Vitthanala Kavitha vs The State Of Telangana on 18 October, 2024

Author: P.Sam Koshy

Bench: P.Sam Koshy, N.Tukaramji

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

WRIT PETTION Nos.26299 and 26300 of 2024

COMMON ORDER:

(per the Hon'ble Sri Justice P.SAM KOSHY) Since the issue involved in both the present writ petitions is one and same, they are decided by the way of this common order.

2. Heard Mr. Mohd. Muzafeerullah Khan, learned counsel for the petitioners and Mr. Swaroop Oorilla, learned Special Government Pleader appearing on behalf of the learned Additional Advocate General for the respondents.

3. The instant two writ petitions have been filed challenging the order dated 07.06.2024 (Annexure P-1) passed by respondent No.2 putting detenu under preventive detention under Sub-Section (2) of Section 3 of the "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 Act of 1986').

4. The writ petitions are one which have been filed seeking for issuance of a Writ in the nature of Habeas Corpus with prayer for production of the detenus before the Court and quashment of the aforementioned two orders.

5. Challenging the said impugned orders, learned counsel for the petitioners contended that a plain reading of the impugned order would reveal that respondent No.2 has taken into consideration primarily four cases which were registered against the detenu during the period between 01.03.2024 to 20.03.2024 all of which were not offences of very serious nature so as to invite the preventive detention order under the aforementioned Act of 1986.

6. It was also the contention of the learned counsel for the petitioner that the nature of offences for which these four crimes have been registered are also not at all serious offences which would have an adverse impact in maintaining the public order. The nature of offences alleged to have been

committed by the detenus were primarily those relating to the law and order situation and those cannot be brought within the purview of maintenance of public order and therefore the impugned orders of preventive detention are bad in law and liable to be set-aside.

7. It was further contended by the learned counsel for the petitioner that though while passing the impugned order the authority concerned relied upon the four cases that were recently registered against the detenu in the year 2023, the nature of offences in the said four cases which have been heavily relied by the Collector & District Magistrate, are not sufficient enough to pass the order of preventive detention and the same deserves to be set aside / quashed.

8. Lastly, it was contended by the learned counsel for the petitioner that the detenus have been granted bail in the related criminal cases, yet they continue to be detained under preventive detention. Learned counsel for the petitioner asserts that the preventive detention law has been misapplied in this case as there is no compelling situation that necessitates such an extreme action. Thus, the impugned orders of preventive detention to be set-aside and the detenus be set free.

9. Per contra, the learned Special Government Pleader argued that the detenus have been implicated in various cases involving murders, attempt to murder, criminal trespass, extortions, criminal intimidations. Currently, the detenus are detained for these crimes. The Special Government Pleader emphasized that the detenus' criminal activities have been persistent and troubling, indicating a pattern of behavior that poses a significant threat to society. As a result, the detenus have been involved in unlawful acts and illegal activities which disturb public order as well as peace and tranquility in the society.

10. It was learned Special Government Pleader's further contention that the matter of the detenus was also subsequently scrutinized by the Advisory Board which in turn had reviewed the decision of the order of detention and had found the decision to be acceptable in the given facts and circumstances of the case which all the more weakens the case of the petitioner and the writ petition therefore deserves to be rejected.

11. Having heard the contentions put forth on either side and on perusal of records, this Court finds that the detention order issued against the detenu lacks substantial justification and is arbitrary in nature. The alleged offenses do not fall under the category of acts that disrupt public order as well as peace and tranquility and there is no compelling evidence to suggest that the detenus pose an imminent threat to society. The preventive detention mechanism is intended for exceptional cases which are not demonstrated here. Furthermore, it is to be noted that the detenus have been granted bail in the related criminal cases, though they were put under preventive detention by the authority concerned which violates their fundamental rights. This Court acknowledges the misuse of preventive detention law in this instance and the undue distress caused to the detenus and their families.

12. It would be relevant at this juncture to refer to a recent decision of this Court itself in Writ Petition No.12085 of 2024 decided on 09.07.2024 wherein this Court dealing with similar situation had referred to a catena of decisions of the Hon'ble Supreme Court i.e. in Mallada K Sri Ram vs. The

State of Telangana and Ors. 1, Nenavath Bujji Etc. vs. The State of Telangana and Ors. 2, Shaik Nazeen vs. State of Telangana 3, Ram Manohar Lohia vs. State of Bihar 4, KanuBiswas vs. State of West Bengal 5, Khaja Bilal Ahmed vs. State of Telangana 6and Ameena Begum vs. The State of Telangana 7 and had held as under, viz., "Under the given legal dictum in a series of decisions of the Hon'ble Supreme Court referred to in the preceding paragraphs, we have no hesitation in reaching to the conclusion that in the instant case also only because the detenu has been charged with similar type of offences in an around sixteen cases in a span of around three years by itself cannot be said to be actions which can be brought under the purview of the detention "acting in any manner prejudicial to the maintenance of the public order". All these specific cases for which he has been charged are cases which are otherwise subjected to trial for the offences punishable under the provisions of Indian Penal Code (2023) 13 SCC 537 2024 SCC Online SC 367 (2023) 9 SCC 633 1965 SCC Online SC 9 (1972) 3 SCC 831 (2020) 13 SCC 632 (2023) 9 SCC 587 and cannot be generalized and brought within the purview of public order."

13. Keeping in view the aforesaid statutory provisions, particularly the Act of 1986 and the details which are reproduced in the preceding paragraphs, we may now refer to a recent decision of the Hon'ble Supreme Court in the case of Nenavath Bujji (supra). In the said judgment, the Hon'ble Supreme Court in paragraph Nos.23, 24 and 25 dealing with the explanation attached to Section 2(a) has held as under:

> "23. The explanation attached to Section 2(a) of the Act 1986 reproduced above contemplates that '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 person referred to in Section 2(a) directly or indirectly, are causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. The Explanation to Section 2(a) also provides that for the purpose of Section 2, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is a "GOONDA"

and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "GOONDA" his alleged activities are such which adversely affected the public order or are likely to affect the maintenance of public order.

24. 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. The basis of detention is the satisfaction of the executive about the likelihood of the detenu acting in a manner,similar to his past acts, which is likely to affect adversely the maintenance of public order and, thereby prevent him, by an order of detention, from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between the prosecution in a Court of law and a detention order under the Act 1986. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt, and the standard is proof beyond the reasonable doubt, whereas in the other a person is detained with a

view to prevent him from doing such act(s) as may be specified in the Act authorizing preventive detention.

25. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. (See : Haradhan Saha v. The State of W.B., 1974 Cri LJ 1479]"

> 14. Again in paragraph No.32, the Hon'ble Supreme Court has in great detail dealt with the expression law and order and public order and held as under, viz., "32. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order, 'Public order' has a narrower ambit, and could be affected by only such contravention, which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other words, the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. [See: Union of India v. Amrit Lal Manchanda, (2004) 3 SCC 75.]"

15. In yet another land mark decision in Ameena Begum vs. The State of Telangana 8, a judgment which has been pronounced under the same provision of law, the Hon'ble Supreme Court held at paragraph Nos.34 to 37 as under, viz., (2023) 9 SCC 587 "34. In Kuso Sah vs. The State of Bihar 9, Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that:

> "4.*** The two concepts have well defined contours, it being well established that stray and un- organised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are

> bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ***
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> 6. *** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***"

(underlining ours, for emphasis)

35. Turning our attention to section 3(1) of the Act, the Government has to arrive at a subjective satisfaction that a goonda (as in the present case) has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes 'public order'. Even within the provisions of the Act, the term "public order" has, strictosensu, been defined in narrow and restricted terms. An order of detention under section 3(1) of the Act can only be issued against a detenu to prevent him "from acting in any manner prejudicial to the maintenance of public order". "Public order" is defined in the Explanation to section 2(a) of the Act as (1974) 1 SCC 195 encompassing situations that cause "harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health".

36. Ram Manohar Lohia (supra) is an authority to rely upon for the proposition that if liberty of an individual can be invaded under statutory rules by the simple process of making of a certain order, he can be so deprived only if the order is in consonance with the said rule. Strict compliance with the letter of the rule, in such a case, has to be the essence of the matter since the statute has the potentiality to interfere with the personal liberty of an individual and a Court is precluded from going behind its face. Though circumstances may make it necessary for ordering a detention without trial, but it would be perfectly legitimate to require strict observance of the rules in such cases. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu.

37. Rekha too (supra) provides a useful guide. It is said in paragraph 30 that:

> "30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal."

16. Hence, we are of the considered opinion that the reasoning given by authority concerned while passing the impugned orders of preventive detention is not justifiable or satisfactory and thus

becomes difficult to uphold the same. As a consequence, the impugned orders dated 07.06.2024 are liable to be and are accordingly set aside / quashed. The detenus, as a consequence, if they are otherwise not wanted in any other case can be released from detention forthwith.

17. Accordingly, both the Writ Petitions stand allowed. No costs.

18. As a sequel, miscellaneous petitions pending if any, shall stand closed.

_____ P.SAM KOSHY, J _____ N.TUKARAMJI, J Date: 18.10.2024 GSD