Mallada K. Sri Ram vs The State Of Telangana on 4 April, 2022

Bench: D.Y. Chandrachud, Surya Kant

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 561 of 2022
(Arising out of SLP(Crl) No 1788 of 2022)

Mallada K Sri Ram .... A

Versus

The State of Telangana & Ors ....Re

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 This appeal arises from a judgment dated 25 January 2022 of a Division Bench of the High Court for the State of Telangana dismissing the writ petition seeking a writ of habeas corpus.

3 The brother1 of the appellant worked as an employee with an entity by the name of M/s Ixora Corporate Services2, Banjara Hills, Hyderabad. On 13 October 2020, a complaint was lodged on behalf of the Company with the SHO, Banjara Hills, alleging that K Mahendar, another employee at the Company, had opened a Date: 2022.04.08 salary account with the Federal Bank without authorization and in conspiracy with the detenu collected an amount of Rs 85 lakhs from 450 job aspirants. It 1 “detenu” 2 “Company” was alleged that the co-accused who was in charge of the HR Department at the Company had, in collusion with the detenu, hatched a plan to collect money from individuals by misrepresenting that they would be given a job at the Company and collected money from aspirants for opening a bank account and supplying uniforms.

4 The first FIR, FIR No 675 of 2020, was registered on 15 October 2020 at Police Station Banjara Hills against K Mahendar (A-1) and the detenu (A-2) for offences punishable under Sections 408, 420, 506 and 120B of the Indian Penal Code 18603. On 17 December 2020, another FIR, FIR No 343 of 2020, was registered at Police Station Chatrinaka against the detenu for offences punishable under Sections 408, 420 and 120B IPC based on similar allegations at the behest of another

informant. The detenu was arrested, in the first case, on 17 December 2020 and, in the second case, on the execution of a PT warrant on 4 January 2021. In the first case, the detenu was released on bail on 8 January 2021 in terms of an order dated 31 December 2020, subject to the condition that he shall appear before the SHO, Police Station Banjara Hills on Mondays between 10.30 am and 5 pm till the filing of the charge-sheet. In the second case, the detenu was released on bail by an order dated 11 January 2021, subject to the condition that he shall appear before the SHO, Police Station Chatrinaka on Sundays between 2 pm and 5 pm for a period of three months. The Court has been apprised of the fact that the charge-sheet has been submitted in the first case.

5 An order of detention was passed against the detenu on 19 May 2021 under the provisions of 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, Fertiliser Offenders, 3 "IPC" 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 19864. The order of detention was challenged before the High Court in a petition under Article 226 of the Constitution. The Division Bench of the High Court dismissed the petition by its impugned judgment and order dated 25 January 2022.

6 Mr A Sirajudeen, senior counsel appearing on behalf of the appellant, submits that there is ex facie, non-application of mind by the detaining authority while passing the order of detention. Senior counsel submitted that this would be evident from the fact that the detenu had been granted bail almost five months prior to the order of detention. The grant of bail was subject to the condition that the detenu would report to the SHO of the police station concerned, in the first case, until the charge-sheet was filed and, in the second case, for a period of three months on stipulated days of the week. In the first case, the charge-sheet was submitted prior to the date of the order of detention on 19 May 2021. On the above premises, it has been submitted that the very basis of the order of detention stands vitiated since it will be apparent from the condition which was imposed by the Court while granting bail that the detenu was required to attend the police station concerned throughout the stipulated period and even that period came to an end by the time the order of detention was passed. Moreover, whereas the order of detention has proceeded on the basis that the acts of the detenu had created a situation leading to a breach of public order in the case, on the other hand, it is evident from the counter affidavit which has been filed by the Commissioner before the High Court that there was only an apprehension that there would be a likelihood of a breach of public order in the future. It was further submitted that it is evident from the recording of facts that the order of 4 "Telangana Act of 1986" detention was passed nearly seven and five months after both the criminal cases were instituted. The detention was, it is urged, based on stale material. It has been argued that the ordinary course of criminal law would be sufficient to deal with the alleged violation and on the above facts, the detention of the detenu is based on no cogent material whatsoever.

7 Mr Mohith Rao, counsel appearing on behalf of the respondents, has submitted that the nature of the acts which are attributed to the detenu are a part of a series of organized activities involving white collar crime where job aspirants were allured into parting with their money on the promise

that they would get employment in the future. Hence, it has been urged that the High Court has rightly held that the order of detention should not be interfered with. 8 At the outset, it is necessary to set out the relevant provisions of the Telangana Act of 1986:

> "2. Definitions.—In this Act, unless the context otherwise requires,—
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> (a) "acting in any manner prejudicial to the maintenance of public order" means when a bootlegger, a dacoit, a drug-

offender, a goonda, an immoral traffic offender, Land-Grabber, a Spurious Seed Offender, an Insecticide Offender, a Fertiliser Offender, a Food Adulteration Offender, a Fake Document Offender, a Scheduled Commodities Offender, a Forest Offender, a Gaming Offender, a Sexual Offender, an Explosive Substances Offender, an Arms Offender, a Cyber Crime Offender and a White Collar or Financial Offender is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:

> Explanation.—For the purpose of this clause public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health;
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> (x) "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 (Act 17 of 1999) or under Sections 406 to 409 or 417 to 420 or under Chapter XVIII of the Indian Penal Code, 1860.

3. Power to make orders detaining certain persons.—(1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender, Land-Grabber, Spurious Seed Offender, Insecticide Offender, Fertilizer Offender, Food Adulteration Offender, Fake Document Offender, Scheduled Commodities Offender, Forest Offender, Gaming Offender, Sexual Offender, Explosive Substances Offender, Arms Offender, Cyber Crime Offender and White Collar or Financial Offender that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if

satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

> Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.
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> 13. Maximum period of detention.—The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under Section 12, shall be twelve months from the date of detention." 9 The order of detention dated 19 May 2021 notes that that the detenu is a 'white-

collar offender' under Section 2(x) of the Telangana Act of 1986 whose offence of cheating gullible job aspirants has been causing "large scale fear and panic among the gullible unemployed job aspirants/youth and thus he has been acting in a manner prejudicial to the maintenance of public order apart from disturbing the peace, tranquillity and social harmony in the society". These alleged offences were noted as the grounds for his detention, in addition to the apprehension that "he may violate the bail conditions and there is an imminent possibility of his committing similar offences, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention".

10 The detenu was released on bail on 8 January 2021 by the Additional Chief Metropolitan Magistrate, Hyderabad subject to the condition that he would have to report to the SHO of the Police Station concerned on a stipulated day every week till the charge sheet was filed. The order granting bail to the detenu in the second case provided that the detenu was subject to the condition of appearing once every week on Sunday before the Police Station concerned for a period of three months with effect from 11 January 2021. As a consequence, the conditions attached to the orders granting bail stood worked out in the month of April 2021. The order of detention dated 19 May 2021 has failed to advert to these material aspects and suffers from a non-application of mind. The basis on which the preventive detention of the detenu has been invoked is that the detenu has cheated aspirants for jobs on the basis of fake documents and that, as a consequence, 450 aspirants were duped, from whom an amount of Rs 85 lakhs had been collected. The order of detention records that the detenu had moved bail applications in two cases in which he was in judicial custody and that the Magistrate had granted him conditional bail. It was apprehended that he may violate the bail conditions while committing similar offences. It is pertinent to note that no application for cancellation of bail was moved by the investigating authorities for violation of the bail conditions. 11 At this stage, it would also be material to note that the first case was registered on 15 October 2020, while the second case was registered on 17 December 2020. Bail was granted on 8 January 2021. The order of detention was passed on 19 May 2021 and was executed on 26 June 2021. The order of detention was passed nearly seven months after the registration of the first FIR and about five months after the registration of the second FIR. The order of detention is evidently based on stale

material and demonstrates non-application of mind on the part of the detaining authority to the fact that the conditions which were imposed on the detenu, while granting bail, were duly fulfilled and there was no incidence of a further violation. In the counter affidavit which was filed before the High Court, the detaining authority expressed only an apprehension that the acts on the basis of which the FIRs were registered were likely to be repeated in the future, thereby giving rise to an apprehension of a breach of public order. The High Court has failed to probe the existence of a live and proximate link between the past cases and the need to detain the detenu after seven months of registration of the first FIR and nearly five months of securing bail. 12 The distinction between a disturbance to law and order and a disturbance to public order has been clearly settled by a Constitution Bench in Ram Manohar Lohia v. State of Bihar5. The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:

> "51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two 5 AIR 1966 SC 740 drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.
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> 52. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order

> but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules." (emphasis supplied)

13 In Banka Sneha Sheela v. State of Telangana6, a two-judge Bench of this Court examined a similar factual situation of an alleged offence of cheating gullible persons as a ground for preventive detention under the Telangana Act of 1986. The Court held that while such an apprehension may be a ground for considering the cancellation of bail to an accused, it cannot meet the standards prescribed for preventive detention unless there is a demonstrable threat to the maintenance of public order. The Court held:

> "9. ...learned counsel appearing on behalf of the petitioner has raised three points before us. First and foremost, he said there is 6 (2021) 9 SCC 415 no proximate or live connection between the acts complained of and the date of the detention order, as the last act that was complained of, which is discernible from the first 3 FIRs (FIRs dated 12-12-2019, 12-12-2019 and 14-12-2019), was in December 2019 whereas the detention order was passed 9 months later on 28-9-2020. He then argued, without conceding, that at best only a "law and order" problem if at all would arise on the facts of these cases and not a "public order" problem, and referred to certain judgments of this Court to buttress the same. He also argued that the detention order was totally perverse in that it was passed only because anticipatory bail/bail applications were granted. The correct course of action would have been for the State to move to cancel the bail that has been granted if any further untoward incident were to take place.
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> 12. While it cannot seriously be disputed that the detenu may be a "white collar offender" as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a preventive detention order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. "Public order" is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.
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> 15. There can be no doubt that what is alleged in the five FIRs pertain to the realm of "law and order" in that various acts of cheating are ascribed to the detenu which are punishable under the three sections of the Penal Code set out in the five FIRs. A close reading of the detention order would make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the detenu was successful in obtaining anticipatory bail/bail from the courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground

> for detaining the detenu, there can be no doubt that the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make-

believe and totally absent in the facts of the present case.

32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground...." 14 In Sama Aruna v. State of Telangana7, a two-judge Bench of this Court examined a case where stale materials were relied upon by the detaining authority under the Telangana Act of 1986. The order of detention pertained to incidents which had occurred between nine and fourteen years earlier in relation to offences involving a criminal conspiracy, cheating, kidnapping and extortion. This Court held that a preventive detention order that is passed without examining a live and proximate link between the event and the detention is tantamount to punishment without trial. The Court held:

> "17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See G. Reddeiah v. State of A.P.[G. Reddeiah v. State of A.P., (2012) 2 SCC 389 : (2012) 1 SCC (Cri) 881] and P.U. Iqbalv. Union of India [P.U. Iqbal v. Union of India, (1992) 1 SCC 434 : 1992 SCC (Cri) 184]."

15 A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the "maintenance of public order". In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since 7 (2018) 12 SCC 150 the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued

with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law.

16 We also note that after notice was issued by this Court, the respondents have been served. No counter affidavit has been filed. We have declined to allow any further adjournment for filing a counter affidavit since a detailed and comprehensive counter affidavit which was filed before the High Court is already on the record and the present proceedings have been argued on the basis of the material as it stood before the High Court. The liberty of the citizen cannot be left to the lethargy of and the delays on the part of the state. Further, in the counter affidavit filed before the High Court, the respondents have argued that the detenu must move the Advisory Board and the writ petition has been filed in a premature fashion. However, in Arnab Manoranjan Goswami v. State of Maharashtra8, a two-judge Bench of this Court has held that while the ordinary procedural hierarchy among courts must be respected, the High Court's writ jurisdiction under Article 226 extends to protecting the personal liberty of 8 (2021) 2 SCC 427 persons who have demonstrated that the instrumentality of the State is being weaponised for using the force of criminal law:

> "68. Mr Kapil Sibal, Mr Amit Desai and Mr Chander Uday Singh are undoubtedly right in submitting that the procedural hierarchy of courts in matters concerning the grant of bail needs to be respected. However, there was a failure of the High Court to discharge its adjudicatory function at two levels—first in declining to evaluate prima facie at the interim stage in a petition for quashing the FIR as to whether an arguable case has been made out, and secondly, in declining interim bail, as a consequence of its failure to render a prima facie opinion on the first. The High Court did have the power to protect the citizen by an interim order in a petition invoking Article 226. Where the High Court has failed to do so, this Court would be abdicating its role and functions as a constitutional court if it refuses to interfere, despite the parameters for such interference being met. The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponised for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defence against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions." 17 It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public order 9 and relying on stale materials while passing the orders of detention 10. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending before the

Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards.

9 V Shantha v. State of Telangana, (2017) 14 SCC 577; Banka Sneha Sheela v. State of Telangana, (2021) 9 SCC 415;

10 Sama Aruna v. State of Telangana, (2018) 12 SCC 150; Khaja Bilal Ahmed v. State of Telangana, (2020) 13 SCC 632 18 We accordingly allow the appeal and set aside the impugned judgment of the High Court dated 25 January 2022. The order of detention which has been passed against the detenu on 19 May 2021 shall accordingly stand quashed and set aside.

19 Pending application(s), if any, stands disposed of.

.....J. [Dr Dhananjaya Y Chandrachud] .....J. [Surya Kant] New Delhi;

April 04, 2022

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ITEM NO.25 COURT NO.4 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).1788/2022

(Arising out of impugned final judgment and order dated 25-01-2022 in WP No. 17120/2021 passed by the High Court for the State of Telangana at Hyderabad) MALLADA K. SRI RAM Petitioner(s) VERSUS THE STATE OF TELANGANA & ORS. Respondent(s) (FOR ADMISSION and I.R.) Date : 04-04-2022 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s) Mr. A. Sirajudeen, Sr. Adv.
Mr. A.V.S. Raju, Adv.
Mr. Ch. Leela Sarveswar, Adv.
Mr. P. Prabhakar, Adv.
Mr. R. Ravi, Adv.
Mr. Somanatha Padhan, AOR

For Respondent(s) Mr. P. Mohith Rao, Adv.
Mr. S. Udaya Kumar Sagar, AOR

UPON hearing the counsel the Court made the following O R D E R 1 Leave granted.

2 In terms of the signed reportable judgment, the appeal is allowed. The order of detention which has been passed against the detenu on 19 May 2021 shall accordingly stand quashed and set aside.

3 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed reportable judgment is placed on the file)