

(2022) 10 TEL CK 0021
In the Telangana High Court
Case No : Writ Petition No. 16369 Of 2022

Mohd. Rizsran Ali

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 226
Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(1), 3(2)
Indian Penal Code, 1860 — Section 34, 406, 420
Essential Commodities Act, 1955 — Section 3, 5, 7
Telangana State Public Distribution System (Control) Order, 2016 — Section 17(e)
Code Of Criminal Procedure, 1973 — Section 41A, 82

Citation : (2022) 10 TEL CK 0021

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

Bench : Division Bench

Advocate : C Sharan Reddy

Final Decision : Allowed

Judgement

1. This writ petition is filed under Article 226 of the Constitution of India by the proposed detenu Mohd. Rizwan Ali, S/o Late Ghulam Rehmani (hereinafter the petitioner), to issue writ in the nature of Mandamus, to call for entire record of the order of detention under Section 3 (1) and (2) of the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'the Act,1980') in SB(1)No.454/PD-6/HYD/2021 dated 18.12.2021 on the file of Commissioner of Police, Hyderabad City/3rd respondent and to set-aside the same as illegal and violation of his personal liberties granted under the Article 21 of the Constitution of India.

2. The relevant facts in brief are that the petitioner had come into adverse notice of the police in five offences i.e., crime numbers a) 166 of 2020, b) 167 of 2020, c) 213 of 2020, d) 241 of 2020 and e) 199 of 2021 of Chaderghat Police Station, Hyderabad Police Commissionerate under Sections 406, 420 read with 34 of IPC

and Section 7 of Essential Commodities Act, 1955 (for short 'the EC Act,1955) and Section 17 (e) of Telangana State Public Distribution System (Control) Order, 2016 (for short 'the order,2016). The detaining authority/3rd respondent by having regard to the history of offences, classified the petitioner as 'black marketer' and forming the Cr.No.199 of 2021 of the Chaderghat Police Station, as ground offence and by observing that the petitioner is acting in a manner prejudicial to the maintenance of supplies of essential commodities to the community passed the impugned order for detention.

3. We have heard Sri C. Sharan Reddy, the learned counsel for the petitioner and Sri A.Manoj Kumar, learned Assistant Government Pleader for Home representing the learned Advocate General appearing for the respondents and perused the materials record.

4. The counsel for the petitioner would submit that, as the order of detention was not executed, the detaining authority had issued the proclamation order under Section 82 of Code of Criminal Procedure, 1973 (Cr.P.C.) read with Section 7 of the EC Act, 1955 on 23.02.2022 alleging disappearance of the petitioner. Nevertheless the accusation as to purchase of PDS rice, hoarding and selling it at higher price is highly misconstrued and the petitioner never involved in any such offence. That apart, the alleged offences are punishable less than 7 years and in all the crimes the police had issued notice under Section 41-A of the Cr.P.C and released the petitioner on bail. However, even by the prosecution version in three crimes, there was no physical recovery of rice from the petitioner and this situation itself is indicating false implication. Despite everything, the alleged offences are being dealt under the general penal jurisdiction by the competent Court, hence there is no justification in invoking the preventive detention proceedings under the Act,1980.

5. The petitioner placed reliance on the authority of Hon'ble Apex Court in Subhash Popatlal Dave vs Union Of India & another 2014 (1) SCC 280 to demonstrate that the propriety of the detention order can be challenged even at pre-execution stage. Thus, prayed to declare the impugned order is un-lawful and un-constitutional and to set-aside the same.

6. In contrast, the learned Assistant Government Pleader for Home appearing for the respondents would submit that the petitioner was engaged in clandestine business of purchasing PDS rice by holding, diverting and selling the same without any valid license thereby committed offence under Section 17 (e) of the Order, 2016 and Section 7 of the EC Act,1955 and causing interruption in the process of supply of essential commodities to the community. Further, the antecedents are establishing that the petitioner is habitual black marketer and organizing business with his associates. The registration of crimes, remanding to judicial custody has no deterrent effect in curbing the activities, as the petitioner had been granted bail under the general laws and if he is let free there is eminent possibility of committing similar offences which would interrupt the supply of essential commodities to the beneficiaries, thus, the impugned order of

detention is justified.

7. In addition, the petitioner had evaded the execution of order and since the date of the order of detention i.e., on 18.12.2021, and as he was absconding, the order of detention remained unexecuted, thereupon proclamation under Section 82 of the Cr.P.C had been issued. For this reason, the grounds raised in the petition cannot be valid unless he is taken into custody, by that means, the petition is not maintainable.

8. The respondents cited the authorities of the Hon'ble Apex Court, in Additional Secretary to the Government of India and others Vs. Smt. Alka Subash Gadia and another 1992 Supl. SCC (1) 496 and Dropti Devi & Anr vs Union Of India & Ors 2012 (7) SCC 499 to showcase that the challenge against the order of detention cannot be entertained except in the five enumerated specific situations and the proposed detenu having willfully evaded the arrest under order of detention cannot take advantage of his own conduct. Furthermore, pleaded that the Co-ordinate bench of this Court in Syeda zoda Fathima Vs. State of Telangana in W.P.No.20533 of 2019 dated 13.02.2020 held that the jurisdiction of Habeas corpus is for examining the nature of custody and as the detenu is not in police custody, the writ petition itself is not maintainable. Thus, pleaded that the impugned order remains unassailable.

9. In this position, the aspects that need determination are:

1. Whether the writ petition challenging the propriety of the order of detention at the stage of pre-execution is maintainable?
2. Whether the impugned order of detention is sustainable in the facts of law?

POINT:

10. The record is disclosing that the order of detention had been passed on 18.12.2021, however the order is pending for execution and the detaining authority had caused the proclamation under Section 82 of the CrPC against the petitioner.

11. The foremost adjuration of the detaining authority/respondent is that the Hon'ble Apex Court in the authority Smt. Alka Subhash Gadia and another (supra) enumerated five grounds where the order of detention could be allowed to be challenged and as the disputation of the petitioner does not fall within those delineated grounds, the impugned order cannot be challenged.

12. In this context, the petitioner has rightly pointed o the authority of the Hon'ble Apex Court in Subhash Popatlal Dave (supra) wherein, this aspect has been explicated and held that the order of detention can be challenged on any ground beyond five conditions even at the pre-execution stage and in the fitness of the things that the materials relied upon by the authorities be served on the proposed detenu so as to be considered before the appropriate forum whether the order of detention was fit to be sustained or not at relevant time. Thence, the

assertion of the respondent that the challenge at pre-execution stage can only be on specific limited ground falls flat.

13. That apart, in this writ petition, issuance of writ of mandamus is sought to enforce the legal right of the petitioner and to restrain the respondents from proceeding with the order of detention, therefore, the observations of the Hon'ble Division Bench of this Court in Syeda zoda Fathima (Supra) stands distinguished and does not resolve the protestation as to the maintainability of writ petition, consequently it shall be held that the the petitioner seeking writ of mandamus is perfectly maintainable even at pre-execution stage of the order of detention.

14. In respect to the propriety of the order, the source of authority to order detention is in Section 3 (1) and (2) of the Act, 1980. This provision contemplates that the authorized officer specifically empowered for this purpose may if satisfied to prevent a person from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community and it is necessary to do so may make an order directing the detention. In the explanation the expression "acting in any manner prejudicial to the maintenance of supplies of commodities to the community" is explained as (a) committing or instigating any person to commit any offence punishable under the EC Act, 1955 or under any other law for the time being in force relating to the control of the production, supply, or distribution of or trade and commerce in any commodity essential to the community; or (b) dealing in any commodity is clarified as essential commodity as defined in the EC Act, 1955 or the provision may in any other law as is referred to in clause (a) with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of the Act, 1980 or the other law aforesaid.

15. The accusation of petitioner is under Section 17(e) of the Order, 2016. The foundation of the Order, 2016 is in Section 3 r/w section 5 of the EC Act, 1955. As such, the contravention of the order under Section 3 of the EC Act, 1955 or the provision of Order, 2016 is sine qua non for penal action. The order of detention is referring to contravention of Clause 17 (e) of the Order, 2016, which is envisaging that a person is found to have purchased the rice through PDS either from the card holder or the fair price shop dealer or any other source shall be liable for criminal action and imposition of penalty as may be fixed by the competent authority. However, in the present case, these indictments are being dealt with by initiating criminal prosecution under general penal law.

16. For that reason, to invoke the jurisdiction of preventive detention which is an implication on suspicion and anticipation against the personal liberties of petitioner, the detaining authority is endowed with sizeable responsibility to exercise the authority with care, caution and diligence to arrive at the subjective conclusion that the facts and circumstances are qualifying the mandates and the prevention of the petitioner is essential to meet the objectives behind such action.

17. In the impugned order, the detaining authority recorded that the proposed

detenu is habitually committing the same offence along with his associates and the registration of crimes and committing him to the judicial custody, has not given deterrent effect in curbing his activities as the bails were granted and if he is at large there is a possibility of committing similar offences and it would prejudice maintenance of supply of the essential commodities through the public distribution system.

18. As per the record, out of the five cases, four crimes of the year 2020 were considered as history and the crime of 2021 as ground case. Admittedly, in all the crimes, initially Section 41-A Cr.P.C notices were issued and the petitioner was released by the investigating agency. Subsequently, on the ground of non compliance of the condition, petitioner was arrested, however released on conditional bail on 24.07.2021, since then no other crime has been registered against him. Even if there is violation of bail condition or the petitioner indulging in similar offence, the concerned agency is at liberty to avail the remedies under general law. At any stretch, merely on the ground of granting bail or by presumption that the petitioner may commit similar offence or to effect deterrence, the detaining authority cannot invoke the preventive detention, unless there is certain material indicating that the unconfined petitioner would cause prejudice to maintain the supply of essential commodities. However, except the assumption basing on the registered crimes no other particulars much less material indicating alleged organized moves of the petitioner affecting the supply of essential commodities has been pointed in the impugned detention order, so as to assess compelling factors for preventive detention.

19. Having regard to the afore-stated aspects and the fact that the accusations in the crimes are being processed under the penal law, and in absence of any ground to infer direct or indirect acts of the petitioner to defeat the maintenance of supply of the essential commodities, it shall be held that the detaining authority had failed to subjectively consider the alleged acts of the petitioner, to rationally arrive at conclusion about existence of positive materials establishing the prerequisites delineated in the statute against the petitioner. For that reason, the general observations of the detaining authority in the impugned order would stand inconsistent with the essentials to order preventive detention. Nevertheless as the alleged infractions of the petitioner can be effectively dealt with under the general penal law, we are of the considered opinion that the order of preventive detention is unsustainable either on fact or law.

20. We accordingly allow the Writ Petition and the impugned detention order vide SB(1)No.454/PD-6/HYD/2021 dated 18.12.2021, passed by the 3rd respondent, is hereby set aside as legally unsustainable. In effect, all the actions of the respondents in pursuance of the impugned detention order shall stand void, forthwith. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.