

(2021) 11 TEL CK 0035

In the Telangana High Court

Case No : Writ Petition No. 17056, 22007 Of 2021

Kolipaka Swapna

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 19(2), 19(3), 19(4), 20, 21, 22, 31B, 32
Defense of India Rules, 1962 — Rule 31(1)(b)
Indian Penal Code, 1860 — Section 379, 406, 420, 506
Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar of Financial Offenders Act, 1986 — Section 2(a), 3(2)

Citation : (2021) 11 TEL CK 0035

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

Bench : Division Bench

Final Decision : Allowed

Judgement

The Commissioner of Police & Additional District Magistrate (Executive), Ramagundam, in exercise of power under Section 3(2) of "The Telangana Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar of Financial Offenders Act, 1986 (Act No.1 of 1986), passed orders of detention dated 04.07.2021. The Commissioner holds that the detenu has been committing series of offences of theft of Solar Power Plant power cables and conveyor belt of Coal Handling Plant belongs to Singareni Collieries Company Limited (SCCL). He assesses that theft of power cables and conveyor belt caused huge financial loss to the SCCL, which may cause interruption to the Power Generation and supply

of power to the coal mines as well as cause interruption to the power generation by NTPC, Ramagundam, which supplies power to the States in South India, thereby adversely affecting the public order and causing huge loss to the public property. The Government accorded approval to the said detention order. Against the said detention, the petitioner, who is the wife of the detenu filed this Writ Petition.

2. Heard Mr. V.Raghunath learned counsel for petitioner and the learned Government Pleader appearing for learned Additional Advocate General for respondents.

3. Learned counsel for petitioner contends that the offences alleged against the detenu are only minor offences under Indian Penal Code, and merely because three crimes were registered against him and merely because he is categorized as 'goonda', is no ground to resort to preventive detention. The offences alleged against the detenu are crimes against the individuals. They are only affecting the 'law and order' and in no manner they affect the public order and, therefore, based on the alleged offences, the Commissioner of Police ought not to have exercised the extraordinary power of detention.

4. Per contra, learned Government Pleader appearing for learned Additional Advocate General submits that the detenu is habituated in committing crimes of theft and unless he is detained there is every possibility of the detenu indulging in perpetrating crimes causing hardship and suffering to public at large. He and his associates are habituated to committing theft of materials which are crucial for generation of electricity and their illegal actions may result in disruption of power supply. He submits that respondents have taken due diligence in assessing the conduct of the detenu and he was detained in strict compliance of law. He therefore submits that no cause is made out to set aside the order of detention. Releasing the detenu would disturb public order.

5. The issue for consideration is whether in the facts of the case preventive detention of detenu is valid ?

6. Resort to preventively detain a person is made when the detaining authority assumes that by allowing the person to be free the detenu may adversely affect or is 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 detenu affects or 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. The writ Court has to keep eternal vigilance to ensure right to life and liberty is not affected by resort by the State to illegal means. The Court is remanded 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. It is in the realm of speculation. The

Court is required to see whether procedural safeguards are strictly complied before detaining a person. 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.

7. It is apt to note the observations of the Hon'ble 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 of a fundamental right just as partial deprivation in every area can. The observations made in the context of Article 31-C have equal and full force for deciding the questions in these matters. Again the observations made in para 70 (SCC p. 659) are very relevant for our purposes. It has been observed that (Minerva Mills case [(1980) 3 SCC 625] , para 70, p. 659)

"[I]f by a constitutional amendment, the application of Articles 14 and 19 is withdrawn from a defined field of legislative activity, which is reasonably in public interest, the basic framework of the Constitution may remain unimpaired. But if the protection of those articles is withdrawn in respect of an uncatalogued variety of laws, fundamental freedoms will become a 'parchment in a glass case' to be viewed as a matter of historical curiosity."

These observations are very apt for deciding the extent and scope of judicial review in cases wherein entire Part III, including Articles 14, 19, 20, 21 and 32, stand excluded without any yardstick.

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109. Dealing with Articles 14, 19 and 21 in *Minerva Mills case* [(1980) 3 SCC 625] it was said that these clearly form part of the basic structure of the Constitution and cannot be abrogated. It was observed that three articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. These articles stand on altogether different footing. Can it be said, after the evolution of the basic structure doctrine, that exclusion of these rights at Parliament's will without any standard, cannot be subjected to judicial scrutiny as a result of the bar created by Article 31-B? The obvious answer has to be in the negative. If some of the fundamental rights constitute a basic structure, it would not be open to immunise those legislations from full judicial scrutiny either on the ground that the fundamental rights are not part of the basic structure or on the ground that Part III provisions are not available as a result of immunity granted by Article 31-B. It cannot be held that essence of the principle behind Article 14 is not part of the basic structure. In fact, essence or principle of the right or nature of violation is more important than the equality in the abstract or formal sense. The majority opinion in *Kesavananda Bharati case* [(1973) 4 SCC 225] clearly is that the principles behind fundamental rights are part of the basic 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]."

8. In *Rekha Vs State of Tamil Nadu* (2011) 5 SCC 244, the Hon'ble 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."

9. In catena of decisions, the Hon'ble 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'ble 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."

10. In *Banka Sneha Sheela vs. The State of Telangana and others* 2021 SCC Online SC 530 (CrI.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.

10.1. 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."

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

" 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 'public order' in that case was because of the expression "in the interests of" 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 'public order' 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." (emphasis supplied)

10.3. On reviewing the precedent decisions, the Hon'ble Supreme Court further held,

"34. 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."

11. In *Vijay Narin Singh vs State of Bihar* (1984) 3 SCC 14, the Hon'ble Supreme Court held,

"32. ...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."

(emphasis supplied)

12. Allegations against detenu is involvement in three crimes, i.e., (1) theft of copper cable from SCCL Solar Power Plant on the night of 04.06.2021; (2) theft of aluminum live power cable from SCCL Solar Power Plant on the night of 12.06.2021; and (3) theft of conveyor of coal handling plant of SCCL on the night of 17.06.2021. It is the case of the detaining authority that based on the confession of co-accused, the detenu was arrested on 20.06.2021 and parts of the alleged stolen items were recovered from him. It is the case of prosecution that by such actions the detenu and his associates caused huge loss of public money and their actions would have resulted in break down of power generated by NTPC and supplied to Southern States. According to the Commissioner of Police, detenu's actions are prejudicial to the maintenance of public order and should be prevented from committing such offences.

13. However, it is seen that all the crimes reported against the detenu are under Section 379 IPC. From the assessment of material considered by the Commissioner of Police, it is seen that detenu was involved in three crimes earlier, but reason for detention is involvement in three crimes alleged to have been committed within a span of about two weeks in the month of June, 2021.

14. Thus, what is alleged against the detenu are offences of theft, that are normal 'law and order' crimes, which require investigation, filing of final report and to prosecute before the jurisdictional criminal Court. By very nature of alleged crimes, they do not affect in any manner the public order. In the facts of this case, it cannot be said that the crimes registered against petitioner inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof [Banka Sneha Sheela vs. State of Telangana and others]. It cannot be said the Police have no clue if the detenu continues to indulge in such crimes.

15. In the facts of this case, we are of the opinion on that, the order of detention is not sustainable and the same is accordingly set aside. Though several other grounds are raised by the petitioner, we have not expressed opinion on those grounds of challenge to the detention order as we are satisfied that prima facie resort to power under Section 3(2) of the Act No.1 of 1986 is not warranted. Writ Petition is allowed and the respondents are directed to set the detenu, namely, Kolipaka Ramesh @ Rambabu, s/o.Rayamallu, Aged 42 years, r/o.Mallikarjuna

Nagar, Julapalli village of Kamanpur Mandal, Peddapalli district, at liberty forthwith, if he is no longer required in any other criminal case. Pending miscellaneous petitions if any shall stand closed.