

Rubeena Khatoon vs The State Of Telangana on 20 April, 2022

Author: Shameem Akther

Bench: Shameem Akther, Juvvadi Sridevi

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

WRIT PETITION No.2190 OF 2022

ORDER:

(Per Hon'ble Dr. Justice Shameem Akther) Mrs. Rubeena Khatoon, the petitioner has filed this Habeas Corpus petition on behalf of her husband, Mohammed Nizamuddin @ Nizam @ Sarkar, S/o. late Syed Hussain, the detenu, challenging the detention order vide SB(I).No.205/PD- 7/HYD/2021, dated 22.11.2021, 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.349, General Administration (Spl. (Law & Order)) Department, dated 11.02.2022, passed by the respondent No.1.

2. Heard the learned counsel for petitioner, learned Assistant Government Pleader for Home appearing for the respondents and perused the record.

3. The case of the petitioner is that basing on two (2) crimes viz., Crime Nos.79 of 2021 of Hussainialam Police Station and 213 of 2021 of Chandrayangutta Police Station, Hyderabad Commissionerate, the respondent No.2 passed the impugned Dr.SA,J&JS,J detention order, dated 22.11.2021. According to respondent No.2, the detenu is a 'rowdy sheeter', as he has been habitually committing offences of threatening to kill the people by brandishing dangerous and prohibited weapon, i.e., knife, demanding money and committing arson to terrorize people to extort money along with his associates in the limits of Hyderabad Police Commissionerate, thus creating widespread fear, terror and panic among the people, thereby adversely affecting the maintenance of public order. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.349, dated 11.02.2022.

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 in both 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 his committing similar offences, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention, which is unjustified. The alleged crimes do not add up to "disturbing the Dr.SA,J&JS,J 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 and Arms Act,

1959, the detenu can certainly be tried and convicted under the penal code and the said special law. 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 'rowdy sheeter'. He has been committing offences of threatening to kill the people by brandishing dangerous and prohibited weapon, i.e., knife, demanding money and committing arson to terrorize people to extort money along with his associates in the limits of Hyderabad Police Commissionerate, thus creating widespread fear, terror and panic among the people, thereby adversely affecting the maintenance of public order. Since the detenu was granted bail in both the crimes relied by the detaining authority, the apprehension of the detaining authority that there is imminent possibility of his committing similar offences, which would be detrimental to public Dr.SA,J&JS,J order, unless he is prevented from doing so by an appropriate order of detention, 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. The unlawful activities of the detenu have 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.349, dated 11.02.2022. 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 SB(I).No.205/PD-7/HYD/2021, dated 22.11.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.349, General Administration (Spl. (Law & Order)) Department, dated 11.02.2022, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Dr.SA,J&JS,J 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*¹, 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 AIR 1966 SC 740 Dr.SA,J&JS,J in mind in view of what has been stated in the grounds of detention.

9. In *Kanu Biswas v. State of West Bengal*², 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 (2) crimes indicated above, has passed the impugned detention order, dated 22.11.2022. 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
79/2021 of Hussainialam PS	07.05.2021	09.05.2021	Sections 506, 384 r/w 511 r/w 34 of IPC	Section 384: Cognizable/ Non Bailable Section 506: Non-cognizable/ Bailable Section 436: Cognizable/
213/2021 of Chandrayangutta PS	08.05.2021	08.05.2021	Sections 436, 506 r/w 34 of IPC	Non Bailable Section 506: Non-cognizable/ Bailable

(1972) 3 SCC 831

Dr.SA,J&JS,J

11. As seen from the material placed on record, the two (2) crimes relied upon by the detaining authority for preventively detaining the detenu relate to extortion, mischief by fire or explosive substance with intent to destroy a house, criminal intimidation and attempt to commit offences punishable with imprisonment for life. Further, the detenu was arrested in connection with the said crimes and subsequently, he moved bail petitions in both the crimes and he was granted bail by the Courts concerned in both the crimes and he was released from jail. Under these circumstances, the apprehension of the detaining authority that since the detenu was released on bail, there is 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, 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, though the detenu was granted bail by the Courts concerned in both the crimes relied by the detaining authority, if it is found that the detenu is involved in further crimes, the prosecution can Dr.SA,J&JS,J apprise the same to the Courts concerned and seek cancellation of bail. Moreover, criminal law was already set into motion against the detenu. Further, since the detenu has allegedly committed offences punishable under the Indian Penal Code and Arms Act, the said crimes can be effectively dealt with under the provisions of the Penal code and the said special law and there was no need for the detaining authority to invoke the draconian preventive detention law. Thus, the offences allegedly committed by the detenu in both the crimes relied by the detaining authority 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. The detaining authority cannot be permitted to subvert, supplant or substitute the punitive law of land, by ready resort to preventive detention.

12. 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 SB(I).No.205/PD-7/HYD/2021, dated 22.11.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.349, General Administration (Spl. (Law & Order)) Department, dated 11.02.2022, passed by the Dr.SA,J&JS,J respondent No.1, are hereby set aside. The respondents are directed to set the detenu, namely Mohammed Nizamuddin @ Nizam @ Sarkar, S/o. Late Syed Hussain, 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.

_____ Dr. SHAMEEM AKTHER, J _____ JUVVADI
SRIDEVI, J 20th April, 2022 MD / BVV