

# Shaik Hameed, vs The State Of Telangana And 2Others on 1 November, 2022

**Bench: A.Abhishek Reddy, Juvvadi Sridevi**

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY  
AND  
THE HON'BLE SMT JUSTICE JUVVADI SRIDEVI

WRIT PETITION No.35436 of 2022

ORDER:

{Per the Hon'ble Sri Justice A.Abhishek Reddy} Mr. Shaik Hameed, the brother of the detenu, has filed the present Writ Petition, challenging the detention order vide C.No.175/PD-CELL/CYB/2021, dated 08.12.2021 passed by the respondent No.2-Commissioner of Police & Additional District Magistrate (Executive), Cyberabad, whereby, the alleged detenu was detained under 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, 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 (for short, 'the PD Act'), and the consequential confirmation order vide G.O.Rt.No.1795, General AAR,J & JS,J Administration (Spl. Law & Order) Department, dated 20.09.2022, passed by the Secretary to Government (FAC), General Administration (Spl. Law & Order) Department, Government of Telangana.

2. Heard the learned counsel for petitioner and learned Special Government Pleader appearing on behalf of the learned Additional Advocate General for the respondents and perused the record.

3. The case of the petitioner is that basing on three (3) crimes viz., Crime Nos.571 of 2021 and 572 of 2021 of Rajendranagar Police Station and Crime No.385 of 2021 of Balapur Police Station, the respondent No.2 passed the impugned detention order, dated 08.12.2021. According to the respondent No.2, the alleged detenu is a 'Goonda', as, he has been engaging himself in unlawful acts and repeatedly indulging in the acts of goondaism by committing property offences such as robberies and extortion in an organized way in the limits of Cyberabad Police Commissionerate. He has been causing large scale fear and panic among the general public, thus adversely affecting the public order, peace and tranquility in the area. Subsequently, the impugned detention AAR,J & JS,J order was confirmed by the Government vide G.O.Rt.No.1795, dated 20.09.2022.

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. Further, the alleged detenu was granted conditional bail by the Courts concerned in all the three crimes relied on by the detaining authority and was released from jail. But, again, he was sent to jail by invoking the draconian

preventive detention law. Therefore, the apprehension of the detaining authority that there is every likelihood of the detenu indulging in similar offences, which are prejudicial to the maintenance of public order, unless he is prevented from doing so by an order of detention, is highly misplaced. The alleged crimes do not add up to "disturbing the public order" and they are confined within the ambit and scope of the words "law and order". Since the offences alleged are under the Indian Penal Code, the detenu can certainly be tried and convicted thereunder. Thus, there is 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 AAR,J & JS,J orders are legally unsustainable and ultimately, prayed to allow the Writ Petition, as prayed for.

5. On the other hand, the learned Special Government Pleader appearing for the respondents supported the impugned orders and submitted that the alleged detenu is a 'Goonda' and has been engaging himself in unlawful acts and repeatedly indulging in the acts of goondaisms by committing property offences such as robberies and extortion in an organized way in the limits of Cyberabad Police Commissionerate and surrounding areas and thereby creating panic among the general public in the limits of Cyberabad and Rachakonda Commissionerate and thereby acting in a manner prejudicial to the maintenance of public order. Therefore, the apprehension of the detaining authority that there is every likelihood of the detenu committing 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. Therefore, the detaining authority is legally justified in passing the impugned detention order. Subsequently, vide G.O.Rt.No.1795, dated 20.09.2022, the Government confirmed the impugned detention order. All the mandatory AAR,J & JS,J 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 dated 08.12.2021 passed by the respondent No.2, and the consequential confirmation dated 20.09.2022 passed by the respondent No.1, 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 AAR,J & JS,J detaining authority should be wary of invoking the immense power under the Act.

8. In *Ram Manohar Lohia v. State of Bihar*<sup>1</sup>, 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*<sup>2</sup>, 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 (3) crimes indicated above, has passed the impugned detention order dated 08.12.2021. We shall present them in a AIR 1966 SC 740 (1972) 3 SCC 831 AAR,J & JS,J 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
			Section	Cognizable/
571/2021	05.04.2021	05.04.2021	394 of IPC	Non Bailable
			Section	Cognizable/
572/2021	05.04.2021	05.04.2021	394 of IPC	Non Bailable
			Section	Cognizable/
385/2021	27.09.2021	27.09.2021	384 of IPC	Bailable

11. As seen from the material placed on record, the three (3) crimes relied on by the detaining authority for preventively detaining the detenu relate to committing property offences such as robberies and extortion. Further, the detenu was arrested in connection with all the three crimes and subsequently, he moved bail petitions and was granted bail in all the three crimes. Under these circumstances, the apprehension of the detaining authority that there is every likelihood of the detenu indulging in similar AAR,J & JS,J offences, which are prejudicial to the maintenance of public order, unless he is prevented from doing so by an 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 hand over the entire case record available in respect of the alleged 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 alleged detenu. Moreover, criminal law was already set into motion against the alleged detenu. Further, 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 the draconian preventive detention law. Thus, the offences allegedly committed by the alleged detenu in the three (3) crimes, relied on 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 AAR,J & JS,J 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 No.175/PD-CELL/CYB/2021 dated 08.12.2021 passed by the respondent No.2 and the consequential confirmation order vide G.O.Rt.No.1795, General Administration (Spl. Law & Order) Department, dated 20.09.2022, are hereby set aside. The respondents are directed to set the alleged detenu, namely, Mr. Shaik Amer, at liberty forthwith, in case he is no longer required in any other criminal case.

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

\_\_\_\_\_ A.ABHISHEK REDDY, J \_\_\_\_\_ JUVVADI  
SRIDEVI, J Date: 01.11.2022 Pvt/Aqs