

(2021) 10 TEL CK 0024
In the Telangana High Court
Case No : Writ Petition No. 8408 Of 2021

Mahmooda Begum

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 21-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 21, 22
Code Of Criminal Procedure, 1973 — Section 167(2)
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 & White Collar or Financial Offenders Act, 1986 — Section 3(2)
Indian Penal Code, 1860 — Section 34, 302, 307
Arms Act, 1959 — Section 25(1B)

Citation : (2021) 10 TEL CK 0024

Hon'ble Judges : A.Rajasheker Reddy, J;Dr. Shameem Akther, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Smt. Mahmooda Begum, the petitioner, has filed this Habeas Corpus petition on behalf of her grandson, Ahmed Hussain @ Amer Hussain @ Gajini Amer, S/o. late Akthar Hussain, aged about 26 years, the detenu, challenging the detention order vide SB (I)No.7/PD-7/HYD/2021, dated 06.01.2021, passed by the respondent No.2-Commissioner of Police, Hyderabad City, wherein, the detenu was detained under Section 3(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 & White Collar or Financial Offenders Act, 1986 (for short, "P.D. Act") and the consequential confirmation order vide G.O.Rt.No.655, General

Administration (Spl. (Law & Order)) Department, dated 20.03.2021, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order)), Department, Government of Telangana.

2. Heard the submissions of Sri Mohd. Islamuddin Ansari, learned counsel for the petitioner, Sri A.Manoj Kumar, learned Assistant Government Pleader for Home representing the learned Additional Advocate General for the respondents and perused the record.

3. The background facts of the case, in brief, are that by relying two criminal cases registered against the detenu, viz., Crime Nos.192/2020 of Banjara Hills Police Station and 168/2020 of Reinbazar Police Station, the respondent No.2- Commissioner of Police, Hyderabad, passed the impugned detention order, dated 06.01.2021. According to the respondent No.2, the detenu is a 'Goonda'. He, along with his associates, committed the offences of attempt to murder and murder, in an organized manner, in the limits of Hyderabad Police Commissionerate, and thus created panic, terror and fear in the minds of general public, thereby disturbing the public order and peace and tranquility in the area. The unlawful activities of the detenu have been causing a feeling of insecurity in the minds of public on a regular basis, which is prejudicial to maintenance of public order. With a view to prevent the detenu from acting in the manner, which is prejudicial to the maintenance of public order, the impugned detention order, dated 06.01.2021, was passed, which was confirmed by the Government, by order, dated 20.03.2021. Hence, this Writ Petition before this Court.

4. The learned counsel for the petitioner vehemently contended that the impugned detention order is vague, irrelevant, improper, against the principles of natural justice and has been passed in a mechanical manner and without application of mind. The detenu is falsely implicated in the cases relied by the detaining authority. The alleged criminal activities of the detenu, in any event, would not satisfy the word 'goonda'. The detaining authority has not applied its mind to the facts and circumstances of the case, while passing the impugned detention order. The detenu was granted mandatory/statutory bail under Section 167(2) of Cr.P.C., with certain conditions, by the Courts concerned in both the crimes relied by the detaining authority. Hence, there was no need to invoke the draconian preventive detention laws against the detenu, since the detenu would be well within the surveillance of police. The conditions imposed in the bail orders were sufficient to prevent the detenu from fleeing from justice. Further, the detaining authority referred to the earlier detention orders passed against the detenu, which have no nexus with the impugned detention order and on this ground alone, the impugned detention order is liable to be set aside. Further, the detenu was not supplied with a copy of G.O.Ms.No.1929, dated 11.12.2020, relied by the detaining authority, which is unconstitutional and against Article 22 of the Constitution of India. Further, the subjective satisfaction recorded by the detaining authority for preventively detaining the detenu is tainted and illegal. Moreover, the cases alleged against the detenu do not add up to "disturbing the

public order". They are confined within the ambit and scope of the word "law and order". Since the offences alleged are under Indian Penal Code and Indian Arms Act, the detenu can certainly be tried under the Penal Code and said special law. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned detention order tantamounts to colourable exercise of power. 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 of personal liberty enjoyed by the people under Article 21 of the Constitution of India. Thus, the detention order and the consequential confirmation order are legally unsustainable and ultimately, prayed to set aside the same and allow the writ petition as prayed for.

5. On the other hand, Sri A.Manoj Kumar, learned Assistant Government Pleader for Home, appearing for the respondents, supported the impugned detention order and submitted the detenu, along with his associates, has been indulging in grave and dangerous activities of murder and attempt to murder, in an organized manner in the limits of Hyderabad Police Commissionerate. The unlawful activities of the detenu were creating large scale fear, terror and panic among the people and thereby, adversely affecting the public order. In the first crime, i.e., Crime No.192/2020, the detenu, along with his associates, attacked the complainant therein and his staff with knives and dagger, resulting in bleeding injuries to the complainant therein. In the second crime, i.e., Crime No.168/2020, the detenu and his associates attacked the deceased with knives and caused multiple stab injuries resulting in instantaneous death of the deceased. The detenu was earlier detained thrice under the provisions of P.D.Act, vide orders in SB(I) No.139/PD/S-1/2015, dated 05.04.2015, SB(I) No.3/PD-2/HYD/2018, dated 09.01.2018 and SB(I) No.177/PD-3/HYD/2019, dated 22.07.2019. In spite of the same, he did not mend his habitual nature of committing crimes and after his release from preventive detention, he again involved in the subject two crimes in the year 2020. With a view to prevent the detenu from further indulging in such dangerous activities in the interest of the society, the impugned detention order was passed. The subjective satisfaction reached by the detaining authority in preventively detaining the detenu is not tainted or illegal. The detenu was served with the detention order, grounds for detention and all the documents relied upon by the detaining authority, and the detenu acknowledged the same. Further, there is no need to serve a copy of G.O.Ms.No.1929, dated 11.12.2020, to the detenu, which relates to delegation of powers by the Government to the Commissioners of Police/District Collectors in the State with regard to provisions of P.D.Act. Further, non-supply of the said order would not, in any manner, cause prejudice to the detenu. Further, the earlier detention orders passed against the detenu were only referred in the impugned detention order, but they were not considered for passing the impugned detention order. Hence the contention of the petitioner that the earlier detention orders have no nexus with the impugned detention order and that on

the said ground, the impugned detention order is liable to be set aside, is untenable. Further, the Advisory Board, in its review meeting held on 15.02.2021, upon hearing the detenu and the concerned investigating officials and upon considering the entire material placed before it, rendered its opinion that there is sufficient cause for detention of the detenu. On considering the opinion of the Advisory Board and upon considering the entire material independently, the Government confirmed the impugned detention order, vide G.O.Rt.No.655, dated 20.03.2021. Therefore, the detaining authority was legally justified in passing the impugned detention order. All the mandatory provisions and the safeguards envisaged under the law were strictly followed, while passing the impugned detention order and hence, the impugned detention order does not suffer from illegality or impropriety and ultimately, prayed to dismiss the Writ Petition.

6. In view of the submissions made by both sides, the point that arises for determination in this Writ Petition is:

"Whether the impugned detention order, dated 06.01.2021, passed by respondent No.2 and the consequential confirmation order, dated 20.03.2021, passed by the Principal Secretary to Government (Spl (Law & Order)) Department, Government of Telangana, are liable to be set aside?"

7. POINT: As per the record, by relying on two criminal cases registered against the detenu, viz., Cr.No.192/2020 of Banjara Hills Police Station and Cr.No.168/2020 of Reinbazar Police Station, the respondent No.2-Commissioner of Police, Hyderabad, passed the impugned detention order, dated 06.01.2021. According to the respondent No.2, the detenu is a 'goonda'. He, along with his associates, committed several bodily offences, including attempt to murder and murder, in an organized manner, in the limits of Hyderabad Police Commissionerate, thus causing widespread fear, terror and panic among the people, thereby adversely affecting the public order. Though the detenu was preventively detained for three times earlier, he did not mend his attitude and again committed the subject two crimes. The detenu was granted mandatory/statutory bail in both the subject crimes by the Courts concerned. In order to prevent the detenu from further indulging in such highly dangerous and illegal activities, which are detrimental to the public order, the impugned detention order, dated 06.01.2021, was passed, which was confirmed by the Government by order, dated 20.03.2021.

8. The material placed on record reveals that the detenu-Ahmed Hussain @ Amer Hussain @ Gajini Amer, S/o. late Akthar Hussain, is alleged to be a 'goonda', as he has been habitually indulging in the acts of goondalism on a regular basis and has been causing a feeling of insecurity in the minds of general public in the limits of Hyderabad Police Commissionerate and his illegal activities have been adversely affecting the maintenance of public order and peace in the area. The detaining authority relied on two cases for preventively detaining the detenu. We shall present them in a tabular form the date of occurrence, the date of

registration of FIR, the offences complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

Sl. No.

Crime No.

Date of Occurrence

Date of registration of FIR

Offence

Nature

1.

192/2020 of Banjara Hills Police Station

09.03.2020

10.03.2020

Sections 307 r/w 34 of IPC and Section 25(1-B) of Arms Act

Section 307 of IPC : Cognizable/ Non-Bailable Section 25(1-B) of Arms Act : Cognizable/Bailable

2.

168/2020 of Reinbazar Police Station

15.08.2020

15.08.2020

Section 302 r/w 34 of IPC and Section 25(1-B) of Arms Act

Section 307 of IPC : Cognizable/ Non-Bailable Section 25(1-B) of Arms Act : Cognizable/Bailable

9. Though several contentions have been raised by both sides on the merits of the case, it is patently evident from the record that in both the crimes relied upon by the detaining authority for preventively detaining the detenu, the detenu was granted statutory bail under Section 167(2) of Cr.P.C. by the Courts concerned and he was released on statutory/mandatory bail in Crime No.192/2020 on 16.06.2020 and in Crime No.168/2020 on 31.12.2020. So, it appears that the investigating officer had not completed investigation within the statutory period, i.e., ninety days. Therefore, the detenu was granted bail under Section 167(2) of Cr.P.C. It is a grave omission on the part of the investigating officer in not completing the investigation within a period of ninety days. The very purpose of enacting the provision under Section 167(2) of Cr.P.C. is to expedite the investigation, so that the valuable material evidence is not lost and can be collected and produced before the Court. Granting Statutory/mandatory

bail to the detenu by the Courts concerned demonstrates non-completion of investigation within the statutory period. The relief granted to the detenu under Section 167(2) of Cr.P.C. cannot be scuttled by invoking the preventive detention laws. Moreover, in the two cases relied on by the detaining authority, the detenu alleged to have committed offence under Sections 307 r/w 34 of IPC, 302 r/w 34 of IPC and Section 25(1-B) of Arms Act. The said offences can be dealt with under the Penal Code/special law. For the inaction of the Police, the detaining authority cannot be permitted to invoke the preventive detention laws, in order to breach the liberty of an individual.

10. Further, it is apt to state that acts which are similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case, it might affect specific individuals only, and therefore would amount to 'law and order problem' only, while in another, it might affect the public order. Some infractions of law may lead to disturbance of 'law and order', but every infraction of law does not necessarily result in 'public disorder'. In the instant case, grave as the offences may be, in the given circumstances of the case, they are committed against particular individuals and not the general public at large. Hence, no inference of disturbance of public order can be drawn. The subject cases can certainly be tried under the normal criminal law/special law and, if convicted, can certainly be punished by the Court of law. Thus, the instant two crimes 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. For the foregoing reasons, the impugned orders are legally unsustainable and are liable to be set aside.

11. In the result, the Writ Petition is allowed. The impugned detention order vide SB (I)No.7/PD-7/HYD/2021, dated 06.01.2021, passed by the respondent No.2-Commissioner of Police, Hyderabad City, and the consequential confirmation order vide G.O.Rt.No.655, General Administration (Spl. (Law & Order)) Department, dated 20.03.2021, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order)), Department, Government of Telangana, are hereby set aside. The respondents are directed to set the detenu, namely Ahmed Hussain @ Amer Hussain @ Gajini Amer, S/o. late Akthar Hussain, at liberty forthwith, if he is no longer required in any other criminal case.

The miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.