
(2017) 06 AP CK 0060
In the Andhra Pradesh High Court
Case No : 42652 of 2016

C. Neela

APPELLANT

Vs

The State of Telangana

RESPONDENT

Date of Decision : 27-06-2017

Acts Referred:

Constitution of India, Article 21, Article 22(1) - Amendment of the Schedule - Protection against arrest and detention in certain cases
Indian Penal Code, 1860, <a href=1

Citation : (2017) 06 AP CK 0060

Hon'ble Judges : C.V.Nagarjuna Reddy, J.Uma Devi

Bench : DIVISON BENCH

Advocate : T. Niranjan Reddy, Allam Ramesh

Judgement

1. The detention of one Chirraboina Krishna Yadav @ Golla Kittu (hereinafter referred to as the detenu) under sub- section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and LandGrabbers Act, 1986 (for short the Act) is questioned by his wife in this writ petition.

2. In the impugned detention order, it is stated that the detenu was involved in 26 offences commencing from 1989 to 2012, that the detenu was externed from Hyderabad city for a period of six months, by order dated 22.08.2011 and that he was also detained under the provisions of the Act for a period of one year, by order dated 22.03.2013. It is further mentioned that after release of the detenu from preventive detention, he has committed five more offences. However, respondent No.2 in his order relied upon only two criminal cases i.e., Crime Nos.247 and 263 of 2016 on the file of Marredpally Police Station. Crime No.247 of 2016 was registered for offences under Sections 365, 195 (A), 465, 341, 342, 509, 506, 109 read with Section 34 I.P.C. The substance of the accusation against the detenu in the said case was that the associates of the detenu came to the house of the de facto complainant, M.Narsamma, threatened her to

receive a sum of Rs.10 Lakhs for compromising the pending criminal case registered for the offence under Section 302 I.P.C. for the alleged murder of a person by name M.Sekhar, the son of the de facto complainant, and that the associates of the detenu have forcibly taken the signatures of the de facto complainant and also her another son by keeping a money bag containing Rs.5 Lakhs on their table. Crime No. 263 of 2016 was registered for the offence under Section 506 I.P.C. on the complaint given by one of the sons of M.Narsamma alleging that the detenu has been threatening the de facto complainant to come for a compromise in the abovementioned murder case, or else he would implicate him and his family members in false criminal cases.

3. Mr. T.Niranjan Reddy, learned Senior Counsel for the petitioner, submitted that though respondent No.2 has referred to five criminal cases allegedly committed by the detenu after he was released from detention in 2014, he has relied upon only two criminal cases, both of which pertain to the same subject matter and while there is absolutely no proof in the allegations made in both the criminal cases, even assuming that the detenu was involved in threatening of the mother and son, who are the de facto complainants in Crime Nos.247 and 263 of 2016, such acts by themselves do not amount to disturbance to public order and at the most the alleged conduct of the detenu would create law and order problem for which he could be dealt with by invoking ordinary criminal laws. He has further argued that as the detenu was in judicial custody on the date of passing detention order, there was no likelihood of his being released and that respondent No.2 did not show awareness of this fact.

4. Learned Government Pleader for Home (Telangana) strenuously defended the detention order by stating that the detenu being a notorious criminal has not mended his ways and has repeatedly been committing offences, even after serving the full period of detention in pursuance of an earlier detention order.

5. With regard to the first submission of the learned Senior Counsel, before discussing the allegations referred to in the detention order, it would be instructive to refer to the relevant case law on the distinction between law and order and public order. In *Dr. Ram Manohar Lohia v. State Bihar* a Constitution Bench of the Supreme Court, speaking through M. Hidayatullah, J (as he then was), explained the difference between maintenance of law and order and maintenance of public order and its disturbance. The Court has further explained the whole concept of public order and law and order, by observing that one has to imagine three concentric circles, that law and order represents the largest circle, within which is the next circle representing public order and the smallest circle represents security of State. The Court has pointed out the difference between the maintenance of law and order and public order. The distinction has been succinctly brought out by the coordinate Bench, headed by Hidayatullah, J, in *Arun Ghosh v. State of West Bengal* by giving examples, the relevant portion of which is reproduced hereinbelow.

Take for instance, a man stabs another. People may be shocked and even

disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. 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 breach of the act upon the society. The French distinguish law and order and public order by designating the latter as *ordre public*. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia's case examples were given by Sarkar, and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.

6. In *Arun Ghosh (2 supra)*, the Supreme Court has dealt with a case where the acts of the detenu affected the family of one Phanindra C. Das and two other individuals, who were assaulted. Their Lordships have distinguished the said case from another case where three instances of rioting armed with lathis, iron rods and acid bulbs etc, were held sufficient to disturb the even tempo of public life in that locality and were treated as disturbance of public order. The Court has referring to another case which pertain to assaults on four persons and throwing a cracker into a police wireless van held that it did not add up to the disturbance of public order and they were treated as separate acts which affected individuals but did not affect the community at large. It has further held that public order is the even tempo of the life of the community taking the country as a whole or even a specified locality; that disturbance of public order is to be distinguished from the acts directed against the individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility and that it is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order.

7. In *Pushkar Mukherjee v. State of West Bengal* the Supreme Court held that 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 criminal jurisprudence, that 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. That in his book *Legal Duties* 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.

8. In *Haradhan Saha v. The State of West Bengal* the Supreme Court has prescribed tests to determine whether the alleged acts affect "law and order" or "public order". The Court held that it is the potentiality of the act to disturb the even tempo of life which makes it prejudicial to the maintenance of public order and that it is the degree and extent of the each of the objectionable activity on the society which is vital for consideration. Considering the question whether a person has committed only breach of law and order or has acted in any manner likely to cause disturbance to public order, it was held that an order of detention under the Act would be valid if the activities of the detenu affect public order, but could not be so where the same affects only the maintenance of law and order and that the facts of each case have therefore to be carefully scrutinized to test the validity of the detention.

9. Keeping in view the legal position discussed above, we need to consider the allegations against the detenu. As noted hereinbefore, though the detention order referred to as many as thirty-one cases, respondent No.2 has relied upon only two criminal cases wherein the mother of the deceased in a Sessions Case

registered against the detenu for the offence under Section 302 IPC and her another son are the de facto complainants. If we carefully analyze the accusations made against the detenu in Crime Nos.247 and 263 of 2016, they centred around the activities of the associates of the detenu and they are directed against only one family, i.e., the mother and the brother of the deceased in the pending sessions case. Thus, the alleged threats given by the detenu are individual centric which by no means can be said to involve public at large thereby causing disturbance to public order. Therefore, in our opinion, the alleged activities of the detenu constituting the grounds of detention fall in the concentric circle of law and order, but not that of public order.

10. During the hearing, this Court has sought to know from the learned Government Pleader for Home as to, out of thirty-one cases allegedly registered against the detenu, how many cases ended in conviction and in how many cases the detenu has been acquitted. The learned Government Pleader submitted that he does not have information on this aspect.

11. 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.

12. In *R. v. Secretary of State for the Home Department, ex p. Stafford*, it was observed The imposition of what is in effect a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with ordinary concepts of the rule of law. Highlighting the invaluable right of personal liberty, the Supreme Court in *State of Maharashtra v. Bhaurao Punjabrao Gawande* the Supreme Court observed: personal liberty is a precious right. So did the Founding Fathers believe because, while their first object was to give unto the people a Constitution whereby a Government was established, their second object, equally important, was to protect the people against the Government. That is why, while conferring extensive powers on the Government like the power to declare an emergency, the power to suspend the enforcement of fundamental rights or the power to issue ordinances, they assured to the people a Bill of Rights by Part III of the Constitution, protecting against executive and legislative despotism those human rights which they regarded as "fundamental". The imperative necessity to protect those rights is a lesson taught by all history and all human experience. Our Constitution makers had lived through bitter years and seen an alien Government trample upon human rights which the country had

fought hard to preserve. They believed like Jefferson that an elective despotism was not the Government we fought for. And, therefore, while arming the Government with large powers to prevent anarchy from within and conquest from without, they took care to ensure that those powers were not abused to mutilate the liberties of the people [vide A.K. Roy v. Union of India: (1982) 1 SCC 271; and Attorney General for India v. Amratlal Pranjivandas (1994) 5 SCC 54].

13. In *Rekha v. State of Tamil Nadu*, while dealing with the preventive detention laws, the Supreme Court held as follows:

14. Article 21 is the most important of the fundamental rights guaranteed by the Constitution of India. Liberty of a citizen is a most important right won by our forefathers after long, historical, arduous struggles. Our Founding Fathers realized its value because they had seen during the freedom struggle civil liberties of our countrymen being trampled upon by foreigners, and that is why they were determined that the right to individual liberty would be placed on the highest pedestal along with the right to life as the basic right of the people of India.

15. Right to liberty guaranteed by Article 21 implies that before a person is imprisoned a trial must ordinarily be held giving him full opportunity of hearing, and that too through a lawyer, because a layman would not be able to properly defend himself except through a lawyer.

16. The importance of a lawyer to enable a person to properly defend himself has been elaborately explained by this Court in *A.S. Mohammed Rafi v. State of T.N.* : (2011) 1 SCC 688; and in *Mohd. Sukur Ali v. State of Assam* : (2011) 4 SCC 729. As observed by Mr. Justice Sutherland of the US Supreme Court in *Powell v. Alabama* : 287 US 45 (1932), "(e)ven the intelligent and educated layman has small and sometimes no skill in the science of law", and hence, without a lawyer he may be convicted though he is innocent. 17. Article 22(1) of the Constitution makes it a fundamental right of a person detained to consult and be defended by a lawyer of his choice. But Article 22(3) specifically excludes the applicability of clause (1) of Article 22 to cases of preventive detention. Therefore, we must confine the power of preventive detention to very narrow limits, otherwise the great right to liberty won by our Founding Fathers, who were also freedom fighters, after long, arduous, historical struggles, will become nugatory.

(emphasis supplied)

Referring to the judgment of the Supreme Court in *Haradhan Saha* (4 supra), the Supreme Court further observed:

No doubt it has been held in the Constitution Bench decision in *Haradhan Saha* case (supra) that even if a person is liable to be tried in a criminal court for commission of a criminal offence, or is actually being so tried, that does not debar the authorities from passing a detention order under a preventive

detention law. This observation, to be understood correctly, must, however, be construed in the background of the constitutional scheme in Articles 21 and 22 of the Constitution (which we have already explained). Article 22(3)(b) is only an exception to Article 21 and it is not itself a fundamental right. It is Article 21 which is central to the whole chapter on fundamental rights in our Constitution. The right to liberty means that before sending a person to prison a trial must ordinarily be held giving him an opportunity of placing his defence through his lawyer. It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law (the Penal Code or other penal statutes) will not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to. Hence, the observation in SCC para 34 in Haradhan Saha case (supra) cannot be regarded as an unqualified statement that in every case where a person is liable to be tried, or is actually being tried, for a crime in a criminal court a detention order can also be passed under a preventive detention law.

14. In the case on hand, as noted above though the detention order referred to as many as thirty-one cases, respondent No.2 has relied upon only two criminal cases. If the detenu has been committing offences on a regular basis, we wonder as to why the State is unable to secure his conviction. The fact that the detenu is not convicted in any of several cases would give rise to a presumption that either the cases were falsely registered against him or that the State is not able to secure his conviction due to inefficiency of investigation and prosecution agencies. The State cannot find an easy way out by choosing to invoke the draconian provisions of preventive detention laws against every criminal as a substitute for his prosecution. As discussed supra, the Supreme Court has drawn a clear distinction between disturbance to public order on one side and disturbance to law and order on the other and held that only in the former case the State is permitted to invoke the powers under the preventive detention laws. If the detention of the detenu in the instant case was to be the panacea of the alleged evil being perpetrated by him on the society, the State has already subjected him to preventive detention for one year from 23.02.2013 to 23.02.2014. The allegation of the State that even his earlier preventive detention did not have any deterrent effect on him shows that the real solution does not lie in passing successive detention orders.

15. In this context we think a little digression from the subject proper is necessary. The State must devise a method to rein in chronic and hardcore criminals and ensure that they are punished under ordinary criminal laws by strengthening the investigation and prosecution systems. In reality, while dealing with prosecuting the same persons who are detained under preventive detention laws, the investigation and prosecution agencies are not showing the required seriousness, as a result of which the accused are able to secure bails as a matter of course and also get easy acquittals. Paradoxically, while easily letting them off under the ordinary criminal laws, the State is resorting to invocation of preventive detention laws, painting the very same accused as goondas and

dreaded criminals. We feel that it is time that the State must overhaul the whole criminal law enforcement system by plugging the huge gaping holes. The State must have efficient and scientifically trained Police officers for investigation of cases. It must also select and appoint efficient, knowledgeable and honest lawyers as Public Prosecutors, without being guided by extraneous factors, such as the individuals allegiance to the powers that be etc., in order to strengthen prosecution agency.

16. Coming to the second submission of the learned Senior Counsel, by now it has become well-settled legal proposition of law that the detaining authority must show its awareness of the existing judicial custody of the detenu and record its satisfaction that there is a reasonable possibility of his coming out from the judicial custody and repeat the offences which may disturb the public order.

17. The Constitution Bench of the Supreme Court in Haradhan Saha (4 supra) held that where the person concerned is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or public order. This ratio was followed in several subsequent judgments of the Supreme Courts (See Rajesh Gulati v. Govt. of NCT of Delhi , T.V. Sravanan v. State , and A. Shanthi v. Government of T.N.).

18. In N. Meera Rani v. Government of Tamil Nadu a three-Judge Bench of the Supreme Court summarized the settled principles in this regard as under: We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position.

19. In Union of India v. Paul Manickam and another the Hon"ble Supreme court while holding that subsisting custody of the detenu by itself does not invalidate the order of his preventive detention, however, struck a note of caution that ordinarily, preventive detention is not needed when detenu is already in custody and that the detaining authority must show his awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. It was further held that where the detention order in respect of a

person who was already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated.

20. A three-Judge Bench of the Supreme Court in *Rekha* (7 *supra*), held in paragraph 27 of the Judgment as under: In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed. The apex Court further held that the Constitution Bench in *Haradhan Saha* (4 *supra*) did not lay down that in all cases the authorities can take recourse to both criminal proceedings as well as a preventive detention order even though in the view of the Court the former is sufficient to deal with the situation.

21. Undisputedly, the detenu was under judicial custody in connection with Crime No.247 of 2016 and he was not granted bail after dismissal of his bail application. Therefore, on the date of passing of the detention order, there was no likelihood of his coming out on bail. There was hence no basis for respondent No.2 to arrive at the satisfaction that there was a likelihood of the detenu coming out on bail in the immediate future.

22. In the light of the above discussion, we are of the opinion that the impugned detention order as approved and confirmed are not sustainable and they are accordingly quashed.

23. In the result, the Writ Petition is allowed.