

(2021) 09 TEL CK 0069
In the Telangana High Court
Case No : Writ Petition No. 12462 Of 2021

Jithy Abhilash

APPELLANT

Vs

State Of Telangana And 2 Others

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 19, 21, 22(2)
Defence Of India Rules, 1962 — Rule 30, 30(1)(b)
Prize Chits And Money Circulation Schemes (Banning) Act, 1978 — Section 2(c), 3, 4, 5, 6
Indian Penal Code, 1860 — Section 34, 120B, 406, 420
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 And While Collar Of Financial Offenders, Cyber Crime Offenders And White Collar Of Financial Offenders Act, 1986 — Section 2(x), 3(2)
Seeds Act, 1966 — Section 19, 21

Citation : (2021) 09 TEL CK 0069

Hon'ble Judges : A.Rajasheker Reddy, J;G. Sri Devi, J

Bench : Division Bench

Judgement

1. The present Writ of Habeas Corpus is filed by Smt. Jithy Abhilash, seeking a direction to the respondents to produce her husband Abhilash Thomas, S/o. Thomas, now detained in 3rd respondent's Prison, Hyderabad, before this Court and to order his release forthwith after declaring that his detention is illegal and invalid and set aside the orders passed by the 2nd respondent vide P.D. Act No.41/PD-CELL/CYB/2021, dated 24.04.2021, and consequential orders of the 1st respondent approving the detention vide G.O.Rt.No.1016, General Administration (SPL. (Law & Order) Department, dated 03.05.2021.

The facts which led to filing of the present Writ is as under:-

The detenu is Abhilash Thomas, S/o. Thomas. The 2nd respondent-Commissioner of Police, Cyberabad Commissionerate, taking into consideration the two crimes

registered against detenu in Crime No.124 of 2021 of Gachibowli Police Station, for the offences punishable under Sections 406, 420 of I.P.C. and Sections 4, 5, 6 read with Section 3, 2 (c) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and Crime No.183 of 2021 of Ramachandrapuram Police Station, for the offences punishable under Sections 406, 420 of I.P.C. and Sections 4, 5, 6 read with Section 3, 2 (c) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, and having satisfied that the detenu has been indulging in acts of cheating the gullible public in an organized manner in the limits of Cyberabad Police Commissionerate and other areas by making the innocent people to join in Indus Viva Health Sciences Private Limited Company by way of selling the products as a big business opportunity and once the members are joined, they are pressurized to join other members in 1:1 ratio in order to earn commissions/easy money, thereby amassed huge amounts in an organized way by running illegal money circulation schemes in the guise of direct selling entity, selling products to students and unemployed youth in large; that he is a "White Collar Offender" as defined in Clause (x) of Section 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 and White Collar of Financial Offenders, Cyber Crime Offenders and White Collar of Financial Offenders Act, 1986 (Act No.1 of 1986) (hereinafter referred to as 'the Act'); that he is acting in a manner prejudicial to the maintenance of public order; and that ordinary law under which he was booked is not sufficient to curb his dangerous and unlawful activities for which he shall be detained under the detention laws, passed the impugned order of detention vide P.D. Act No.41/PD-CELL/CYB/2021, dated 24.04.2021 under Sub-Section (2) of Section 3 of the Act No.1 of 1986.

The said detention order has been approved by the Government under sub-section (2) of Section 3 of the Act vide G.O.Rt.No.1016, General Administration (Spl.(Law & Order)) Department, dated 03.05.2021.

Assailing the same, the petitioner, who claims to be the wife of the detenu, filed the present writ of Habeas Corpus. It is the case of the petitioner that the detenu was falsely implicated in the above referred cases. Even though the detenu was granted bail in the above referred cases, he continued to be in judicial custody due to passing of the impugned detention order and that the same is passed only to see that the detenu does not come out of the jail.

Heard the learned Counsel for the parties and perused the impugned order.

Learned Counsel appearing for the petitioner would submit that relying only on the cases registered against the detenu in the year 2021, the impugned detention order is passed. It is further submitted that while passing the impugned detention order, the 2nd respondent has failed to apply his mind to

arrive at a proper subjective satisfaction as required by the Act; and that the order and the grounds specified by the 2nd respondent do not satisfy the requisite ingredients that the detention of the detenu is necessary for preventing the "White Collar Offences". It is also submitted that the alleged cases do not amount 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 provisions of Indian Penal Code, Prize Chits and Money Circulation Schemes (Banning) Act, 1978, the detenu can certainly be tried and convicted under the provisions of the said Special Act and I.P.C. It is further submitted that the cases registered against the detenu are still under investigation and the detenu has been granted conditional bails. It is also submitted that there is no material placed on record to show/satisfy that unless the detenu is detained, it would not be possible to control his habituality in continuing the criminal activities by resorting to normal procedures and ordinary course of law. Therefore, the learned Counsel seeks to set aside the detention order passed by the 2nd respondent as well as the consequential order of the 1st respondent. In support of his contention, he relied upon the Division Bench Judgment of this Court in W.P.No.29261 of 2019 dated 23.04.2020 (Dr.Pawan Malhan v. The State of Telangana).

On the other hand, learned Assistant Government Pleader for Home, appearing on behalf of the learned Advocate General submits that in the above referred cases, the detenu obtained bail from the Court concerned, but mere granting of bail does not absolve the detenu from the offences committed by him and that the 2nd respondent has already moved a petition before this Court for cancellation of bail. It is further submitted that the essential concept of preventive detention is not to punish him for something he has done, but to prevent him from doing it. In support of his contention, he relied on the Constitutional Bench Judgment of the Apex Court in Haradhan Saha v. State of West Bengal AIR 1974 SC 2154. It is also submitted that the detenu is treated as "White Collar Offender" as he has been habitually and continuously engaging himself in illegal activities by cheating the innocent unemployed youth, college students, retired employees, working people, house wives and general public by enrolling them as members into M/s. Indus Viva Health Sciences Private Limited in a binary method through promoters in the guise of direct selling. He induced the members to join the company's scheme by paying money into company bank accounts towards purchase of products to earn huge commissions every month. After joining the scheme, he used to inform them to join other members in 1:1 ratio under their down-line to earn money or commissions. The entire system of his enrolment of members into his company is a Pyramid scheme where the initial members keep benefiting from the joining of new members under their down-line and the latest members, who could not join any more members would lose the money they invested in the scheme. As such it is largely affecting the interest of public interest and thereby public order. As such, it cannot be said the offences committed by the detenu relates to 'law and order' and does not affect

'public order'.

In view of the aforesaid rival submissions, the point that arises for consideration is "Whether the detention order, dated 24.04.2021 passed by the 2nd respondent, and the confirmation order, dated 03.05.2021 passed by the 1st respondent, are liable to be set aside or not".

In catena of decisions, the Hon'ble Supreme Court as well as this Court have held 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 affects the fundamental right of personal liberty which is guaranteed and protected by Article 21 of the Constitution of India. Hence, according to the Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

In *V. Shantha v. State of Telangana and Others* (2017) 4 SCC 577 while considering the various provisions of the Act, the Apex Court held as under:

"The detenu was the owner of Laxmi Bhargavi Seeds, district distributor of Jeeva Aggri Genetic Seeds. Three FIRs were lodged against the detenu and others under Sections 420, 120-B, 34 IPC and Sections 19 and 21 of the Seeds Act, 1966. It was alleged that chilli seeds sold were spurious, as they did not yield sufficient crops, thus causing wrongful loss to the farmers, and illegal gains to the accused. Whether the seeds were genuine or not, the extent of the yield, are matters to be investigated in the FIRs. Section 19 of the Seeds Act provides for penalty by conviction and sentence also. Likewise, Section 20 provides for forfeiture. Sufficient remedies for the offence alleged were, therefore, available and had been invoked also under the ordinary laws of the land for the offence alleged.

The order of preventive detention passed against the detenu states that his illegal activities were causing danger to poor and small farmers and their safety and financial wellbeing. Recourse to normal legal procedure would be time-consuming, and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities in the business of spurious seeds, affecting maintenance of public order, and that there was no other option except to invoke the provisions of the Preventive Detention Act as an extreme measure to insulate the society from his evil deeds. The rhetorical incantation of the words "goonda" or "prejudicial to maintenance of public order" cannot be sufficient justification to invoke the Draconian powers of preventive detention. To classify the detenu as a "goonda" affecting public order, because of inadequate yield from the chilli seed sold by him and prevent him from moving for bail even is a gross

abuse of the statutory power of preventive detention. The grounds of detention are ex facie extraneous to the Act."

The Apex Court further held that preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law, and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention in most cases is for a year only, and cannot be used as an instrument to keep a person in perpetual custody without trial.

In fact, in *Ram Manohar Lohia v. State of Bihar* AIR 1966 SC 740, the Apex Court has deprecated the invoking of the preventive law in order to tackle a law and order problem. The Apex Court has observed as under:

"54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. 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."

In the case of *Kanu Biswas v. State of West Bengal* (1972) 3 SCC 831, the Apex Court has opined as under:

"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 reach of the act upon the society. Public order is what the French call 'order publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining

whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

In the instant case, the detaining authority relied on two crimes i.e., Crime No.124 of 2021 of Gachibowli Police Station, registered for the offences punishable under Sections 406, 420 of I.P.C. and Sections 4, 5, 6 read with Section 3, 2 (c) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and Crime No.183 of 2021 of Ramachandrapuram Police Station, registered for the offences punishable under Sections 406, 420 of I.P.C. and Sections 4, 5, 6 read with Section 3, 2 (c) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, registered against the detenu for preventively detained him.

In *State of Maharashtra and Ors. v. Bhaurao Punjabrao Gawande* (2008) 3 SCC 613 the Apex Court has held as follows:

"23....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 these 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."

In the Nine-Judge Constitution Bench decision in *I.R. Coelho v. State of T.N.* 2007 (2) SCC 1 the Apex Court has observed as follows:

"109.It is necessary to always bear in mind that fundamental rights have been considered to be (the) heart and soul of the Constitution.

49. Fundamental rights occupy a unique place in the lives of civilized societies and have been described in judgments as "transcendental", "inalienable", and primordial."

It is also appropriate to refer to the decision of the Apex Court in *Rekha Vs. State of Tamil Nadu* (2011) 5 SCC 244, wherein it is held as follows:

"23.criminal cases are already going on against the detenu under various

provisions of the Indian Penal Code as well as under the Drugs and Cosmetics Act, 1940 and if he is found guilty, he will be convicted and given appropriate sentence. In our opinion, the ordinary law of the land was sufficient to deal with this situation, and hence, recourse to the preventive detention law was illegal."

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."

As seen from the material placed on record, the crimes relied upon by the detaining authority for preventively detaining the detenu relate to cheating. Further, the detenu was arrested in connection with the said crimes and subsequently, he moved bail petitions in the said crimes and he was granted conditional bail by the Courts concerned. Under these circumstances, the apprehension of the detaining authority that since the detenu was released on bail, there is imminent possibility of his involving in similar offences unless he is prevented from doing so by an appropriate order of detention is highly misconceived. 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, in the instant case, since the detenu was granted bail by the Courts concerned, if it is found that the detenu is involved in further crimes, the prosecution can apprise the same to the Courts concerned and seek cancellation of bail. Moreover, criminal law was already set into motion against the detenu. Since the detenu has allegedly committed offences punishable under the Indian Penal Code, the said crimes can be effectively dealt with under the provisions of the Penal Code and there was no need for the detaining authority to invoke draconian preventive detention laws. The detaining authority cannot be permitted to subvert, supplant or substitute the punitive law of land, by ready resort to preventive detention.

Grave as the offences may be, they relate to cheating. Even a plain reading of the complaints in F.I.R.No.124 of 2021 of Gachibowli Police Station and F.I.R.No.183 of 2021 of Ramachandrapuram Police Station, would show that the complainant therein had paid only an amount of Rs.12,500/-, but the Investigating Agency has seized all the bank accounts of the company. So, no inference of disturbance of public order can be drawn. These types of cases can certainly be tried under the normal criminal justice system. And, if convicted, can certainly be punished by the Court of law. Hence, there was no need for the detaining authority to pass the detention order.

In *Yumman Ongbi Lembi Leima v. State of Manipur* (2012) 2 SCC 176, the Supreme Court, after referring to the case-law on the subject, held as under:-

"23. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to hold that the (sic exercise of) extraordinary powers of detaining an individual in contravention of the provisions of Article 22 (2) of the Constitution was not warranted in the instant case, where the grounds of detention do not disclose any material which was before the detaining authority, other than the fact that there was every likelihood of Yumman Somendro being released on bail in connection with the cases in respect of which he had been arrested, to support the order of detention.

27. As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. An individual incident of an offence under the Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention."

In *Mungala Yadamma v. State of A.P.* (2012) 2 SCC 386 the Apex Court held as under:-

"7. Having considered the submissions made on behalf of the respective parties, we are unable to accept the submissions made on behalf of the State in view of the fact that the decision in *Rekha's case* (supra), in our view, clearly covers the facts of this case as well. The offences complained of against the appellant are of a nature which can be dealt with under the ordinary law of the land. Taking recourse to the provisions of preventive detention is contrary to the constitutional guarantees enshrined in Articles 19 and 21 of the Constitution and sufficient grounds have to be made out by the detaining authorities to invoke such provisions.

9. Preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial."

Relying upon the law laid down in *Yumman Ongbi Lembi Leima v. State of Manipur* (8 supra) , recently, the Apex Court in *Banka Sneha Suseela v. State of Telangana and others* CrI.A.No.733 of 2021, SC, dt.02.08.2021 held as under:-

"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 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 the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground."

That apart, in W.P.No.29261 of 2019, dated 23.04.2020 (Dr.Pawan Malhan v. The State of Telangana), the allegation against the detenu that he has been habitually and continuously engaging himself in a series of illegal activities of cheating the innocent unemployed youth, college students, retired employees and other general public by enrolling them as members into a Multi Level Marketing company namely M/s.EBIZ.COM PRIVATE LIMITED along with his associate Hitik Malhan, with gullible words, in an organized manner, to make huge illegal and easy money, creating large scale fear and panic among the general public by committing such offences and thus he has been acting in a manner prejudicial to the maintenance of public order apart from disturbing the peace, tranquility and social harmony in the society. Though six crimes were registered against the detenu, the Division Bench of this Court allowed the Writ Petition by holding that "Grave as the offences may be, they relate to cheating. So, no inference of disturbance of public order can be drawn. These types of cases can certainly be tried under the normal criminal justice system. And, if convicted, can certainly be punished by the Court of law. Hence, there was no need for the detaining authority to pass the detention order".

In the instant case also the offences alleged against the detenu are relating to cheating and only three crimes have been registered against the detenu, as such applying the aforesaid decision of the Division Bench of this Court, this Writ Petition is also deserves to be allowed.

Having regard to the principles of law laid down by the Apex Court as well as this Court in the judgments referred to above and for the aforesaid reasons, we are of the opinion that the impugned detention order is legally unsustainable.

In the result, the Writ Petition is allowed. The impugned detention order passed by the 2nd respondent vide P.D. Act No.41/PD-CELL/CYB/2021, dated 24.04.2021, and the consequential confirmation order of the 1st respondent approving the detention vide G.O.Rt.No.1016, General Administration (SPL. (Law & Order) Department, dated 03.05.2021, are hereby set aside. The respondents are directed to set the detenu, namely Abhilash Thomas, S/o. Thomas, 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.