HON'BLE SRI JUSTICE A. RAJASHKER REDDY
AND
HON'BLE SRI T. AMARNATH GOUD

WP No. 20910 of 2020

Order : (*Per Hon'ble Sri Justice A. Rajasheker Reddy*)

The petitioner, is the wife of the detenu namely Sri.Mohd.Ghouse Pasha @ Baba, challenging order of detention vide No.38/PD-CELL/CYB/2020, dated 04-09-2020 passed by Commissioner of Police, Cyberabad Police Commissionerate (hereinafter referred as respondent no. 2), exercising power conferred under Section 3(1) & (2) r/w Section 2(a) & 2(g) of 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 and White Collar or Financial Offenders Act 1986(Act 1/86), and the same was confirmed on 31-10-2020 vide G. O. Rt. No. 1651, stating that he has been indulging in the acts of goondaism by committing dangerous offences such as gruesome murder and attempt to murder in an organized manner.

02. Heard the learned counsels for the parties and perused the documents and impugned order.

03. Smt. B. Mohana Reddy, learned counsel for the petitioner has assailed the order impugned by submitting that the detaining authority after referring to 2 offences committed by the detenu in December 2019 and July 2020 under the provisions of Chapter XVI under the IPC, 1860 in the limits of Cyberabad Commissionerate passed the order of detention. That the detaining authority got influenced by the law and order crimes registered against the detenu which formed the basis for their subjective satisfaction, without proper application of mind terming him as Goonda as defined under the Preventive Detention Act. That these two crimes registered in 2019 and 2020 relate to the offence of murder, attempt to murder and therefore order of detention cannot be invoked against the detenu for arriving at subjective satisfaction, as they are the crimes pertaining to law and order, affecting the specific individuals only and not public at large, thus, touching the problem of law and order. That the preventive detention law cannot be invoked in every case as a matter of course and as an alternative method to the punitive law and necessity of invocation of

preventive detention arises if and only if activities are affecting public order and every crime registered under chapters XVI or XVII or XXII of the Indian Penal Code cannot form the basis for arriving at subjective satisfaction and passing the detention orders against the individuals and touching their liberty under Article 21 of the Constitution of India as a matter of course. That the procedure established under law should be strictly followed before depriving the liberty of an individual. That the detenu was in Judicial Custody in connection with Cr.No.681/2020 of Mailardevpally P.S., as on the date of passing the detention order and that it is a settled principle in law that the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. That the detaining authority must show that it is reasonably satisfied on the material that there is likelihood of him being released in the near future and there is every possibility of him indulging into prejudicial activities. The detaining authority without satisfying the mandatory requirement under law passed the present detention order against the detenu while in judicial custody and didn't satisfy the triple requirements as held by the Supreme Court. These crimes do not tend to disturb the even flow of the society. The detaining authority passed the order of detention mechanically without proper application of mind to the facts and circumstances of the case and therefore this order impugned must be quashed.

04. Per contra, Sri. Srikanth Reddy, the learned Government Pleader for Home representing the learned Additional Advocate General for respondents, would submit that the 2nd respondent passed the detention order against the detenu vide Proceeding No.38 /PD-CELL/CYB/2020, dated 4.9.2020 treating him as Goonda' as he has been habitually engaging himself in unlawful acts of goondaism by committing grave and dangerous offences such as murder, attempt to murder in an organised way in the limits of Cyberabad Police Commissionerate and thereby causing harm, panic and a feeling of insecurity among the innocent general public of the locality and thus he has been acting in a manner prejudicial to the maintenance of public order, apart from disturbing peace, tranquility and social harmony in the society and there is a likelihood of the detenue being enlarged on bail and imminent possibility of resorting to further prejudicial activities like in the past. Therefore, the detaining authority was legally justified in passing the impugned orders. Hence, the learned Government pleader has supported the impugned order.

05. The point that arises for consideration is:-

Whether the order of detention, dated 04-09-2020 passed by 02nd respondent as confirmed by order, dated 31-10-2020, passed by the 1st respondent, are liable to be set aside ?

06. The law on this point is settled that public order is different from law and order as the latter is found in all the forms disorder. However, public order, if disturbed, will lead to public disorder. Two people fighting on road, creating disorder, but public order is not disturbed as the flow of the society continues and their acts can be dealt with as per the normal laws governing criminal justice system. On the other hand, if two people from different communities or belief, indulge in fight and one of them tries to instigate the hatred on religious lines, the problem though still is of law and order but there is an apprehension that the public will be affected as this might lead to the communal strife if not timely and preventive actions are taken. **(**See ***Ram Manohar Lohia v. State of Bihar AIR 1966 SC 740; Kanu Biswas vs. State of West Bengal (1972) 3 SCC 83)***

07. It would be apposite to discuss the judgment of Supreme Court in **Arun Ghosh vs. State of West Bengal (1970) 1 SCC 98.** This is a case where the Apex Court has distinguished in between the public order and law and order with illustration. The Honourable Supreme Court, after referring to several of its binding precedents, held;

> ***3.*** *… Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not*

cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore 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 the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr Ram Manohar Lohia case examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.

08. Reliance has been placed, by learned counsel for respondents on the judgement of Supreme Court in **State of Maharashtra and others vs. Bhaurao Punjabrao Gawande (2008) 3 SCC 613** and on judgement in **WP Nos 32370** and batch of 2018 decided by this Court. Before adverting to the judgements cited by learned counsel for the petitioner, we would first deal with the judgements relied upon by the learned counsel for respondents.

09. In ***Bhaurao Punjabrao*** **(**supra) Supreme Court was dealing with an issue related to filing of WP (Habeas Corpus) at pre-execution stage. In the instant case the respondent Bhaurao was

running a racket of black marketing of Kerosene oil and when an order of detention was passed against him, he absconded and didn't surrender. In-fact he filed Habeas Corpus without submitting to the order of detention and surrendering. The writ petition was allowed by HC and was challenged before the Supreme Court. The Apex Court, after perusing several of its judgment dealt with the issue and held that the law appears to be fairly well settled and it is this that as a general rule, an order of detention passed by a detaining authority under the relevant "preventive detention" law cannot be set aside by a writ court at the pre-execution or pre-arrest stage unless the court is satisfied that there are exceptional circumstances. (See ***Alka Subhash Gadia* 1992 SCC (Cri) 301]**. Admittedly, in the case on hand, this WP has been filed post execution of the order of detention in-fact the detenue was already in custody at the time of passing of order of detention. Therefore, this judgement in *Bhaurao Punjabrao* is not applicable to the facts of the case in hand.

10. In WP No. 32370 and batch of 2018 this court was dealing with case where offences related to human trafficking were involved. The detenu in the instant case was running brothel house by securing the girls, through illegal means, from her community and from other parts of the district. The girls procured were forced into prostitution with offers of money and life of luxury. The detenu, despite being named in various FIRs, continued her practice in an organized manner. This led to the disturbance in the adjacent areas and affected the life and public tranquility of the public at large and more particularly the residents of the locality. A perusal of the judgment in WP No. 32370 and batch of 2018 would cogently evince that the crime related to sexual offence, immoral trafficking are not just confined to a particular person rather they affect the society at large. Such crimes are not against an individual but against society at large and stir indignation against the person involved in such acts. Trafficking is much more than just a social evil. In some cases, traffickers trick, defraud or physically force victims and in others, the victims are lied to, assaulted, threatened or manipulated into working under inhumane, illegal or otherwise unacceptable conditions. It is a violent crime against humanity itself. It is a menace that violates all the basic tenets of human rights, justice, and dignity and is often referred to as modern-day slavery. Therefore, we are not persuaded with the judgments relied upon by the respondents

11. It is borne out of record that the detenu is allegedly involved in two criminal cases vide crime No. 914/2019 and 681/2020. The following are the offences alleged, the date of occurrence and the relevant provisions of IPC.

Sl. No	Crime No.	Date of occurrence	Date of registration of FIR	Offences	Nature
1.	914/2019 of Mailardevpally PS	19.12.2019	19.12.2019	Sections 302 r/w 34 of IPC	Cognizable and non-bailable
2.	681/2020 of Mailardevpally PS	22.07.2020	22.07.2020	Section 307 of IPC	Cognizable and non-bailable

12. A perusal of the order of detention would reveal that in crime no. 914/2019, the petitioner moved bail petition before the Addl. Metropolitan Sessions Judge at LB Nagar Ranga Reddy District vide Crl. MP. NO. 1131/2019 that was allowed and the Court granted the conditional bail to the detenu and he subsequently was released from the jail on 07.03.2020. The detenu was arrested once again in crime no. 681/2020. He moved a bail petition before the Metropolitan Sessions Judge vide Crl. MP No. 2524 of 2020 and the same was dismissed on 01-09-2020. The detenue continues to be in jail. It is an admitted fact that the respondents are aware of the fact the bail application of the detenu has already been rejected in the second crime and this fact has also been recorded at para 11 of the counter affidavit filed in this case. It is stated that the chargesheet has been filed and normal criminal procedure is already set in motion.

13. In **Champion R. Sangma V. State of Meghalaya (2015) 16 SCC 253**, the Supreme Court took note of the principles laid down by it earlier in **Kamarunnisa V. Union of India (1991) 1 SCC 128** to the following effect:-

> "13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed *(1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would be all probability indulge in prejudicial activity; and (3) if it*

is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in *Ramesh Yadav* was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody."

14. Though it was contended that the detaining authority was well aware of the full facts and having subjectively satisfied himself that there was a real likelihood of the detenu being enlarged on bail and in anticipation thereof, the order of detention was passed, the detaining authority failed to satisfy the second limb of the triple requirement test as held in by the Hon'ble Supreme Court in *Champion R. Sangma*,(supra). It is an admitted fact that the bail application of the detenu in crime no 681/2020 was dismissed. Even if, there is an apprehension, as recorded by the respondent in the detention order, they can file an application before the concerned court for cancellation of his bail in crime no. 914/2019.

15. It is settled proposition of law as has been laid down by the Hon'ble Supreme Court as well as the High Courts that personal liberty is a precious right. Power conferred by such preventive detention law has to be exercised with extreme care and scrupulously within the bounds laid down in such a law. Preventive detention involves detaining of a person without trial in order to prevent him from committing certain types of offences as such preventive detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes. When invoking the magical formula of preventive detention the detaining authority is required to consider whether the offences allegedly committed by the detenu can be dealt with within the normal course of criminal justice system or not. (see ***State of Maharashtra V. Bhaurao Punjabrao Gawande (2008) 3 SCC 613 , Kishori***

Mohan Bera V. State of West Bengal (1972) 3 SCC 845, Munagala Yadamma V. State of A.P (2012) 2 SCC 386 & Rapolu Mahalakshmi V. State of Telangana 2019 SCC OnLine TS 2058).

16. It is stated by the learned counsel for the petitioner that this Court in WP No. 13861 of 2020 dated 03-11-2020, WP No. 7504 of 2019 dated 11-07-2019 and WP No. 13126 of 2020 dated 03-11-2020, which were filed challenging the detention orders on the grounds that the orders of detention passed by respondent detaining authority fell in the category of 'law and order' problem and not in the category of the 'public order' affecting the people at large, dealt with similar fact situations and we have been informed that these orders have attained finality as well. In those writ petitions, detenu were alleged to have committed the crime related to the offences of murder, attempt to murder, theft, hurt etc. This Court, after discussing various judgments by the Hon'ble Supreme Court, allowed these writ petitions and quashed the orders of detention. It was held that though the offences were against specific individuals and the offences in the said crimes were of gruesome and brutal in nature, but the gravity alone cannot be taken into consideration for passing the order of detention. We find ourselves in agreement with the findings of the judgments in the above mentioned writ petitions. In the circumstances, we are of the view that there were no compelling situations for the detaining authority to invoke the draconian preventive detention law against the detenu.

17. On the above analysis of the matter, the order passed by the 2nd respondent vide order of detention No.38/PD-CELL/CYB/2020, dated 04-09-2020 and the consequential confirmation order passed by the 1st respondent are not valid, as such they are quashed. The detenu is directed to be released from the custody provided he is not required in connection with any other criminal case. The writ petition no. 20910 of 2020 is allowed. Miscellaneous petitions, if any pending, shall also stand disposed of. There shall be no order as to costs.

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A.RAJASHEKER REDDY, J

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T. AMARNATH GOUD, J

Dated: 03-03-2021
Nrg
Note : issue cc today.
(B/O.)
KVS

HON'BLE SRI JUSTICE A. RAJASHKER REDDY
AND
HON'BLE SRI T. AMARNATH GOUD

WP No. 20910 of 2020

Dated:03-03-2021