

Fatima Al Amoodi vs The State Of Telangana on 4 July, 2019

Author: Shameem Akther

Bench: Raghvendra Singh Chauhan, Shameem Akther

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.874 of 2019

Date: 04.07.2019

Between:

Fatima Al Amoodi

...Petitioner

And

The State of Telangana,
Rep. by its Chief Secretary,
Telangana Secretariat, Hyderabad,
and others.

...Respondents

Counsel for the petitioner : Smt. S. Vani

Counsel for the respondents : Sri S. Sharath
Special Government Pleader for
The Advocate General

The Court made the following:

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H CJ & Dr. SAJ
W.P.No.874 of 2019

ORDER:

(Per the Hon'ble Dr. Justice Shameem Akther) The petitioner has filed this habeas corpus writ petition on behalf of her son, Saud Amoodi @ Saud @ Amoodi, challenging the detention order

dated 24.12.2018 passed by the Commissioner of Police, Hyderabad City, the respondent No.2, wherein the detenu- Saud Amoodi @ Saud @ Amoodi 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, Fertilizer Offenders, Food Adulteration Offenders, Fake Document offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders & White Collar or Financial Offenders Act, 1986 (for short "P.D. Act").

2) Heard the learned counsel for the parties, and perused the impugned order.

3) Smt.S.Vani, learned counsel for the petitioner, has raised the following contentions before this Court:

The alleged four cases relied upon by the detaining authority are pending adjudication in the Courts of law and there is no case in which the detenu was convicted for any offence. The detention order has been passed on untenable grounds without recording subjective satisfaction and therefore, the order of detention is vitiated. The detention order was passed as a counterblast to the Anti-Corruption case filed against the officials of respondent No.3 and the refusal of the detenu to stop his brother from deposing under Section 164 Cr.P.C in the Anti-Corruption case and the said act of respondent HCJ & Dr. SAJ No.3 amounts to violation of fundamental right, guaranteed to the detenu. There is no single instance which forms the basis for the subjective satisfaction on the part of the detaining authority in coming to the conclusion that the detenu indulged in activities prejudicial to the public order. Since the offences alleged are under the Indian Penal Code and Arms Act, the detenu can certainly be tried and convicted for those offences. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned order tantamount to the colourable exercise of power. Thus, the impugned order is legally unsustainable and ultimately prayed to set aside the same by allowing the writ petition.

4) On the other hand, Mr.S.Sharath, the learned Special Government Pleader, pleads that in each case, allegedly committed by the detenu, he managed to get bail from the Court concerned. The series of crimes allegedly committed by him were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the detenu committed the offences of attempt to commit murder, criminal conspiracy, criminal intimidation, causing grievous hurt by dangerous weapons, extortion, trespass and also in possession of arms etc., it has created sufficient panic in the minds of the general public.

Therefore, the detaining authority was legally justified in passing the impugned order and ultimately prayed to dismiss the writ petition.

5) In view of the submissions made by both sides, the point that arises for determination in this Writ Petition is:

"Whether the impugned detention order, dated 24.12.2018, passed by the Commissioner of Police, Hyderabad City, respondent No.2, is liable to be set aside?"

HCJ & Dr. SAJ

6) POINT: Briefly, the facts of the case as alleged are that the detenu was habitually indulging in the acts of goondaism and committed grave and dangerous offences such as attempt to commit murder and criminal intimidation in public places in the limits of Hyderabad Police Commissionerate, thereby creating large-scale fear and panic among the general public, adversely affecting the maintenance of public order. Hence, he is a "Goonda" as defined under the P.D. Act. Earlier the detenu was involved in three grave and gruesome offences in the limits of Hyderabad city during the years 2004 to 2016 vide i) Crime No.152/2004 under Section 380 IPC on the file of Banjara Hills Police Station ii) Crime No.433/2012 under Sections 364, 364(A), 365, 352, 368, 109, 120(b) IPC r/w 149 IPC Section 25(1) of Arms Act, 1959 on the file of Bowenpally Police Station and iii) Crime No.1163/2016 under Sections 341, 427, 326, 506 r/w 34 IPC on the file of Banjara Hills Police Station.

7) The respondent No.2 passed the impugned detention order dated 24.12.2018 treating the petitioner's son as a "Goonda" relying upon the four crimes, i.e, i) Crime No.588/2017 under Sections 147, 148, 324, 325, 341, 387, 506 r/w 149 IPC on the file of Banjara Hills Police Station, ii) Crime No.1059/2017 under Sections 341, 448, 420, 506 IPC on the file of Banjara Hills Police Station, iii) Crime No.8/2018 under Sections 307, 120B r/w 34 IPC, Section 27 of Arms Act on the file of Humayunnagar Police Station and iv) Crime No.137/2018 under Sections 506, 507 r/w 120B IPC on the file of Humayunnagar Police Station. Therefore, the detenu is a potential threat to the maintenance of public order. The detenu was granted bail in all the cases registered against him. Therefore, in order to prevent the detenu from disturbing the public order, the said HCJ & Dr. SAJ preventive detention order was passed by the respondent No.2. Hence, this writ petition before this Court.

8) The material placed on record reveals that the detenu-Saud Amoodi @ Saud @ Amoodi, who is a rowdy sheeter of Banjara Hills Police Station, has been habitually indulging in acts of goondaism and alleged to have committed several grave and dangerous offences such as attempt to commit murder, criminal intimidation in public places in broad day light within the limits of Hyderabad Police Commissionerate. The detaining authority, respondent No.2 by relying on four criminal cases as mentioned below, passed the detention order dated 24.12.2018:

Date of registration Crime No. Occurrence Offences Nature of FIR
Sec.147,148, 325, 341 IPC: Bailable/ cognizable Sections 147, Sec.324, 387 IPC:

588/2017 of			148, 324, 325,	
	23.06.2017	23.06.2017		Non-bailable/
Banjara Hills PS			341, 387, 506	

			r/w 149 IPC	cognizable, Sec.506 IPC: Bailable/ Non-cognizable Sec.341, 448 IPC: Bailable/cognizable Sec.420 IPC: Non-
1059/2017 of			Sections 341,	
	19.11.2017	19.11.2017	448, 420, 506	bailable/cognizable
Banjara Hills PS			IPC	Sec.506 IPC: Bailable/Non- cognizable
8/2018 of			Sections 307, 120B r/w 34	Sections 307, 120B r/w 34 IPC, S.27 of
	10.01.2018	11.01.2018	IPC, S.27 of Arms Act	Arms Act: Non- bailable/cognizable Sec.506, 507 IPC - Bailable/Non-
Humayunnagar PS			Sections 506,	
137/2018 of			507 r/w 120B	cognizable Sec.120B IPC: Non-
	04.05.2018	01.06.2018	IPC	bailable/cognizable
Humayunnagar PS				

The offences relied upon by the detaining authority, respondent No.2, reveal that the detenu alleged to have committed attempt to commit murder, trespass, grievous hurt, criminal intimidation, criminal conspiracy, extortion and also in possession of arms etc. The HCJ & Dr. SAJ detenu had gradually improved his criminal tendencies and alleged to have involved in grave and gruesome offences as indicated above. The offences alleged to have been committed by the detenu during the years 2004 to 2016 also indicates the commission of offences under Section 25(1) of Arms Act. However, the detaining authority did not rely on the offences alleged to have been committed by the detenu during the years 2004 to 2016. The detaining authority had relied upon the alleged offences committed by the detenu only during the short period i.e, 2017 and 2018. The manner, in which the offences alleged to have been committed by the detenu, certainly causes terror, panic and a feeling of insecurity among the general public. The continuation of commission of such alleged offences certainly disturbs the public peace and tranquility within the limits of Hyderabad Police Commissionerate and it has effect of causing prejudice to the maintenance of law and order.

9) It is appropriate to refer the following decisions of the Hon'ble Supreme Court:

i) In Pushkar Mukherjee vs. State of West Bengal¹, the Hon'ble Supreme Court observed that if any of the grounds of detention are found to be irrelevant,

satisfaction of the detaining authority on which the order of detention is based would be open to challenge and the detention order would be liable to be quashed.

ii) In *Ummu Saleema vs. B.B.Gujaral*², the Hon'ble Supreme Court pointed out that though an order of detention may not state in express words that the detaining authority had also considered the question whether prosecution under ordinary criminal law would not AIR 1970 SC 852 (1981) 3 SCC 317 HCJ & Dr. SAJ meet the situation and be sufficient to prevent the detenu from engaging in objectionable activities, a reading of the entire counter-

affidavit made it clear that it was the opinion of the detaining authority that, prosecution or no prosecution, the only effective way of preventing the detenu from engaging in objectionable activities was to detain him. Acting upon the counter-affidavit averments, the order of detention was upheld.

iii) In *Suraj Pal Sahu vs. State of Maharashtra*³, the Hon'ble Supreme Court observed that it must be borne in mind, having regard to the purpose of the preventive detention law, that the detaining authority must take into consideration rational grounds and that should be the basis for the horoscope for the future, so as to determine whether the person proposed to be detained comes within the mischief of such law. It was further observed that if the person is in detention or is under trial and his conviction is unlikely but his conduct comes within the mischief of the Act, then the authority is entitled to take a rational view of the matter.

10) As per the clause (g) of Section 2 of the P.D.Act, a "Goonda" means a person, who either by himself or as a member of or leader of gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.

11) The commission of alleged offences as indicated in the above table clearly demonstrates that the detenu had been committing grave and gruesome offences such as attempt to commit murder, trespass, grievous hurt, criminal intimidation, criminal conspiracy, extortion (1986) 4 SCC 378 HCJ & Dr. SAJ and also in possession of arms etc., in public places within the limits of Hyderabad Police Commissionerate and creating terror, panic and fear in the minds of the general public, disturbing the public peace and tranquility. So it is imperative upon the officers concerned to pass the order of detention, since the acts of the detenu are prejudicial to the maintenance of public order. The grounds of detention as indicated in the impugned order are found to be relevant and in tune with the provisions of the P.D. Act. Since the detenu is granted bail in all the cases, there is possibility of his coming out and committing similar offences, which would again certainly cause great panic in the general public and effect the maintenance of public order.

12) The submissions made by the learned counsel for the petitioner that the detenu had not been convicted so far in any of the alleged offences; the detention order was passed without recording subjective satisfaction and it is passed as a counterblast to the anti-corruption case filed against the officials of respondent No.3 and the offences alleged under the Indian Penal Code and Arms Act, can

be dealt with under ordinary criminal law, are unsustainable. The manner in which the alleged offences are committed and there is possibility of detenu committing similar offences in future which are prejudicial to the maintenance of public order and as it would disturb the public peace and tranquility. The subjective satisfaction of the detaining authority is not tainted or illegal on any account. The acts of the detenu cannot be dealt with under ordinary criminal law. Under these circumstances, the detaining authority, respondent No.2 is justified in passing the impugned order.

HCJ & Dr. SAJ

13) Accordingly, the Writ Petition is devoid of merits and the same is hereby dismissed. No order as to costs.

The miscellaneous petitions pending, if any, in this Writ Petition, shall stand closed.

_____ RAGHVENDRA SINGH CHAUHAN,
HCJ _____ Dr. SHAMEEM AKTHER, J Date:
04.07.2019 scs