

Kotari Amboji vs State Of Telangana on 18 July, 2022

Author: Shameem Akther

Bench: Shameem Akther, N.Tukaramji

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI
WRIT PETITION No.18895 OF 2022

ORDER:

(Per Hon'ble Dr. Justice Shameem Akther) This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner challenging the detention order vide No.195/PD-CELL/CYB/2021, dated 31.12.2021, passed by the respondent No.2-Commissioner of Police, Cyberabad Commissionerate, 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.748, General Administration (Spl. (Law & Order)) Department, dated 31.03.2022, passed by the Chief Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana.

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

3. Learned counsel for the petitioner would submit that by relying on a recent solitary case viz., Crime No.761 of 2021 of 2 Dr.SA,J & NTR,J Jagadgirigutta Police Station, Cyberabad Police Commissionerate, registered for the offences under Section 376-AB I.P.C. and Section 3 read with 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'), the respondent No.2, passed the impugned detention order, dated 31.12.2021. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.748, dated 31.03.2022. The solitary crime relied on by the detaining authority does not add up to "disturbing the public order" and it is confined within the ambit and scope of the words "law and order". Since the offences alleged are under the Indian Penal Code and the special law, the detenu can certainly be tried and convicted under the Penal Code and the said special law. The detenu has no past criminal history. Further, the detenu was granted conditional bail by the Court concerned in the solitary crime relied on by the detaining authority and was released from jail. The impugned detention order was passed on stale grounds, in a mechanical manner and without application of mind. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law against the detenu. Hence, the impugned orders are legally unsustainable and ultimately, prayed to allow the Writ Petition, as prayed for.

3 Dr.SA,J & NTR,J

4. 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', as he had engaged himself in unlawful acts of sexual offence committing penetrative sexual assault on a minor girl in the limits of Jagadgirigutta Police Station, Cyberabad Police Commissionerate, in an organized way and acted in a manner prejudicial to the maintenance of public order. The detenu got conditional bail from the Court concerned in the solitary crime relied on by the detaining authority. The crime allegedly committed by the detenu was sufficient to cause a feeling of insecurity in the minds of the people at large. Since the modus of committing the crime was penetrated sexual assault on a minor girl aged about five years, it has created sufficient panic in the minds of the general public. Since the detenu was involved in sexual offence against a minor girl, which is heinous in nature, it cannot be said that the impugned detention order was passed on stale grounds and without application of mind. Therefore, the detaining authority and the Government are justified in passing the impugned orders. The impugned orders are legally sustainable and ultimately, prayed to dismiss the Writ Petition.

4 Dr.SA,J & NTR,J

5. 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.195/PD- CELL/CYB/2021, dated 31.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.748, General Administration (Spl. (Law & Order)) Department, dated 31.03.2022, passed by the Chief Secretary to Government, General Administration (Spl. (Law & Order) Department, Government of Telangana, are liable to be set aside?"

POINT:

6. 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.

5 Dr.SA,J & NTR,J

7. In Ram Manohar Lohia v. State of Bihar¹, 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.

8. 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.

9. In the present case, the detaining authority, basing on a solitary crime indicated above, has passed the impugned detention order, dated 31.12.2021. We shall present it 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.

AIR 1966 SC 740 (1972) 3 SCC 831 6 Dr.SA,J & NTR,J Date of Date of Crime No. registration Offences Nature Occurrence of FIR Sec.376-AB -

761/2021 of Jagadgirigutta PS	04.09.2021	10.09.2021	Sec.376-AB IPC and	Cognizable/ Non-Bailable
			Sec.3 r/w 4 of POCSO Act	Sec.3 of POCSO Act: Cognizable/ Non-Bailable

10. A bare perusal of the impugned detention order clearly reveals that the detaining authority is concerned by the fact that in the case relied upon by it for preventively detaining the detenu, the detenu was involved in the heinous activity of penetrative sexual assault on the minor girl and was granted conditional bail by the Court concerned and he was released from prison on 17.12.2021. However, the apprehension of the detaining authority that since the detenu was already enlarged on bail, there is imminent possibility of his indulging in similar shameful and inhuman acts of sexual assault on minor girls exploiting their innocence and helpless condition in a deceptive manner in due course which are detrimental to public order, unless he is prevented from doing so by an appropriate order of detention, is highly misplaced. In the said crime, the detenu was remanded to judicial custody on 14.09.2021. His bail application vide Crl.M.P.No.413 of 2021 was allowed by the learned Special 7 Dr.SA,J & NTR,J Sessions Judge for Trial and Disposal of Cases under POCSO Act, Ranga Reddy District at L.B. Nagar, vide order, dated 02.12.2021, on conditions, i.e., on executing a personal bond for a sum of Rs.25,000/- with two sureties each for like sum to the satisfaction of learned XI Additional Metropolitan Magistrate, Kukatpally at Prashanth Nagar, and that the detenu shall appear before the Station House Officer Concerned on every Sunday between 10:30 AM and 12:00 Noon for a period of 60 days or till filing of charge sheet, whichever is earlier, failing which the Investigating Officer shall take appropriate steps for cancellation of the bail to the detenu and that he shall not leave India without previous permission of the Court and shall deposit his passport, if any, with the Court and he shall file an affidavit, if he does not own passport. The detenu was

released from judicial custody on 17.12.2021. The impugned detention order was passed on 31.12.2021, i.e., within fifteen days from the date of release of detenu on bail from judicial custody. Here, it is apt to refer to Section 29 of the POCSO Act, 2012, which reads as under:

"29. Presumption as to certain offences:- When a person is prosecuted for committing or abetting or attenuating to commit any offence under Sections 3, 5, 7 and 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."

8 Dr.SA,J & NTR,J

11. In the instant case, a bare perusal of the bail order of the detenu, dated 02.12.2021, reveals that the prosecuting authority has not brought the aforementioned proviso to the notice of the learned Sessions Judge who granted bail to the detenu. For the inaction of the Police, the detaining authority cannot be permitted to invoke the draconian preventive detention laws, in order to breach the liberty of an individual. The detenu is being prosecuted for committing a heinous offence of penetrative sexual assault on a minor girl aged about five years. He was granted bail by the Court of Session as indicated above on certain conditions. If the state is aggrieved by the grant of bail to the detenu, nothing prevented the State to seek cancellation of bail. The State did not choose to resort to such cancellation of bail, instead passed the impugned detention order. All the cases under POCSO Act are being put on fast track. In our opinion, the bald statement made in the grounds of detention that considering the detenu's involvement in heinous activities and his release from prison on bail, there is imminent possibility of his indulging in similar shameful and inhuman acts of sexual assault on minor girls exploiting their innocence and helpless condition in a deceptive manner, which are detrimental to public order, would not justify the impugned detention order.

9 Dr.SA,J & NTR,J

12. Further, in Gulab Mehra Vs. State of UP and others³, the Hon'ble Apex Court, relying on its earlier judgment rendered in Kanchanlal Maneklal Chokshi Vs. State of Gujarat {AIR 1979 SC 1945}, held as follows:

"The ordinary criminal process is not to be circumvented or short-circuited by ready resort to preventive detention, but that the possibility of launching a criminal prosecution is not an absolute bar to an order of preventive detention. Nor is it correct to say that if such possibility is not present to the mind of the detaining authority the order of detention is necessarily bad. However, the failure of the detaining authority to consider the possibility of launching a criminal prosecution may, in the circumstances of a case, lead to the conclusion that the detaining authority had not applied its mind to the vital question whether it was necessary to make an order of preventive detention. Where an express allegation is made that the order of detention was issued in a mechanical fashion without keeping present to its mind the question whether it was necessary to make such an order when an ordinary

criminal prosecution could well serve the purpose, the detaining authority must satisfy the court that the question too was borne in mind before the order of detention was made. If the detaining authority fails to satisfy the court that the detaining authority so borne the question in mind the court would be justified in drawing the inference that there was no application of the mind of the detaining authority to the vital question whether it was necessary to preventively detain the detenu."

13. Further, in the instant case, since the detenu has committed the offences punishable under the Indian Penal Code and the POCSO Act, the said crime can be effectively dealt with under the provisions of the Penal Code and the said special law. The solitary AIR 1987 SC 2332 10 Dr.SA,J & NTR,J crime relied on by the detaining authority does not add up to "disturbing the public order" and it is confined within the ambit and 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.

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

15. In the result, the Writ Petition is allowed. The impugned detention order vide No.195/PD-CELL/CYB/2021, dated 31.12.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.748, General Administration (Spl. (Law & Order)) Department, dated 31.03.2022, passed by the Chief Secretary to Government (General Administration (Spl. (Law & Order)) Department, Government of Telangana, are hereby set aside. The respondents are directed to set the detenu, namely Kotari Amboji, S/o. Manik, at liberty forthwith, if he is no longer required in any other criminal case.

11 Dr.SA,J & NTR,J The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J _____
N.TUKARAMJI, J Date: 18.07.2022 MD