

**(2022) 09 TEL CK 0054**  
**In the Telangana High Court**  
**Case No : Writ Petition No. 12035 Of 2022**

Badker Kasturi

APPELLANT

Vs

State Of Telangana

RESPONDENT

**Date of Decision :** 13-09-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 21, 22  
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(a), 2(x), 3(2)

**Citation :** (2022) 09 TEL CK 0054

**Hon'ble Judges :** Dr. Shameem Akther , J;Juvvadi Sridevi, J

**Bench :** Division Bench

**Advocate :** Pasham Trivikram Reddy

**Final Decision :** Allowed

## Judgement

1. Mrs. Badker Kasturi, the petitioner, has filed this Habeas Corpus petition on behalf of her son, Thakur Deepak Singh Badekar @ Deepak, S/o. Thakur Madhusudhan Singh, the detenu, challenging the detention order vide SB(I) No.233/PD-7/HYD/2021, dated 03.11.2021, passed by the respondent No.2, whereby, the detenu was detained under Section 3(2) of the Telangana Preventive Detention Act, 1986 (Act 1 of 1986), and the consequential confirmation order vide G.O.Rt.No.245, General Administration (Spl. (Law & Order)) Department, dated 01.02.2022, passed by the respondent No.1.

2. Heard Sri Pasham Trivikram Reddy, learned counsel for the petitioner, Sri T.Srikanth Reddy, learned Government Pleader for Home representing the learned Additional Advocate General for the respondents, and perused the record.

3. The case of the petitioner is that basing on three (3) crimes registered against

the detenu viz., Crime No.139/2020 of Kamatipura Police Station and 40/2021 of Charminar Police Station of Hyderabad Police Commissionerate, and 165/2021 of Shamshabad Police Station of Cyberabad Police Commissionerate, the respondent No.2 passed the impugned detention order, dated 03.11.2021. According to respondent No.2, the detenu is a 'Goonda', as he, along with his associates, has been habitually committing offences including mischief by fire and extortion in the limits of Hyderabad and Cyberabad Police Commissionerates, thus creating widespread fear, terror and panic among the people, thereby adversely affecting the maintenance of public order. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.245, dated 01.02.2022.

4. Learned counsel for the petitioner would submit that the impugned detention order is illegal, arbitrary, unconstitutional, improper, against the principles of natural justice and has been passed in a mechanical manner and without application of mind. Already criminal law was set into motion against the detenu. The detenu was granted bail by the Courts concerned in all the three (3) crimes relied by the detaining authority and he was released from judicial custody on bail. But he was again sent to prison by invoking the draconian preventive detention laws on the apprehension that there is imminent possibility of the detenu committing similar offences, which is unjustified. The alleged crimes do not add up to "disturbing the public order" and they are confined within the ambit and scope of the word "law and order". Since the offences alleged are under the Indian Penal Code, the detenu can certainly be tried and convicted under the penal code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law. Hence, the impugned orders tantamount to colourable exercise of power. The subjective satisfaction recorded by the detaining authority in preventively detaining the detenu is tainted and illegal. Preventive detention cannot be made a substitute to punitive detention. The detaining authority has to be extremely careful while passing the detention order, since the detention ipso facto adversely affects the fundamental right and personal liberty enjoyed by the detenu under Article 21 of the Constitution of India. Thus, the impugned orders are legally unsustainable and ultimately, prayed to allow the Writ Petition, as prayed for.

5. On the other hand, the learned Government Pleader for Home appearing for the respondents supported the impugned orders and submitted that the detenu is a 'Goonda', as he along with his associates has been habitually committing grave and dangerous offences including mischief by fire and extortion, in an organized manner, thereby causing large scale fear, terror and panic among the people, thereby adversely affecting the maintenance of Public Order. Since the detenu got bail in all the three crimes relied upon by the detaining authority, the apprehension of the detaining authority that there is imminent possibility of the detenu committing similar offences, is not misconceived. The series of crimes allegedly committed by the detenu were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the modus of committing the crime

was mischief by fire and extortion, it has created sufficient panic in the minds of the general public. Therefore, the detaining authority was legally justified in passing the impugned detention order. Further, the Advisory Board rendered its opinion that there is sufficient cause for detention of the detenu and on considering the same along with the entire material, the Government confirmed the impugned detention order vide G.O.Rt.No.245, dated 01.02.2022. All the mandatory requirements were strictly followed by the detaining authority while passing the impugned detention order. The impugned orders are legally sustainable 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 impugned detention order vide SB(I) No.233/PD-7/HYD/2021, dated 03.11.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.245, General Administration (Spl. (Law & Order)) Department, dated 01.02.2022, passed by the respondent No.1, 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 committed against a particular individual fall within the ambit of "law and order" and when the public at large is adversely affected by the criminal activities of a person, such activities of that person are 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. Hence, according to the Hon'ble Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

8. In *Ram Manohar Lohia v. State of Bihar* AIR 1966 SC 740, the Hon'ble Supreme Court has, in fact, deprecated the invoking of the preventive law in order to tackle a law and order problem. It was observed that every breach of public peace and every violation of law may create a 'law and order' problem, but does not necessarily create a problem of 'public order'. The distinction has to be borne in mind in view of what has been stated in the grounds of detention.

9. In *Kanu Biswas v. State of West Bengal* (1972) 3 SCC 831, the Hon'ble Apex Court, while discussing the meaning of word 'public order,' held 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 extent of the reach of the act upon the Society.

10. In a recent judgment in *Banka Sneha Sheela Vs. State of Telangana* (2021) 2 Supreme Court Cases 415, the Hon'ble Apex Court held as follows:

"12. While it cannot seriously be disputed that the Detenu may be a "white

collar offender” as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a Preventive Detention Order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. Public order is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.

15. 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 Detenue which are punishable under the three sections of the Indian Penal Code 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 Detenue 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 Detenue, 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.

32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the Detenue, 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 the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground...”

(emphasis supplied)

11. In another recent judgment in Mallada K Sri Ram Vs. State of Telangana 2022 SCC Online SC 424, the Hon’ble Apex Court, while referring to its earlier decisions in Banka Sneha Sheela’s case (3 supra), Ram Manohar Lohia’s case (AIR 1966 SC 740 supra) and Sama Aruna Vs. State of Telangana (2018) 12 Supreme Court Cases 150, held as follows:

“15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the “maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenue was released on bail on 8 January 2021 and detained with effect

from 26 June 2021. The nature of the allegations against the detainee are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detainee are capable of being dealt by the ordinary course of criminal law.”

(emphasis supplied)

12. Yet again, in another recent judgment in Shaik Nazneen Vs. State of Telangana 2022 LiveLaw (SC) 559, the Hon’ble Apex Court, while referring to Banka Sneha Seela’s case (3 supra) and Mallada K.Sriram’s case (4 supra), held as follows:

“In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case.”

13. In the present case, the detaining authority, basing on three (3) crimes indicated above, has passed the impugned detention order, dated 03.11.2021. We shall present them in a tabular form the date of occurrence, the date of registration of FIR, the offence 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

139/2020 of Kamatipura PS

02.09.2020

02.09.2020

Section 435 r/w 34 of IPC

Cognizable/ Bailable

40/2021 of Charminar PS

13.02.2021

13.02.2021

Section 435 of IPC

Cognizable/ Bailable

165/2021 of Shamshabad PS

29.03.2021

29.03.2021

Section 384 r/w 34 of IPC

Cognizable/ Non Bailable

14. As seen from the material placed on record, the three (3) crimes relied by the detaining authority for preventively detaining the detenu relates to Mischief by fire and Extortion. The detenu was arrested in connection with all the three crimes and he was granted bail in all the three crimes the Courts concerned and he was released from judicial custody. Under these circumstances, the apprehension of the detaining authority that after release on bail, the detenu continued to commit similar offences and in view of the habitual nature of committing crimes, there is imminent possibility of his committing similar offences is highly misplaced. If the State is aggrieved by granting of bail to the detenu, 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. Mere obtaining of bail orders cannot be a substantial ground for invoking draconian preventive detention law against a person. Further, it is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of the detenu and to handover the entire case record available against the detenu. The police are supposed to be vigilant in collecting the whole data against the detenu and furnish the same to the Public Prosecutor/Additional Public Prosecutor to defeat the bail application/s of the detenu. Further, a mere apprehension of 'breach of law and order' is not sufficient to meet the standard of adversely affecting the 'maintenance of public order'. In the instant case, if it is apprehended that the detenu, since set free, would continue to indulge in similar offences, that may be a good ground to appeal against the bail orders granted and/or to cancel bail, but certainly cannot provide the springboard to move under the preventive detention statute. Moreover, criminal law was already set into motion against the detenu. Further, since the detenu has allegedly committed offence punishable under the Indian Penal Code, the subject crimes can be effectively dealt with under the provisions of Indian Penal Code and there was no need for the detaining authority to invoke

draconian preventive detention laws. The subject cases do not fall within the ambit of the words "public order" or "disturbance of public order". Instead, they fall within the scope of the words "law and order". Hence, there was no need for the detaining authority to pass the impugned detention order. Under these circumstances, the subjective satisfaction recorded by the detaining authority in detaining the detenus can be said to be tainted with malice. The personal liberty of an accused cannot be sacrificed on the altar of preventive detention, merely because a person is implicated in a criminal proceeding. Article 22 of the Constitution of India was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. 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 detenu under Article 21 of the Constitution of India. The detaining authority cannot be permitted to subvert, supplant, or substitute the punitive law of land, by ready resort to preventive detention.

15. For the foregoing reasons, the impugned orders are legally unsustainable and are liable to be set aside.

16. In the result, the Writ Petition is allowed. The impugned detention order vide SB(I) No.233/PD-7/HYD/2021, dated 03.11.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.245, General Administration (Spl. (Law & Order)) Department, dated 01.02.2022, passed by the respondent No.1, are hereby set aside. The respondents are directed to set the detenu, namely, Thakur Deepak Singh Badekar @ Deepak, S/o. Thakur Madhusudhan Singh, at liberty forthwith, if he is no longer required in any other criminal case.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.