

(2021) 11 TEL CK 0031
In the Telangana High Court
Case No : Writ Petition No. 16305 Of 2021

Gadusu Pushpalatha

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 15-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 21, 22, 22(3)(b)
Telangana Preventin of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2(v), 3(2)
Indian Penal Code, 1860 — Section 34, 195A, 354B, 376(2)(n), 493, 504, 506
Protection of Children from Sexual Offences (POCSO) Act, 2012 — Section 3, 4

Citation : (2021) 11 TEL CK 0031

Hon'ble Judges : P.Naveen Rao, J;P.Sree Sudha , J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Gadusu Narsimha alias Narsimha Yadav-detenu, the husband of the petitioner herein, was detained by the Commissioner of Police, Rachakonda Commissionerate, under detention order dated 07.06.2021 passed in exercise of power under Section 3(2) of the Telangana Preventin of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter, 'the Act of 1986'). The same was approved by the Government of Telangana under G.O.Rt.No.1310, General Administration (Spl.(Law & Order) Department, dated 16.06.2021. This G.O. is subjected to challenge in the present writ petition and a writ of habeas corpus is sought to produce and release the petitioner's husband.

2. In the affidavit filed in support of the writ petition, the petitioner claimed that the fourth respondent herein had registered a crime against the detenu vide Crime No.636 of 2020 under Sections 376(2)(n), 354(B), 493, 506 IPC and Sections 3 and 4 of POCSO Act, 2012 and sent him to judicial remand on 06.07.2020. On an application vide Crl.M.P.No.801 of 2020 dated 16.07.2020 bail was granted to the detenu and after completion of investigation, charge-sheet

was filed and it is numbered as Spl.S.C.No.8 of 2021 on the file of the learned Metropolitan Sessions Judge, Cyberabad-cum-I Additional District Judge, Ranga Reddy District at L.B.Nagar, and it is pending. The detenu filed quash petition vide Crl.P.No.2083 of 2021 against the same. The detenu and one Alimineti Srilatha Reddy-defacto complainant are acquainted with each other for more than fourteen years and they are living in relationship. Out of the acquaintance with the Alimineti Srilatha Reddy, the detenu obtained an amount of Rs.2,00,000/- and agreed to pay the same within three months. Due to misunderstanding with the detenu, Alimineti Srilatha Reddy filed C.C.No.1781 of 2010 and also lodged two criminal complaints vide C.C.Nos.270 and 573 of 2010 against the detenu. At the instance of elders, the matter was settled between them since the detenu agreed to pay an amount of Rs.10,00,000/- to the Alimineti Srilatha Reddy . A Memorandum of Understanding dated 27.10.2017 was also entered into between them in which the Alimineti Srilatha Reddy agreed that she received the amount and that she will not file any cases against the detenu. Again at the instance of the Alimineti Srilatha Reddy , the detenu purchased a plot vide Sale Deed No.10857 of 2019 dated 09.04.2019 and then she also executed Oppanda Patram on 09.04.2019 in which she admitted that the detenu purchased the plot in her name for the welfare of her children. Again, when Alimineti Srilatha Reddy insisted the detenu to purchase another plot, he expressed his inability, and therefore, she filed a complaint vide FIR No.636 of 2020.

3. Likewise, Alimineti Srilatha Reddy also filed several cases against the Police Officers to extract money. She lodged a complaint against one Mr.K.Rajender Reddy, Sub-Inspector of Police and he paid an amount of Rs.2,50,000/- to her and executed Understanding Deed on 12.04.2018 in which she agreed that she will not file any cases against him. Again, she also lodged a complaint against one Mr.Arun Kumar, Sub-Inspector of Police and later withdrawn the same. The Alimineti Srilatha Reddy filed another complaint against the detenu under Sections 195-A and 506 IPC, but after investigation, it was closed as 'action dropped' and final report was filed.

4. Alimineti Srilatha Reddy again filed a case in Crime No.128 of 2021 under Sections 354-D, 504, 506 read with Section 34 IPC against the detenu. Aggrieved by the same, he filed the quash petition and it is pending. The daughter of Alimineti Srilatha Reddy gave another complaint, which was registered as Crime No.319 of 2021 under Sections 504 and 506 IPC. The case of the petitioner herein is that the Assistant Commissioner of Police, Vanasthalipuram, at the instance of the Alimineti Srilatha Reddy, regularly calling the detenu to his office and pressurizing to settle the disputes with the Alimineti Srilatha Reddy, and therefore, the detenu made a complaint to the Deputy Commissioner of Police, L.B.Nagar and Commissioner of Police, Rachakonda, on 19.04.2021 against the said Assistant Commissioner of Police. The petitioner further assert that at the instance of the said Assistant Commissioner of Police, the Commissioner of Police-second respondent passed the impugned detention

order. The petitioner also states that all the criminal cases are filed only by the Alimineti Srilatha Reddy against the detenu with an intention to extort money and that for the past ten years no third party or any other person did not file any case against him. The petitioner further asserts that the detenu was wrongly implicated in Crime No.636 of 2020. In Crime No.53 of 2021 the acts of Alimineti Srilatha Reddy in extorting amounts from the Police Officials came to the knowledge of the media persons and the same was published in all leading news papers and also telecasted in all leading Telugu news channels. The criminal cases lodged against the detenu does not amount to disturbing the public order and they are only within the ambit of law and order and they can be tried under the provisions of the Indian Penal Code and there is no need to the Detaining Authority to invoke the draconian preventive detention laws illegally and arbitrarily.

5. In his counter-affidavit, the second respondent-Commissioner of Police, Rachakonda Commissionerate, Hyderabad, would submit that the detention order was passed against the detenu terming him as 'sexual offender' as he had been continuously, repeatedly involving in the offences of cheating, criminal intimidations, extortions in the police station limits of Rachakonda Commissionerate and recently involved in the cases of rape on a minor girl and even on her mother and outraging the modesty of women by seeking obscene photos, text messages to the victims and also threatening them to withdraw their cases, and thus, acting in a manner prejudicial to the maintenance of public order apart from disturbing peace and tranquillity in the area. He would further submit that the Government approved the detention order vide G.O.Rt.No.1310 dated 16.06.2021 and his case was referred to the Advisory Board and after hearing the detenu and the Investigating Officer, it opined that there is sufficient cause for detention of the detenu under the provisions of the Act, and therefore, it cannot be said that the order of detention is vitiated. He would also submit that if the detenu is set at liberty, it is prejudicial to the maintenance of public order. He would also submit that Crime Nos.636 of 2020, 128 of 2021 and 319 of 2021 were registered against him and the criminal activities indulged in by the detenu would squarely fall within the definition of 'sexual offender' as defined in Clause (v) of Section 2 of the Act of 1986 and that the detention order was passed with a view to prevent the detenu from acting in a manner prejudicial to maintenance of public order, the provisions of the Act of 1986 were invoked. He would also asserts that the impugned detention order was passed only with a view to prevent the detenu from further indulging into such offences, but not from the pressure from the Government and that the essential concept of preventive detention is not to punish him but only preventing from doing it. The basis for the detention is the satisfaction of the executive for a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same and that one is punitive action and the other is preventive act. The power of preventive detention is qualitatively different from punitive detention and that preventive

detention is a precautionary exercise of power in reasonable anticipation, and therefore, he seeks dismissal of the writ petition.

6. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Home.

7. Perused the record and also the decisions cited by both the counsel.

8. In *Suguna V/S. State Of Telangana W.P.No.24441 of 2019* decided on 23.01.2020 , a Division Bench of this Court held as follows:

'... that there is a vast difference between 'law and order' and 'public order'. The offences which are committed against a particular individual fall within the ambit of 'law and order'. It is only when the public at large is adversely affected by the criminal activities of a person, the conduct of a person is 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. The invoking of such law adversely effects the fundamental right of personal liberty which is guaranteed and protected by Article 21 of the Constitution of India.'

9. The Hon'ble Apex Court in a decision reported in *Banka Sneha Sheela V/S. State Of Telangana Criminal Appeal No.733 of 2021* decided on 02.08.2021 referring to a decision reported in *Vijay Narain Singh V/S. State Of Bihar (1984) 3 SCC 14*, a three Judge Bench held as follows:

'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 jeopardised 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 authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising 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.'

10. In a decision reported in *Rekha V/S. State Of Tamil Nadu (2011) 5 SCC 244*, a three-Judge Bench held that 'Article 22(3)(b) of the Constitution of India which permits preventive detention is only an exception to Article 21 of the Constitution. An exception is an exception, and cannot ordinarily nullify the full force of the main rule, which is the right to liberty in Article 21 of the Constitution. Fundamental rights are meant for protecting the civil liberties of the people, and not to put them in jail for a long period without recourse to a lawyer and without a trial. Article 22, hence, cannot be read in isolation but must be read as an exception to Article 21. An exception can apply only in rare and

exceptional cases, and it cannot override the main rule'. The Apex Court on the issue of conceptual nature of preventive detention held that 'we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India, and therefore, the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.'

11. Coming to the case on hand, Alimineti Srilatha Reddy married a person and blessed with two children and filed complaints against her husband and in-laws, therefore, her husband deserted her long back. Thereafter, she developed acquaintance with the detenu and he is residing with her from the past fourteen years.

12. Admittedly, Alimineti Srilatha Reddy filed number of cases against the detenu, but she has withdrawn C.C.Nos.1781, 270 and 573 of 2010 after receiving Rs.10,00,000/- from the detenu and in that connection she also executed a Memorandum of Understanding on 27.10.2017 to that effect in which it is clearly stated that she will not file any case against the detenu. Even after the said Memorandum of Understanding, the detenu has purchased a house in her name and to that effect she has also executed a deed of Oppanda Patram on 09.04.2019 in which she specifically stated that she will never raise any litigation against him. Later, she got filed the present criminal cases against him. Basing on the above criminal cases, the impugned detention order was passed alleging him as sexual offender.

13. In the impugned detention order, the Commissioner of Police observed that considering the antecedents of the detenu and bail order granted therein, he strongly believed that there is every likelihood of his being indulged in similar offences which are detrimental and prejudicial to the maintenance of public order, tranquillity in the area, unless he is prevented from doing so by an appropriate order of detention.

14. Apparently, the conduct of Alimineti Srilatha Reddy shows that she was in the habit of filing complaints not only against the detenu but also against several Police Officers for extortion of the amounts. Apart from that she herself executed Memorandum of Understanding or Oppanda Patram after receiving amounts. Even after lodging a complaint in Crime No.636 of 2020, a Memorandum of Understanding was entered into on 16.05.2021 for payment of Rs.16,00,000/-, out of which Rs.1,00,000/- was paid by the detenu and a receipt was also filed as a material paper to this writ petition.

15. It is the contention of the detenu that the detention order was passed at the instance of Alimineti Srilatha Reddy as he gave complaint against the Assistant Commissioner of Police to the Deputy Commissioner of Police. The main allegation against the detenu is that he committed rape on a minor girl i.e., daughter of Alimineti Srilatha Reddy and the detenu also sent abusive messages

to the cell phones of her daughter and threatened them. Admittedly, all the criminal cases instituted against the detenu are only by the Alimineti Srilatha Reddy and no other third party filed any case against him during this period. The above all criminal cases can be disposed of in the criminal justice system basing on the evidence adduced by both the parties, and therefore, it cannot be said that if the detenu is released, there is every likelihood of threat to the public order. Further, the Hon'ble Apex Court already laid down the distinction between 'law and order' and 'public order' (extracted supra). The said criminal cases purely falls within the realm of the law and order and can be effectively handled by the investigating agency during the course of investigation.

16. In the light of the foregoing discussion, the detention order dated 07.06.2021 passed by the second respondent is patently illegal and is liable to be set aside.

17. Accordingly, the writ petition is allowed and the order of detention dated 07.06.2021 is set aside and the petitioner is set at liberty forthwith. There shall be no order as to costs.

18. Pending miscellaneous petitions, if any, shall also stand closed in the light of this final order.