act -Cognizable/ Non-Bailable, Sections 363, 188, 269, 270 IPC and Section 3 of Epidemic Diseases Act, 1897- Cognizable/ Bailable,

8. As seen from the material placed on record, in the solitary crime relied upon by the detaining authority for preventively detaining the detenu, the allegation is that on 22.04.2020 evening hours while the victim minor girl, who is mentally challenged, was moving on the roads, the detenu hatched a plan to enjoy with her sexually and by saying gullible words to her, took her along with him to a lonely room near his house and forcibly participated in the sexual intercourse with the victim girl along with his friends repeatedly, and thereafter, left the victim girl near Khaja Panshop, Rodamastryanagar Road. The nature of the offence and the manner in which the alleged offence has been committed by the detenu

certainly causes panic and a feeling of insecurity among the general public. It is evident from the material placed on record that in the alleged solitary case, the detenu made persistent efforts to get bail and he was granted bail by the Court concerned and released from prison. Under these circumstances, the contention of the respondents that there is imminent possibility of the detenu again indulging in similar shameful and inhuman acts of sexual assault on minor girls and women exploiting their innocence in a deceptive manner, cannot be brushed aside.

9. It is apt to state that preventive detention is different from punitive detention. While punitive detention could be enforced under ordinary criminal law, the law of preventive detention can be enforced against habitual offenders to prevent them from committing the further offences. The legal parameters for testing the validity of 'preventive detention' fundamentally vary from that of 'punitive detention'. Also, 'Public order' is distinct from 'law and order'. While individual offences without affecting public at large could be considered as violating 'law and order', the offences that affect larger public and disturbs the even tempo of public life fall under the category of disturbance to public order and only in the latter category of cases, the law of preventive detention must be enforced.

10. In the case of **Madhu Limaye v. Sub-Divisional Magistrate**¹. the Apex Court held as follows:

¹ (1970) 3 SCC 746

"The acts which disturb public tranquility or are breaches of the peace should not be given a narrow meaning, but should be given a liberal interpretation. For the expression 'in the interest of public order' is very wide amplitude."

11. In **Commissioner of Police & Others Vs. C.Anita (Smt.)**², the Apex Court examined the issue of "public order" and "law and order" and observed as follows:

"The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect

² (2004) 7 SCC 467

merely an individual leaving the tranquility of the society undisturbed?" This question has to be faced in every case on its facts."

12. In **R. Kalavathi v. State of Tamil Nadu**³, the Apex Court, while dealing with the case affecting the public order observed that even a single act which has the propensity of affecting the even tempo of life and public tranquility would be sufficient for detention.

13. Here, it is apt to state that the power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution, even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is not a bar to an order of preventive detention and an order of preventive detention is also not a bar to prosecution. It cannot be considered to be a parallel proceeding. The anticipated behaviour of a person based on his past conduct in the light of surrounding circumstances may provide sufficient ground for detention. The basis of preventive detention is suspicion and its justification is necessary.

14. As per the clause (v) of Section 2 of the P.D. Act, a "sexual offender" means a person who commits or abets the commission of

³ (2006) 6 SCC 14

offences in contravention of any of the provisions under the Protection of Child from Sexual Offences Act, 2012, or the offences punishable under Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376D, 377 or 509 of the Indian Penal Code, 1980.

15. It is evident from the material placed on record that in the aforesaid crime relied by the detaining authority, the detenu and his friends forcibly committed penetrative sexual intercourse with a mentally challenged minor girl several times by tying her hands and blindfolding her. The nature of offences alleged and the *modus* of committing the same would certainly create fear, panic and a feeling of insecurity among the innocent minor girls, their parents, relatives and also in the minds of the general public, disturbing the public peace and tranquility. So, it is imperative upon the officers concerned to pass the order of detention, since the acts of the detenu are prejudicial to the maintenance of public order. The contention of the learned counsel for the petitioner is that the detaining authority had relied over a single case and passed the impugned detention order and that the apprehension that the detenu would repeat similar offences in future is untenable and hence, the impugned detention order is unsustainable. Though the detaining authority had relied over a single case, the material placed on record, as indicated above, reveals that a mentally challenged minor girl was repeatedly sexually assaulted by the detenu and others, the manner in which the sexual assault was committed repeatedly would certainly cause fear in the minds of the public at large. In view of the material on record, the apprehension of detaining authority is justified. Therefore, the contention raised

by the petitioner is unsustainable. The detaining authority had sufficient material to record subjective satisfaction that the detention of the detenu was necessary to maintain public order and even tempo of life of the community. The order of detention does not suffer from any illegality. The grounds of detention, as indicated in the impugned order, are found to be relevant and in tune with the provisions of the P.D. Act. Since the detenu was granted bail in the aforesaid case relied by the detaining authority, there is nothing wrong on the part of the detaining authority in raising an apprehension that there is possibility of the detenu indulging in similar shameful and inhuman acts of sexual assault on minor girls and women exploiting their innocence in a deceptive manner in due course, which would again certainly affect the public morale at large. The manner in which the alleged offence committed by the detenu makes it amply clear that there is every possibility of detenu committing similar offences in future, which are prejudicial to the maintenance of public order. The subjective satisfaction of the detaining authority is not tainted or illegal on any account. Further, the material placed on record reveals that the detenu was supplied with the material relied upon by the detaining authority in the language known to him, i.e., Hindi apart from 'English'. The acts of the detenu cannot be effectively dealt with under ordinary criminal law. Under these circumstances, the detaining authority is justified in passing the impugned detention order. Therefore, the impugned orders are legally sustainable. We do not see any merit in this Writ Petition and as such, it is liable to be dismissed.

16. The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.

The miscellaneous petitions pending, if any, in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY, J

Dr. SHAMEEM AKTHER, J

14th June, 2021

Note:-

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(B/O)

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