Varakala Narsimha Cherpata Narsimha vs The State Of Telangana And 2 Others on 12 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.21170 OF 2022

ORDER:

(Per Hon'ble Dr. Justice Shameem Akther) This Habeas Corpus petition is filed by the petitioner/detenu, namely, Varakala Narsimha @ Cherpata Narsimha, S/o V.Krishna, challenging the detention order vide SB(I)No.237/PD-2/HYD/2021, dated 03.11.2021, 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.216, General Administration (Spl. (Law & Order)) Department, dated 29.01.2022, passed by the respondent No.1.

2. Heard the learned counsel for the 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 three crimes viz., Crime Nos.25 of 2021, 105 of 2021 and 157 of 2021 of Kulsumpura Police Station, Hyderabad, the respondent No.2 passed the impugned detention order, dated 03.11.2021. According to respondent No.2, the detenu is a 'Goonda', as he has been habitually committing offences of voluntarily causing hurt, extortion and criminal intimidation in the Dr.SA,J & NTR,J limits of Hyderabad Police Commissionerate and thus causing widespread fear, terror and panic among the people and thereby adversely affecting the public order. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.216, dated 29.01.2022.

4. Learned counsel for the petitioner would contend that relying on three cases registered against the detenu in the year 2021, the impugned detention order was passed. The alleged cases do not add up to "disturbing the public order". They are confined within the ambit and scope of the word "law and order". Since the offences alleged are under the Indian Penal Code, the detenu can certainly be tried and convicted under the Indian Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law. Hence, the impugned orders tantamount to colourable exercise of power. Further, the detenu was granted bail by the Courts concerned in Crime Nos.25 and 105 of 2021. The detenu has not moved any bail application in Crime No.157 of 2021. Thus, the detenu continues to be in judicial custody. Despite the fact that the detenu is in judicial custody, the impugned detention order has been passed against the detenu. The detaining authority, without appreciating the material on record, mechanically passed the impugned

detention order. There was no need for the detaining authority to invoke the draconian preventive detention law against the detenu. Hence, the impugned orders are Dr.SA,J & NTR,J 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 'Goonda'. He has been habitually committing offences of voluntarily causing hurt, extortion and criminal intimidation in the limits of Hyderabad Police Commissionerate and thus causing widespread fear, terror and panic among the people, thereby adversely affecting public order. The detenu got bail in crime No.25 of 2021 and released from jail. After release, there was no change in his attitude and committed crime No.105 of 2021. Later, he got bail in crime No.105 of 2021 also and released from jail. After release, he committed crime No.157 of 2021 and remanded to judicial custody. Earlier, the detenu was detained vide proceedings SB(I) No.270/PD- 2/HYD/2019, dated 30.10.2019. Since the detenu got bail in Crime Nos.25 and 105 of 2021, the apprehension of the detaining authority that there is every likelihood of the detenu moving bail petition in crime No.157 of 2021, grant of bail to the detenu and his release from judicial custody on bail soon and on such release, there is imminent possibility of his committing similar offences, which would be detrimental to the public 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 Dr.SA,J & NTR,J in the minds of the people at large. 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.216, dated 29.01.2022. 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.237/PD-2/HYD/2021, dated 03.11.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.216, General Administration (Spl. (Law & Order)) Department, dated 29.01.2022, 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, Dr.SA,J & NTR,J 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 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.

9. In Kanu Biswas v. State of West Bengal2, 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 five crimes indicated above, has passed the impugned detention order, dated 24.11.2021. We shall present them in a tabular form the date of occurrence, the date of registration of FIR, the offence complained of AIR 1966 SC 740 (1972) 3 SCC 831 Dr.SA,J & NTR,J and its nature, such as bailable/non-bailable or cognizable/non- cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
25/2021 of Kulsumpura PS	10.02.2021	10.02.2021	Sections 384, 504, 506 and 510 of IPC	Section 384: Cognizable/ Non Bailable Section 510: Non cognizable/ Non Bailable Sections 504, 506: Non-cognizable/ Bailable
105/2021 of Kulsumpura PS	13.06.2021	13.06.2021	Sections 324, 448 and 506 of IPC	Sections 324, 448: Cognizable/ Non-Bailable Section 506: Non-Cognizable/ Bailable
157/2021 of Kulsumpura PS	17.09.2021	18.09.2021	Sections 384 & 506 of IPC	Section 384:Cognizable/ Non Bailable Section 506: Non-cognizable/

Bailable

11. As seen from the material placed on record, the crimes relied upon by the detaining authority for preventively detaining the detenu relate to voluntarily causing hurt, extortion, house trespass, insult, causing annoyance and criminal intimidation. The detenu was granted bail by the Courts concerned in Crime Nos.25 and 105 of 2021. The detenu has not moved any bail petition in Crime No.157 of 2021. Thus, the detenu continues to be in judicial custody as on the date of passing of the impugned detention order, dated 03.11.2021. Under these circumstances, the apprehension of the detaining authority that there is every possibility of the detenu moving bail petition in crime No.157 of 2021, grant of bail to the detenu and his release from judicial custody Dr.SA,J & NTR,J on bail soon and on such release, there is imminent possibility of his committing similar offences, which would be detrimental to the 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. Here, it is appropriate to refer to the decision of the Hon'ble Apex Court in Rekha Vs. State of Tamil Nadu3, wherein it is held as follows:

> "Where a detention order is served on a person already in jail, there should be a real possibility of release of a person on bail who is already in custody, provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence, the detention order will be illegal."

Moreover, criminal law was already set into motion against the detenu. Since the detenu has committed offences punishable under 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 draconian preventive detention laws. The instant case does not fall within the ambit of the words "public order" or (2011) 5 SCC 244 Dr.SA,J & NTR,J "disturbance of public order". Instead, it falls within the scope of the words "law and order". Further, passing of detention order against the detenu on earlier occasion cannot be a ground to invoke the draconian preventive detention law. 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.237/PD-2/HYD/2021, dated 03.11.2021, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.216, General Administration (Spl. (Law & Order)) Department, dated 29.01.2022, passed by the respondent No.1, are hereby set aside. The respondents are directed

to set the detenu, namely, Varakala Narsimha @ Cherpata Narsimha, S/o V.Krishna, at liberty forthwith, if he is no longer required in any other criminal case.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

_____ Dr. SHAMEEM AKTHER, J _____ N.TUKARAMJI , J Date: 12.07.2022 ssp