

(2022) 01 TEL CK 0046
In the Telangana High Court
Case No : Writ Petition No. 17120 Of 2021

Mallada K. Sri Ram

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 25-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 21
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 2(x), 3(2)
Indian Penal Code, 1860 — Section 406, 407, 408, 409, 417, 418, 419, 420

Citation : (2022) 01 TEL CK 0046

Hon'ble Judges : Dr. Shameem Akther N.Tukaramji, J

Bench : Division Bench

Advocate : Seshagirirao Yalamanchili

Final Decision : Dismissed

Judgement

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1. Mr. Mallada Sri Ram, the petitioner, filed this Habeas Corpus petition on behalf of his brother, Mallada Gangadhar, S/o. late Sathyam, aged 43",,,,,

years, the detenu, challenging the detention order, vide SB(I) No.102/PD-1/HYD/2021, dated 19.05.2021, passed by the Commissioner of Police,",,,,

Hyderabad City, the respondent No.2, whereby, 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 ""PD Act""), and the consequential confirmation order vide G.O.Rt.No.1917, General Administration (Spl. (Law & Order)) Department",,,,,

dated 24.08.2021, passed by respondent No.1.",,,,,

2. We have heard the submissions of Sri Seshagiri Rao Yalamanchili, learned counsel for the petitioner, Sri A. Manoj Kumar, learned Assistant",,,,,

Government Pleader for Home appearing on behalf of Advocate General for the respondents and perused the record.,,,,,

3. The learned counsel for the petitioner has vehemently contended that the impugned detention order is illegal, arbitrary, unconstitutional, improper",,,,,

against the principles of natural justice and has been passed in a mechanical manner and without application of mind. Both the cases relied upon by the",,,,,

detaining authority for preventively detaining the detenu have been foisted against the detenu. Already criminal law was set into motion against the",,,,,

detenu. Further, the alleged criminal activities of the detenu, in any event, would not satisfy the word ""white collar offender"". In both the cases",,,,,

relied by the detaining authority for preventively detaining the detenu, the detenu was granted conditional bail by the Courts concerned and after",,,,,

release on bail, the detenu neither violated the bail conditions nor involved in any other crime(s). 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. In case the detenu had violated the bail",,,,,

conditions, the sponsoring authority could have taken steps for cancellation of bail. Instead, the sponsoring authority gave a requisition to the detaining",,,,,

authority for passing the detention order. The detaining authority has not applied its mind to the facts and circumstances of the case, while passing the",,,,,

impugned detention order. Further, the subjective satisfaction recorded by the detaining authority for preventively detaining the detenu is vague and not",,,,,

based on any material. The detaining authority did not assign any reason for coming to a conclusion that the activities of the detenu are disturbing",,,,,

peace and tranquility in society and affecting the public order. Further, 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 detenu is alleged to be a "White Collar Offender", the

detenu can certainly be tried and convicted under the Penal Code. 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 of a person is an

exceptional power, which can only be used in exceptional circumstances. 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 is legally unsustainable and ultimately, prayed to set aside the same and allow the writ petition as

prayed for. In support of his contentions, the learned counsel had placed reliance on a judgment of the Hon'ble Apex Court in Banka Sneha

Sheela Vs. State of Telangana 2021 SCC Online SC 530.

4. On the other hand, the learned Assistant Government Pleader for Home would contend that the detenu is a "White Collar Offender". He has

repeatedly indulged in committing offences of cheating the unemployed job aspirants/youth promising employment in private sectors by creating fake

documents in the limits of Hyderabad Police Commissionerate and thus causing large scale fear and panic among the general public and thus

disturbing peace and tranquility in society and acted in a manner, which is prejudicial to the maintenance of public order. The detenu had cheated as

many as 450 gullible job aspirants under the guise of providing jobs and collected a huge amount of Rs.85 lakhs from them. The unlawful activities of

the detenu were causing widespread danger to the gullible public and were detrimental to the public order. The crimes allegedly committed by the

detenu were sufficient to affect the even tempo of the society and create a feeling of insecurity in the minds of the public in general and unemployed

youth in particular. The impugned detention order was passed basing on valid grounds and material placed before the respondents. All the mandatory

provisions and the safeguards envisaged under the Constitution of India were strictly followed while passing the impugned detention order and hence,

the impugned detention order does not suffer from illegality or impropriety. In both the cases relied by the detaining authority for detaining the detenu,

the detenu got bail from the Courts concerned. Hence, with a view to prevent the detenu from further indulging in such unlawful activities in the",,,,

interest of the society, the impugned detention order was passed. Preventive detention is different from punitive detention. Preventive detention is a",,,,

precautionary measure basing on reasonable anticipation and it does not overlap with the prosecution. Further, the Advisory Board, in its review",,,,

meeting held on 05.08.2021, 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, the Government confirmed the impugned detention order, vide G.O.Rt.No.1917, General Administration (Spl. (Law & Order))",,,,

Department, dated 24.08.2021. Therefore, the detaining authority was legally justified in passing the impugned detention order and ultimately, prayed to",,,,

dismiss the writ petition.,,,,

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

â??Whether the impugned detention order, dated 19.05.2021, passed by the Commissioner of Police, Hyderabad City, respondent No.2," ,,,,

and the consequential confirmation order, dated 24.08.2021, passed by the Principal Secretary to Government, General Administration" ,,,,

(Spl. (Law & Order)) Department, Government of Telangana, respondent No.1, are liable to be set aside?â??" ,,,,

POINT: ,,,,

6. Briefly, the facts of the case are that by relying on two criminal cases registered against the detenu in Crime Nos.675/2020 of Banjara Hills Police",,,,

Station and 343/2020 of Chatrinaka Police Station, within the limits of Hyderabad Police Commissionerate, the respondent No.2-Commissioner of",,,,

Police, Hyderabad City, passed the impugned detention order, dated 19.05.2021. According to the respondent No.2, the detenu is a â??White Collar",,,,

Offenderâ?? and he has been habitually and continuously engaging himself in series of unlawful activities by committing criminal breach of trust," ,,,,

cheating, forgery for the purpose of cheating and cheating the innocent job aspirants, by collecting huge money from them under the guise of providing" ,,,,

employment and thereby creating large scale fear and insecurity among the gullible public, which are prejudicial to the maintenance of public order. In",,,,,

both the cases relied by the detaining authority for preventively detaining the detenu, the detenu got bail from the Court concerned. In order to prevent",,,,,

the detenu from indulging in similar illegal activities, which are detrimental to the public order, the impugned detention order, dated 19.05.2021, was",,,,,

passed, which was confirmed by the Government by order, dated 24.08.2021.",,,,,

7. The material placed on record reveals that the detenu-Mallada Gangadhar, S/o. late Sathyam, aged about 43 years, is alleged to be a "White",,,,,

Collar Offender". He cheated as many as 450 innocent job aspirants by collecting a huge amount of Rs.85 lakhs from them under the guise of",,,,,

providing employment in private sectors by creating fake documents, in an organized manner. The detaining authority relied on two cases for",,,,,

Crime No., Date of Occurrence, Date of registration of

FIR, Offences, Nature

675/2020 of Banjara

Hills Police Station", Prior to 15.10.2020, 15.10.2020, "Sections 408, 420, 468,

471, 506 r/w 120B of

IPC", "Sections 408, 420 &

468: Cognizable/ Non

Bailable, Section 471:

Cognizable/ Bailable

Section 506 : Non-

cognizable/ Bailable

343/2020 of

Chatrinaka Police

Station", Prior to 17.12.2020, 17.12.2020, "Sections 408, 420, 468,

120B of IPC", "Sections 408, 420 &

468: Cognizable/ Non

Bailable

12. In the case of Madhu Limaye Vs. Sub-Divisional Magistrate (1970) 3 SCC 746. The Hon'ble Apex Court held as follows:,,,,

â??The acts which disturb public tranquility or are breaches of the peace should not be given a narrow meaning, but should be given a liberal" ,,,,

interpretation. For the expression â??in the interest of public orderâ?? is very wide amplitude.â?? ,,,,

13. In the case of Commissioner of Police & Others Vs. C.Anita (Smt.) (2004) 7 SCC 467, the Honâ??ble Apex Court examined the issue of ""public" ,,,,

order"" and ""law and order"" and observed as follows:" ,,,,

â??The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression ""law and order"" is wider in scope" ,,,,

inasmuch as contravention of law always affects order, ""public order"" has a narrower ambit, and public order could be affected by only such" ,,,,

contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a ,,,,

whole or even a specified locality. The distinction between the areas of ""law and order"" and ""public order"" is one of the degree and extent of the reach" ,,,,

of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the ,,,,

maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum ,,,,

of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption" ,,,,

of disorder that helps to distinguish it as an act affecting ""public order"" from that concerning ""law and order"". The question to ask is: ""Does it lead to" ,,,,

disturbance of the current 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?"" This question has to be faced in every case on its facts."" ,,,,

14. In the case of R. Kalavathi v. State of Tamil Nadu (2006) 6 SCC 14, the Honâ??ble Apex Court, while dealing with the case affecting the public" ,,,,

order, observed that even a single act which has the propensity of Â affecting the even tempo of life and public tranquility would be sufficient for" ,,,,

detention. ,,,,

15. The decision of the Honâ??ble Apex Court in Banka Sneha Sheelaâ??s case supra relied by the learned counsel for the petitioner is ,,,,

distinguishable on facts from the instant case. In the said decision, the number

of victims duped/cheated and the amount collected from them is much" ,,,, lower than the victims involved and the amount collected by the detenu in the instant case. The modus operandi adopted by the detenu in the instant ,,,, case is also quite different to the modus operandi of the detenu in the aforementioned case. In the instant case, the detenu amassed a huge amount of" ,,,, Rs.85 lakhs by cheating more than 450 unemployed under the guise of providing jobs in private companies. In that process, the detenu created fake" ,,,, documents, fake identity cards and opened bank accounts on the pretext of crediting the salary of the victims and made the victims purchase uniforms." ,,,, The detenu also went to the extent of creating a fake letter in the name of Special Commissioner (Sanitation), GHMC, as if a sanitation project was" ,,,, sanctioned to ICS and also created a fake agreement between GHMC and ICS on a non-judicial stamp paper worth Rs.100/-. Believing the gullible ,,,, words of the detenu, as many as 450 innocent unemployed youth paid amounts to the detenu. The ramifications of illegal activities of the detenu and its" ,,,, effect on the society at large and unemployed youth in particular, is much wider than that of the illegal activities of the detenu in Banka Shena" ,,,, Sheela's case supra. Both the crimes relied by the detaining authority in the instant case duly reflect the propensity of the detenu to commit ,,,, offences with cool calculation and deliberate design to dupe/cheat the gullible youth taking advantage of their unemployment; and for a person of such ,,,, a conduct staying in the community is desperate and dangerous to the people at large and unemployed youth in particular. ,,,, 16. As per the clause (x) of Section 2 of the P.D.Act, a "White Collar Offender" or "White collar offender" or "Financial Offender" means" ,,,, a person who commits or abets the commission of offences punishable under the Telangana Protection of Depositors of Financial Establishment Act, ,,,, 1999 or under sections 406 to 409 or 417 to 420 or under Chapter XVIII of the Indian Penal Code, 1860." ,,,, 17. In Subramanian Vs. State of Tamilnadu (2012) 4 Supreme Court Cases 699, the Hon'ble Apex Court held as follows:" ,,,, "It is well settled law that the Court does not interfere with the subjective satisfaction reached by the detaining authority except in exceptional and ,,,, extremely limited grounds. The court cannot substitute its own opinion for that of the detaining authority when the grounds of detention are precise," ,,,,

pertinent, proximate and relevant, that sufficiency of grounds is not for the court, but for the detaining authority for the formation of subjective",,,,

satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such,,,,

satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action,,,,

of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive",,,,

authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the detaining authority, therefore, is",,,,

considered to be of primary importance with certain latitude in the exercise of its discretion.â??,,,,

18. It is pertinent to state that the personal liberty of an individual, which the law preserves and protects, can also be taken away by following the",,,,

procedure established by law, when it is used to jeopardize the public good and not merely private interests. An order of detention is not a curative or",,,,

reformatory or punitive action, but a preventive action, the avowed object of which is to prevent the anti-social and subversive elements from",,,,

imperiling the welfare of the people or the security of the nation or from disturbing the public tranquility or from indulging in white collar offences. In,,,,

the instant case, the commission of alleged offences by the detenu as indicated in the above table clearly demonstrates that the detenu, under the",,,,

pretext of providing jobs to the gullible unemployed youth, collected huge amounts from them in an organized fashion, played fraud on them and when",,,,

they asked him to repay the money, threatened them with dire consequences and escaped. The modus operandi of the detenu in the alleged offences",,,,

would certainly disturb the public peace and tranquility. So it is imperative upon the officers concerned to pass the order of detention, since the acts of",,,,

the detenu are prejudicial to the maintenance of public order. The illegal activities of the detenu were of such a reach and extent, that they would",,,,

certainly affect the even tempo of life and were prejudicial to the public order. The detaining authority had sufficient material to record subjective,,,,

satisfaction that the detention of the detenu was necessary to maintain public order and even tempo of life of the community. The order of detention,,,,

does not suffer from any illegality. The grounds of detention, as indicated in the impugned order, are found to be relevant and in tune with the",,,,

provisions of the PD Act. Since the detenu got bail in both the crimes relied by the detaining authority, there is nothing wrong on the part of the",,,,

detaining authority in raising an apprehension that there is every possibility of the detenu committing similar offences, which would again certainly",,,,

affect the public order. The material placed on record reveals that the detenu was supplied with the documents relied upon by the detaining authority,,,,,

in the language known to him, i.e., English. The material relied on and circumstances show that the subjective satisfaction of the detaining authority is",,,,

not tainted or illegal on any account. The facts and circumstances indicate that the acts of the detenu cannot be effectively dealt with under ordinary,,,,,

criminal law. Under these circumstances, the detaining authority is justified in passing the impugned detention order. We do not see any merit in this",,,,

Writ Petition and as such, it is liable to be dismissed.",,,,

19. The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.",,,,

The miscellaneous petitions pending, if any, in this Writ Petition, shall stand closed.",,,,