

(2021) 09 TEL CK 0043
In the Telangana High Court
Case No : Writ Petition No. 14976 Of 2021
Mausin VsState Of Telangana

Date of Decision : 13-09-2021

Acts Referred:

Telangana Preventive Detention Act, 1986 — Section 3(2)

Citation : (2021) 09 TEL CK 0043

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Mr. Mausin, the petitioner, has filed this Habeas Corpus petition on behalf of his brother, Mr. Mohammed Mohin Khadar Khan @ Mohin, s/o. Khayyum Khadar Khan, the detenu, challenging the detention order vide No:24/PD- CELL/CCRB/RCKD/2021, dated 09.04.2021, passed by respondent No.2, whereby, the detenu was detained under Section 3(2) of the Telangana Preventive Detention Act, 1986 (Act 1 of 1986), and the consequential confirmation order vide G.O.Rt.No.1206, General Administration (Spl. Law & Order)) Department, Government of Telangana, dated 01.06.2021, passed by the Principal Secretary to Government, General Administration (Spl. Law & Order)) Department, Government of Telangana.

2. Heard Smt B. Mohana Reddy, learned counsel for the petitioner, Sri A.Manoj Kumar, learned Assistant Government Pleader for Home appearing for the learned Additional Advocate General for the respondents and perused the record.

3. The case of the petitioner is that basing on three crimes viz., Crime Nos.1072 and 1074 of 2020 on the file of Vansthalipuram Police Station and Cr.No.374 of 2020 on the file of Abdullapurmet Police Station, respondent No.2 passed the impugned detention order, dated 09.04.2021. According to respondent No.2, the detenu is a 'Goonda', as he has been committing theft of cash from ATMs continuously, repeatedly in the limits of various police stations of Rachakonda Commissionerate and in the police station limits of bordering State of Andhra Pradesh and thereby creating large scale fear and panic among the general

public, Bankers and adversely affecting the public order, peace and tranquility in the area. Subsequently, the impugned detention order was confirmed by the Government vide G.O.Rt.No.1206, dated 01.06.2021.

4. Learned counsel for the petitioner would contend that the impugned detention order has been passed in a mechanical manner and without application of mind. Already criminal law was set into motion against the detenu. The detenu was granted bail by the Courts concerned on 06.04.2021 in all the crimes relied upon by the detaining authority. But he was again sent to jail by invoking the draconian preventive detention laws on the apprehension that there is imminent possibility of the detenu again indulging in similar offences, which is unjustified. The alleged crimes do not add up 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 Indian Penal Code, 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 law against the detenu. Hence, the impugned orders tantamount to colourable exercise of power. The impugned orders are legally unsustainable and ultimately, prayed to allow the Writ Petition, as prayed for.

5. On the other hand, the learned Assistant Government Pleader for Home appearing for the respondents supported the impugned orders and submitted that the detenu is a 'Goonda' and he has been committing theft of cash from ATMS continuously and thereby acting in a manner prejudicial to the maintenance of public order, apart from disturbing peace and tranquility in the area. Since the detenu got bail in all the crimes relied upon by the detaining authority, the apprehension of the detaining authority that there is imminent possibility of the detenu indulging in similar offences, is not misconceived. The series of crimes allegedly committed by the detenu were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the modus of committing the crime was theft, it has created sufficient panic in the minds of the general public. Therefore, the detaining authority was legally justified in passing the impugned detention order. Further, the Advisory Board rendered its opinion that there is sufficient cause for detention of the detenu and on considering the same along with the entire material, the Government confirmed the impugned detention order vide G.O.Rt.No.1206, dated 01.06.2021. All the mandatory requirements were strictly followed by the detaining authority while passing the impugned detention order. The impugned orders are legally sustainable and ultimately, prayed to dismiss the Writ Petition.

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

"Whether the impugned detention order vide No: 24/PD-CELL/CCRB/RCKD/2021, dated 09.04.2021, passed by respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1206, General Administration (Spl. Law & Order)) Department, Government of Telangana, dated 01.06.2021, passed by

the Principal Secretary to Government, General Administration (Spl. Law & Order)) Department, Government of Telangana, are liable to be set aside?"

POINT:

7. In catena of cases, the Hon'ble Supreme Court had clearly opined that there is a vast difference between "law and order" and "public order". The offences committed against a particular individual fall within the ambit of "law and order" and when the public at large is adversely affected by the criminal activities of a person, such activities of that person are 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. Hence, according to the Hon'ble Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

8. In Ram Manohar Lohia v. State of Bihar AIR 1966 SC 740, the Hon'ble Supreme Court has, in fact, deprecated the invoking of the preventive law in order to tackle a law and order problem. It was observed that every breach of public peace and every violation of law may create a 'law and order' problem, but does not necessarily create a problem of 'public order'. The distinction has to be borne in mind in view of what has been stated in the grounds of detention.

9. In Kanu Biswas v. State of West Bengal (1972) 3 SCC 831, the Hon'ble Apex Court, while discussing the meaning of word 'public order,' held that 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 extent of the reach of the act upon the Society.

10. In the present case, the detaining authority, basing on three crimes indicated above, has passed the impugned detention order, dated 09.04.2021. We shall present them in a tabular form the date of occurrence, the date of registration of FIR, the offence complained of and its nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.

Date of Occurrence

Date of registration of FIR

Offences

Nature

1072/2020 of

Vanasthalipuram PS

17.12.2020

18.12.2020

Section 379 of IPC

Cognizable/ Non Bailable

1074/2020 of Mothkur PS

17.12.2020

21.12.2020

Section 379 of IPC

Cognizable/ Non Bailable

374/2020 of Mothkur PS

18.12.2020

18.12.2020

Section 457,

380 and 201 of IPC

Cognizable/ Non Bailable

11. As seen from the material placed on record, the crimes relied upon by the detaining authority for preventively detaining the detenu relate to theft. 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 bail by the Court concerned in all the crimes. 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 misplaced. 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 has 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.

12. Here, 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 cases, 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 subject cases 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.

13. In the result, the Writ Petition is allowed. The impugned detention order vide No.24/PD- CELL/CCRB/RCKD/2021, dated 09.04.2021, passed by respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1206, General Administration (Spl. Law & Order)) Department, Government of Telangana, dated 01.06.2021, passed by respondent No.1, are hereby set aside. The respondents are directed to set the detenu, namely, Mr. Mr. Mohammed Mohin Khadar Khan @ Mohin, s/o. Khayyum Khadar Khan, at liberty forthwith, if he is no longer required in any other criminal case.

14. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.