

(2022) 06 TEL CK 0047
In the Telangana High Court
Case No : Writ Petition No. 34568 Of 2021

Zahara Sulthana

APPELLANT

Vs

State Of Telangana And 2 Others

RESPONDENT

Date of Decision : 20-06-2022

Acts Referred:

Telangana Prevention Of Dangerous Activities Of Boot-Leggings, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders And White Collar Or Financial Offenders Act, 1986 — Section 3(2)

Citation : (2022) 06 TEL CK 0047

Hon'ble Judges : Dr. Shameem Akther, J;Juvvadi Sridevi, J

Bench : Division Bench

Advocate : M Amarnath

Final Decision : Allowed

Judgement

1. Mrs. Zahara Sulthana, the petitioner, has filed this Habeas Corpus petition on behalf of her husband, Hussain Khan, S/o. Late Alam Khan, the detenu, challenging the detention order vide No.113/PD-CELL/CCRB/RCKD/2021, dated 18.08.2021, passed by the 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.2287, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 11.10.2021, passed by respondent No.1.

2. Heard Sri M.Amarnath, learned counsel for the petitioner, Sri G.Malla Reddy, learned Assistant Government Pleader for Home for the respondents and perused the record.

3. The case of the petitioner is that basing on two crimes registered against the detenu viz., Crime Nos.608/2020 and 298/2021 of Hayathnagar Police Station,

Rachakonda Commissionerate, the respondent No.2 passed the impugned detention order, dated 18.08.2021. According to respondent No.2, the detenu is a 'Sexual Offender', as he has been inducing women folk in the guise of offering liquor or money from toddy compounds and indulging in committing rape on them after robbing their gold chains, phones on the point of threat, in the limits of Rachakonda Police Commissionerate. The presence of the detenu in the locality is adversely affecting the public order and he has been acting in a manner prejudicial to the maintenance of public order apart from disturbing peace, tranquility and social harmony in the society. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.2287, dated 11.10.2021.

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. In any event, the alleged illegal activities of the detenu would not satisfy the word 'Sexual Offender'. Further, there is no material to connect the detenu with the alleged crimes. The subjective satisfaction arrived at by the detaining authority for preventively detaining the detenu is tainted and illegal. Further, the detenu was granted conditional bail by the Court concerned in the both the crimes relied by the detaining authority and he was released from prison on bail on 18.08.2021. However, on the same day, he was again sent to prison by invoking draconian preventive detention laws on the apprehension that there is imminent possibility of the detenu indulging in similar prejudicial activities again, which is unjustified. The alleged crimes do not add up to "disturbing the public order" and it is 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 'Sexual Offender'. He has been habitually indulging in grave and dangerous offences by inducing the innocent women from toddy compounds by his glib talks, taking them to isolated areas and committing heinous offence of rape and also committing theft of their valuables like jewelry and fleeing away from the spot. The unlawful and dangerous activities of the detenu have been creating large scale fear, panic and a feeling of insecurity among the public, especially women, in the area and thereby disturbing the peace and tranquility in the area. Since the detenu was granted bail in both 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 prejudicial activities again, which would be prejudicial to the maintenance of public order, is not

misconceived. On an earlier occasion, the detenu was detained under the provisions of Preventive Detention laws vide Proceedings SB(I)No.220/PD-S1/2016, dated 06.05.2020, for his illegal activities. However, he did not mend his attitude and on release from prison after suffering imprisonment for 12 months, he again committed several offences of theft/rape in the limits of Hyderabad and Rachakonda Commissionerates. 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, particularly women folk. Since the modus of committing the crimes was inducing the innocent women with his glib talks, taking them to isolated places and committing rape on them and also committing theft of their valuables like jewelry, 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.2287, dated 11.10.2021. 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.113/PD-CELL/CCRB/RCKD/2021, dated 18.08.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.2287, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 11.10.2021, passed by respondent No.1, are liable to be set aside?"

POINT:

7. In a 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 two crimes indicated above, has passed the impugned detention order, dated 18.08.2021. 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

608 of 2020 of Hayathnagar PS

06.10.2020

07.10.2020

Sections 420, 376, 379 of IPC

Cognizable/ Non-bailable

298 of 2021 of Hayathnagar PS

01.05.2021

01.05.2021

Sections 420, 376, 379 of IPC

Cognizable/ Non-bailable

11. As seen from the material placed on record, the two crimes relied upon by the detaining authority for preventively detaining the detenu relates to cheating, rape and theft. Subsequent to his arrest, the detenu moved bail petitions in both the crimes and he was granted conditional bail by the Courts concerned in both the crimes vide orders, dated 28.06.2021 and 13.08.2021 and he was released from jail on 18.08.2021. The conditions imposed in the bail order, dated 13.08.2021, are that the detenu shall execute a personal bond for Rs.25,000/- with two sureties; he shall surrender his passport before the Magistrate concerned; after release, he shall appear before the SHO, Hayathnagar, on every

Sunday and Thursday between 10:00 AM and 02:00 PM until further orders. It is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of the detenu and to hand over 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. Even assuming that the bail conditions are violated by the detenu and he is involved in further crimes, nothing prevents the prosecution to apprise the same to the concerned Court and seek cancellation of bail. By virtue of the conditions imposed in the bail order, the detenu would be under surveillance of the Court and the police. Under these circumstances, the apprehension of the detaining authority that since the detenu was granted bail, there is imminent possibility of his indulging in similar prejudicial activities, which would be prejudicial to the maintenance of public order, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. 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. Grave as the offences may be, they relate to cheating, rape and theft. So, no inference of disturbance of public order can be drawn. The subject cases can certainly be tried under the Penal Code. Thus, the subject 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.

13. For the foregoing reasons, the impugned orders are legally unsustainable and are liable to be set aside.

14. In the result, the Writ Petition is allowed. The impugned detention order vide No.113/PD-CELL/CCRB/RCKD/2021, dated 18.08.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.2287, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 11.10.2021, passed by respondent No.1, are hereby set aside. The respondents are directed to set the detenu, namely Hussain Khan, S/o. Late Alam Khan, at liberty forthwith, if he is no longer required in any other criminal case.

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