

**(2022) 02 TEL CK 0053**

**In the Telangana High Court**

**Case No : Writ Petition Nos. 32490, 32525 Of 2021**

Akhtar Begum

APPELLANT

Vs

State Of Telangana

RESPONDENT

**Date of Decision : 17-02-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 19, 19(2), 19(3), 19(4), 20, 21, 22, 31C, 31B, 32  
Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 201, 302, 394, 406, 420, 506  
Telangana Prevention Of Dangerous Activities Of Boot-Leggings, 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 — Section 2, 2(a), 3

**Citation : (2022) 02 TEL CK 0053**

**Hon'ble Judges : P. Naveen Rao, J;Dr. G. Radha Rani, J**

**Bench : Division Bench**

**Advocate : B Mohana Reddy**

**Final Decision : Allowed**

## **Judgement**

1. Heard learned counsel for petitioner Smt B.Mohana Reddy and learned Government Pleader for Home appearing for learned Additional Advocate

General for respondents.

2. In these two writ petitions, petitioner is sister of two detenues viz., Mohmood Bin Alvi and Ayub Bin Alvi, who are detained by two independent

proceedings dated 24.9.2021.

3. The orders of detention were passed against these two detenues on the allegations that they are involved in two recent crimes, Crime No.243 of

2021 registered on 17.7.2021 under Sections 302, 201, 120 (B), 147, 148 read

with 149 IPC of Chaderghat Police Station and Crime No. 294 of 2021

registered on 18.7.2021 under Section 394 IPC in Afzulgunj Police station. The Detaining Authority also refers to previous involvement of the

detenues in several crimes. In the case of Mahmood Bin Alvi, it is alleged that he was involved in 13 offences between 2002 to 2018 and that he was

externed from the limits of Hyderabad Police Commissionerate in the year 2015 and there is no remorse and he continue to indulge in crimes. With

reference to Ayub Bin Alvi, it is alleged that he was involved in six crimes between 2005 to 2017 and there is no remorse in his conduct and he

continues to indulge in heinous crimes.

4. It is further asserted that these two detenues applied to grant bail on 13.8.2021 and 16.9.2021; as prosecution vehemently opposed granting of bail,

both bail applications were rejected. However, the Detaining Authority anticipated that since no charge sheets were filed within the statutory time,

there was every possibility of statutory bail being granted to them, the order of detention was passed to prevent the detenues being set free. As

anticipated, on 20.10.2021 statutory bail was granted to both detenues. The Government approved detention order by order dated 1.10.2021 and on

review, the Advisory Board confirmed the decision of the Detaining Authority to detain the detenues in its review meeting held on 27.10.2021. Based

on the report of the Advisory Body, the Government confirmed the order of detention by order dated 25.11.2021 in case of Mahmood Bin Alvi and by

order dated 18.11.2021 in case of Ayub Bin Alvi. It is asserted that having regard to the previous history of involvement in several crimes and

involvement in heinous crimes of committing murder for gain and to have over all control in the locality to commit crimes, it is no more desirable to

allow these detenues to go scot-free and allow them to indulge in committing further crimes which actions would be prejudicial to the maintenance of

public order, therefore, detention is necessary.

5. Extensive submissions are made by learned counsel for detenues and learned Government Pleader for Home. Both counsel placed extensive

reliance on decisions of this Court and the Honâ??ble Supreme Court.

6. It is the assertion of learned counsel for detenues that the crimes registered against the detenues do not attract public order. What is alleged in

Crime No. 243 of 2021 was a result of animosity between the deceased and

detenue and this solitary instance cannot be the basis to resort to preventive detention. She would submit that even according to the prosecution, it is a case of murder to settle scores against the deceased as they bore grudge against him in trying to prevent their activities. The other crime reported against the detenues is an offence of theft of two wheeler motor vehicles. She would therefore submit that these two crimes are routine law and order problems and do not attract disturbance to public order requiring preventive detention.

7. Per contra, according to learned Government Pleader for Home, antecedent activities of the person can be looked into to assess the mind set of a person who frequently indulges in crimes, though, ultimately he may have been acquitted. The criminal bent of mind and motive to create panic and insecurity in the mind of people at large is evident in the manner in which victim was killed to eliminate rival person in the community and to gain control over the area so that they can indulge in illegal activities affecting ordinary people. He would therefore submit that on noticing the involvement in two recent crimes, the Detaining Authority has looked into the previous conduct to assess the bent of mind and having assessed that it is no more desirable to let them free, rightly concluded that the detenues be detained.

8. While considering a challenge to the order of detention, what is required to be seen by the Court is whether due procedure was followed and whether there was application of mind to consider all aspects requiring detention. Once a decision is arrived by observing the due formalities and on due assessment of the involvement of the detenues, the Court cannot interfere with the decision to detain the detenues.

9. Learned Government Pleader contended that as held by the Honâ??ble Supreme Court in Haradhan Shah vs. State of West Bengal (1975) 3 SCC 198, preventive detention is a precautionary measure to ensure that detenue do not repeat crimes causing hardship to public at large, that Article 14 of the Constitution of India is inapplicable and that merely detenues were granted bail is no ground to hold the detention as illegal. He would submit that even a solitary instance can be a good ground to detain as held by the Honâ??ble Supreme Court in Abdul Sathar Ibrahim Manik Vs. Union of India (1992) 1 SCC 1. He would further submit that detaining authority can take note of antecedents of the person to assess his criminal behaviour and

possibility of he indulging in crimes in future as held by the Honâ??ble Supreme Court in Harpreet Kour (Mrs) vs. State of Maharashtra (1992) 2

SCC 177. On review of precedent decisions, in W.P.No.102 of 2021 this Court upheld the detention on a solitary crime and in anticipation of securing bail.

10. Two competing aspects throw up whenever an issue of preventive detention comes up. On the one side is the right of the individual citizen to protect his life, liberty and privacy, which are sacrosanct. On the other extreme is the sacred duty of the Government to enforce law and order, peace and tranquility in the society. Whenever a crime is reported, the law enforcing agency sets in motion criminal justice system on the offences enumerated in the Indian Penal Code and various special enactments dealing with specific crimes. In the process of investigation into the crime, the accused can be arrested, detained and can be interrogated.

11. Section 2(a) of the Act, 1986 defines what is meant by â??acting in any manner prejudicial to the maintenance of public orderâ?. It means a person against whom several crimes are reported and is known as â??a bootleggerâ?, â??a dacoitâ?, â??a goondaâ? , â??an immoral traffickerâ? and â??a land grabberâ? and is engaged or is making preparations for engaging, in any of his activities as such, which affected adversely, or are likely to affect adversely, the maintenance of public order. Explanation appended to this clause explains that â??public orderâ? is deemed to have been affected adversely/likely to be affected adversely, if any of the activities of a person referred to in the clause, directly or indirectly, is causing or calculated to cause any harm, danger, or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health. Other clauses of Section 2 of the Act, 1986 defines various terms mentioned in Clause (a), including the term â??land grabberâ? [clause (j)].

(a) ""acting"" in any manner prejudicial to the maintenance of public order"" means when a boot-legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order :

Explanation. - For the purpose of this clause public order shall be deemed to

have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health :

(j) ""land-grabber"" means a person, who illegally takes possession of any land (whether belonging to Government, local authority or any other person) or enters into or creates illegal tenancies or lease and licence, agreements or any other agreement in respect of such lands; or who constructs unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis or for construction or use and occupation of un-authorised structures or he knowingly gives financial aid to any person for taking illegal possession of such lands, or for construction of unauthorised structures thereon or who collects or attempts to collect from any occupier of such lands, rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to the lawful procedure ; or who abets in any manner die doing of any of the above-mentioned things;

12. Ordinarily, no person can be arrested/detained unless crime is reported. Act 1 of 1986 makes an exception to this salutary principle. It vests extraordinary power in the Government or in its delegatee to detain a person even before a crime is committed by him. Perforce, this power of detention is not to be exercised as a matter of course. As it seeks to offend the most sacred of the rights, right to life, liberty and privacy, there are three primary requirements need to be answered by the law enforcing agency before invoking the provisions of Section 3 of the Act, 1986. Firstly, he must be a known offender and several crimes are reported against him and can be classified as a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber; secondly, the person must be acting in a manner prejudicial to the maintenance of the public order; and thirdly, there must be subjective satisfaction by the authority that there is possibility of the person indulging in such activities in future also which is likely to cause disturbance to public order.

13. Resort to preventively detain a person is made when the detaining authority

assumes that allowing a known offender at large may adversely affect or likely to adversely affect the maintenance of public order. Preventive detention of a person is an extreme measure impinging a citizen's right to life and liberty. Law enforcing agency can resort to such extreme measure only when the conduct of offender affects or is likely to affect maintenance of public order and ordinary law enforcing mechanism is not sufficient to prevent such person from indulging in illegal activities. It being an extreme measure, the law enabling such power has to be strictly construed.

14. There is no quarrel with the propositions that even when an offender is involved in one crime an offender can be detained and that preventive detention is a precautionary measure to prevent committing further crimes affecting the community at large. At the same time, it is a measure that affects right to life and liberty, which is sacrosanct and requires to be preserved at any cost. Therefore, the detaining authority has to apply his mind, weigh all options and can resort to such measure only in extraordinary circumstances where law and ordinary machinery may not cope up and there is an imminent threat to public order.

15. The decision must be a well considered decision impelled by protection of public order. Even then, it is an extreme measure to be resorted in extraordinary circumstances, as a last resort and in larger public interest. It being an exception, cannot subsume the character of routine police action. It should be resorted to only when the normal course of criminal justice system has failed to discipline the individual and actions and conduct of a person has caused or is likely to cause disturbance to public order. The power to detain is an exceptional power to be used under exceptional circumstances. (Sudhir Kumar Saha vs. the Commissioner of Police, Calcutta (1970) 1 SCC 149)

16. The Court has to assess that in given facts whether extreme measure of preventive detention is warranted making regular criminal law procedure a nugatory. It is the sacred duty of the writ Court to keep eternal vigil to ensure right to life and liberty is not affected by State resorting to illegal means. The Court is reminded of the fact that resort to preventive detention is on the allegation of involvement in alleged crime(s) as assessed by the detaining authority, which is/are yet to be proved. Preventive detention is largely

precautionary and based on suspicion. (State of Madras Vs. V.G.

Row AIR 1952 SC 196). It is in the realm of speculation. The Court is required to see whether procedural safeguards are strictly complied before

detaining a person. A mere disturbance to 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. (Pushker Mukherjee Vs State of West Bengal (1969 1 SCC

10). Thus, what is paramount to note is whether the offence(s) complained of against detenu is/are of a nature which can be dealt with under the

ordinary law of the land. If the answer is yes, the detention order is ex facie illegal.

17. It is apt to note the observations of the Hon<sup>ble</sup> Supreme Court in I.R. Coelho Vs State of Tamil Nadu (2007) 2 SCC 1. They read as under:

“49. Granville Austin has been extensively quoted and relied on in Minerva Mills [(1980) 3 SCC 625] . Chandrachud, C.J. observed that to destroy

the guarantees given by Part III in order to purportedly achieve the goals of Part IV is plainly to subvert the Constitution by destroying its basic

structure. Fundamental rights occupy a unique place in the lives of civilised societies and have been described in judgments as “transcendental”,

“inalienable” and “primordial”. They constitute the ark of the Constitution (Kesavananda Bharati [(1973) 4 SCC 225] at SCC pp. 991, 999).

The learned Chief Justice held that Parts III and IV together constitute the core of commitment to social revolution and they, together, are the

conscience of the Constitution. It is to be traced for a deep understanding of the scheme of the Indian Constitution. The goals set out in Part IV have,

therefore, to be achieved without the abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the

core of our Constitution and combine to form its conscience. “Anything that destroys the balance between the two parts will ipso facto destroy an

essential element of the basic structure of our Constitution.” (emphasis supplied) (Minerva Mills [(1980) 3 SCC 625] , SCC p. 654, para 57.) Further

observes the learned Chief Justice, that the matters have to be decided not by metaphysical subtlety, nor as a matter of semantics, but by a broad and

liberal approach. We must not miss the wood for the trees. A total deprivation of fundamental rights, even in a limited area, can amount to abrogation





structure of the Constitution. It is necessary to always bear in mind that fundamental rights have been considered to be heart and soul of the Constitution. Rather these rights have been further defined and redefined through various trials having regard to various experiences and some attempts to invade and nullify these rights. The fundamental rights are deeply interconnected. Each supports and strengthens the work of the others. The Constitution is a living document, its interpretation may change as the time and circumstances change to keep pace with it. This is the ratio of the decision in Indira Gandhi case [1975 Supp SCC 1].

18. In *Rekha Vs State of Tamil Nadu* (2011) 5 SCC 244, the Hon<sup>ble</sup> Supreme Court guides the High Courts on how to deal with cases of preventive detention. The Supreme Court held:

30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.

19. In catena of decisions, the Hon<sup>ble</sup> Supreme Court and this Court considered what is meant by "law and order", "public order" and "security of State". Leading case on the subject is *Ram Manohar Lohia vs. State of Bihar* (1966) 1 SCR 709. It was a case of detention

under the Defense of India Rules. Hon<sup>ble</sup> Supreme Court held as under:

54. 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 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.

55. 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. By using the expression "maintenance of law and order" the District Magistrate was widening his own

field of action and was adding a clause to the Defence of India Rules."

20. In Banka Sneha Sheela Vs. The State of Telangana 2021 SCC Online SC 530 (Crl.A.No.733 of 2021), the detenu was detained on 28.09.2020

alleging that he was involved in five crimes committed between October, 2017 to December, 2019 attracting Sections 420, 406 and 506 of IPC. It was

alleged that he was luring general public to invest money with an assurance of 100% return within a short period.

20.1. After taking note of law declared by the Hon'ble Supreme Court in Ram Manohar Lohia (supra), the Hon'ble Supreme Court held,

"15. There can be no doubt that for "public order" to be disturbed, there must in turn be public disorder. Mere contravention of law such as

indulging in cheating or criminal breach of trust certainly affects "law and order" but before it can be said to affect "public order", it must

affect the community or the public at large.

16. There can be no doubt that what is alleged in the five FIRs pertain to the realm of "law and order" in that various acts of cheating are

ascribed to the Detenu which are punishable under the three sections of the

Penal Code, 1860 set out in the five FIRs. A close reading of the Detention Order would make it clear that the reason for the said Order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case.â??

20.2. Taking note of the judgment in *Madhu Limaye vs. Sub-Divisional Magistrate* (1970) 3 SCC 746, the Honâ??ble Supreme Court held,

â?? 20. To tear these observations out of context would be fraught with great danger when it comes to the liberty of a citizen under Article 21 of the

Constitution of India. The reason for not adopting a narrow meaning of â??public orderâ?? in that case was because of the expression â??in the

interests ofâ? which occurs to Article 19(2) to 19(4) and which is pressed into service only when a law is challenged as being unconstitutional for

being violative of Article 19 of the Constitution. When a person is preventively detained, it is Article 21 and 22 that are attracted and not Article 19.

Further, preventive detention must fall within the four corners of Article 21 read with Article 22 and the statute in question. To therefore argue that a

liberal meaning must be given to the expression â??public orderâ?? in the context of a preventive detention statute is wholly inapposite and incorrect.

On the contrary, considering that preventive detention is a necessary evil only to prevent public disorder, the Court must ensure that the facts brought

before it directly and inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof at large.â?

(emphasis supplied)

20.3. On reviewing the precedent decisions, the Honâ??ble Supreme Court further held,

â??34. â?|â?|. a possible apprehension of breach of law and order can be said to

be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail, but certainly cannot provide springboard to move under a preventive detention statute. â?|â?|â?|

21. In *Vijay Narin Singh vs State of Bihar* (1984) 3 SCC 14, the Honâ?ble Supreme Court held,

â?|32. â?|It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that

the liberty of a person is not jeopardized unless his case falls squarely within the four corners of the relevant law. The law of preventive detention

should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man

under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as

would satisfy the requirements of the legal provisions authorizing such detention. When a person is enlarged on bail by a competent criminal court,

great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be

tried by the criminal court.â?|

(emphasis supplied)

22. The facts on record disclose that out of 13 crimes reported against Mahmood Bin Alvi, he was acquitted in 10 cases, 2 cases were compromised

and one case is pending trial. In case of Ayub Bin Alvi, he was acquitted in all the six crimes. Further in case of Mahmood Bin Alvi, the crimes

referred to were alleged to have been committed between 2002-2018 and in case of Ayub Bin Alvi the alleged crimes were reported between 2005-

2017. All the previous crimes against the detainees were closed except one crime against Mahmood Bin Alvi. Per force, the crimes referred to in the

orders of detention were not proximate to the decision to detain the detainees, therefore, leaving the previous crime history aside, only two crimes were

registered against the detainees on 17th and 18th August, 2021, considered for their preventive detention.

23. On going through the record of these two cases, it is seen that on the ground of involvement in two crimes, the detention orders were made. First

crime is on murder of a rival. It appears crime was the result of an inter se

dispute between the victim and the detenues. Though, it is a heinous crime but by this solitary instance, it cannot be assumed that this would create fear, panic, insecurity in the public and disturb peace leading to disturbance of public order. The other crime is theft of a two wheeler motor vehicle. These are normal law and order crimes, which require investigation, filing of final report and to prosecute them before the jurisdictional criminal Court. The law enforcing machinery can deal with these crimes under the Code of Criminal Procedure. Ordinary law of the land is sufficient to deal with the situation. (Rekha) (supra).

24. It cannot be said that the crimes registered against the detenues require preventive detention. Further, crimes in the past are not proximate to the decision to detain the detenues and except one crime against Mahmood Bin Alvi, which is pending trial, all other crimes ended in acquittal. Further, if the prosecution opines that setting the detenues free is not desirable in public interest, nothing prevented them to file petitions to cancel the bail. Further, if the prosecution was of the firm opinion that detenues should not be set free they should have filed charge-sheet within the time available to them. They cannot cover up their lapses in conducting investigation and resort to draconian law merely because they have power to detain. It clearly amounts to abuse and misuse of power.

25. Preventive detention is extra-ordinary measure impelled by desire to ensure public order. It is an exception to ordinary law enforcement against an offender. Resort to this extraordinary measure can be against offenders who are creating panic, fear and apprehension of insecurity to people at large and when there is serious threat to public order due to egregious conduct and the law enforcement machinery is unable to control the detainee from indulging in repeated crimes. It is not to be resorted when the offenders can be handled in the regular course of policing. Guided by long line of precedent decisions, the conclusion is irresistible that the orders of detention are not sustainable. They are accordingly set aside.

26. For the aforesaid reasons, the orders of detention vide SB(I) No.266/PD-6/HYD/2021 dated 24.09.2021 and SB(I)

No.267/PD-6/HYD/2021 dated 24.09.2021 and the consequential confirmation orders of the first respondent approving detention vide G.O.Rt No.

2593 General Administration (SPL. (Law & Order) Department dated 25.11.2021

and G.O.Rt No. 2550 General Administration (SPL. (Law & Order) Department dated 18.11.2021 respectively are not sustainable and the same are accordingly set aside.

27. Writ Petitions are allowed and the respondents are directed to set the detenues, namely, 1) Mahmood Bin Alvi @ Mahamood Jabri @ Bhinswala

Mahmood S/o Alvi Bin Ismail, and 2) Ayub Bin Alvi S/o Alvi Bin Ismail, respectively, detained in Central Prison, Chanchalguda, Hyderabad at liberty

forthwith, if they are no longer required in any other criminal case. Pending miscellaneous petitions if any shall stand closed.