

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT PETITION No.24635 of 2020

ORDER: (Per Hon'ble Dr. Justice Shameem Akther)

This Habeas Corpus Writ Petition is filed by the petitioner challenging the detention order vide No.52/PD CELL/CCRB/RCKD/2020, dated 06.10.2020, passed by the respondent No.2, whereby, the detainee 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.1957, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 17.12.2020.

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

3. Initially, the mother of the detainee filed this Writ Petition on behalf of the detainee-Smt. Mudise SuryaKumari @ Anjali @ Pagadala Anjali @ Dasari Anjali @ Chitti @ Kumari @ Rani @ Pallavi @ Rajani @ Lakshmi, W/o Venkat Reddy @ Aditya Naidu @ Yakub, aged 29 years. Subsequently, the mother of the detainee died and her paternal uncle was brought on record as petitioner No.2 to prosecute the writ petition, vide order, dated 03.06.2021 passed in I.A.No.1 of 2021. Further, it is also apt to state that this Court, vide order, dated 03.06.2021, passed in I.A.No.2 of 2021, was pleased to grant interim bail to the petitioner from 05.06.2021

to 19.06.2021 to perform the last rituals of her mother, who died on 01.06.2021. While she was on interim bail, she filed another application in I.A.No.4 of 2021 seeking extension of interim bail on the ground that she was tested positive for COVID 19. Accordingly, this Court, vide order, dated 17.06.2021, extended the interim bail for a period of four weeks and directed her to surrender before the concerned jail on 17.07.2021.

4. The case of the petitioner is that basing on a recent solitary crime registered against the detainee viz., Crime No.368/2020 of Keesara Police Station, the respondent No.2 passed the impugned detention order, dated 06.10.2020. According to respondent No.2, the detainee is an 'Immoral Traffic Offender', as she, along with her associates, has been organizing prostitution by importing girls from West Bengal State by means of human trafficking through her agents. The detainee, along with her associates, formed into a syndicate and have been engaging themselves in unlawful acts of organizing prostitution clandestinely by acting as a leader/member of criminal gang to make easy buck in a short period and she has been running online prostitution racket for pimping and receiving payments, in the limits of Rachakonda Police Commissionerate and thereby, acting in a manner prejudicial to the maintenance of public order and public health at large. Subsequently, the impugned detention order was confirmed by the Government, vide G.O.Rt.No.1957, dated 17.12.2020.

5. Learned counsel for the petitioner vehemently contended that the impugned detention order has been passed basing on stale and irrelevant grounds, in a mechanical manner and without

application of mind. The reasons assigned for passing the impugned detention order are flimsy, untenable and without material whatsoever. The detainee was falsely implicated in the solitary crime relied by the detaining authority. Though in the counter affidavit filed by the respondent No.2 it is mentioned that the detainee continues to be in judicial custody in view of dismissal of two bail petitions moved by her in the solitary crime relied by the detaining authority, but in fact, the detainee was granted bail, after filing of counter by respondent No.2, in the crime, vide order, dated 26.03.2021, passed in CrI.M.P.No.56 of 2021 by the XVI Additional Metropolitan Sessions Judge at Malkajgiri, Ranga Reddy District. Further, the entire material relied upon by the detaining authority for preventively detaining the detainee was not furnished to the detainee, which is against the mandate given under Article 22(5) of Constitution of India. The detaining authority, in their counter affidavit, cannot embellish or supplement to what has been stated in the detention order. The Advisory Board was totally influenced with the respondent No.2 and mechanically confirmed the detention order, without independently examining the entire material on record. Already criminal law was set into motion against the detainee. The alleged crime does not add up to "disturbing the public order" and it is confined within the ambit and scope of the word "law and order". Since the offence alleged is under the Indian Penal Code and The Immoral Traffic (Prevention) Act, 1956 (for short, 'PITA'), the detainee can certainly be tried and convicted under the penal code and the said special law. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law against the detainee. Hence,

the impugned orders tantamount to colourable exercise of power. The detenue is a law abiding citizen and eking out her livelihood by doing private job and she is the sole breadwinner for the entire family. The impugned orders are legally unsustainable and ultimately, prayed to allow the Writ Petition, as prayed for. In support of his contentions, the learned counsel for the petitioner relied on the following decisions:

1. **Kamsani Sanjeeva Vs. State of Telangana**¹
2. **Gorre Laxmi Vs. State of Telangana and others**²
3. **Abdul Latif Abdul Wahab Sheikh Vs. B.K.Jha and another**³
4. **Jai Singh and others Vs. State of Jammu & Kashmir**⁴
5. **Ajay Dixit Vs. State of U.P.**⁵
6. **Ram Baochan Dubey Vs. State of Maharashtra**⁶
7. **Devi Lal Mahto Vs. State of Bihar**⁷
8. **Anant Sakharam Raut Vs. State of Maharashtra**⁸
9. **Ramveer Jatav Vs. State of U.P.**⁹
10. **Makhan Singh Tarsikka Vs. State of Punjab**¹⁰

6. On the other hand, the learned Assistant Government Pleader for Home appearing for the respondents supported the impugned orders and submitted that the detenue is an 'Immoral Traffic Offender'. She, along with her associates, formed into a syndicate and had been indulging in the acts of organizing prostitution clandestinely by acting as a leader/member of criminal gang to make easy buck in a short period and she had been running online prostitution racket for pimping and receiving payment and thereby acting in a manner prejudicial to the maintenance of public order and public health at large. She is habituated of making easy bucks and living luxurious life on earnings of prostitution. The detenue was involved in as many as

¹ LAWS (TLNG)-2019-4-56

² Decided on 10.11.2020 in W.P.No.14432 of 2020 by the High Court for the State of Telangana

³ (1987) 2 Supreme Court Cases 22

⁴ (1985) 1 Supreme Court Cases 561

⁵ (1984) 4 Supreme Court Cases 400

⁶ (1982) 3 Supreme Court Cases 383

⁷ (1982) 3 Supreme Court Cases 328

⁸ (1986) 4 Supreme Court Cases 771

⁹ (1986) 4 Supreme Court Cases 762

¹⁰ AIR 1964 Supreme Court 1120

fourteen cases of immoral trafficking between 2013 and 2015 in the limits of various police stations situated in the erstwhile Cyberabad Commissionerate. With a view to prevent her from further indulging in illegal activities, an order of detention was passed against her on earlier occasion, vide order, 23.11.2015, passed in Proc No.54/PD/CCRB/CYB/2015 and she was detained in Special Prison for Women at Chanchalguda, Hyderabad. Challenging the said detention order, the detenue filed W.P.No.157 of 2016 before the erstwhile High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh. The said Writ Petition was allowed on the condition that the detenue shall leave Hyderabad Metropolitan Development Authority Area and live outside the said area at least for a period of one year and shall submit a written undertaking to that effect to the Superintendent, Central Prison for Women, Chanchalguda, Hyderabad, before she is released from the prison. Despite the said direction of High Court, the detenue again involved in human trafficking offence within one year from her release from prison, vide Crime No.319 of 2017 of Medipally Police Station and she was remanded to judicial custody. She was granted bail by the Court concerned in the said offence and she came out of prison. During the year 2020, the detenue again involved in the similar offence, which is relied by the detaining authority for preventively detaining her. The continuous criminal activities of the detenue not only endanger the family system but also create social unrest causing widespread health hazards to the general public. 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 detenue and on considering the same along with the entire material, the Government confirmed the impugned detention order vide G.O.Rt.No.1957, dated 17.12.2020. 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.

7. 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.52/PD CELL/CCRB/RCKD/2020, dated 06.10.2020, passed by the respondent No.2, and the consequential confirmation order vide G.O.Rt.No.1957, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 17.12.2020, are liable to be set aside?”

POINT:

8. Briefly, the facts of the case are that by relying on a solitary crime registered against the detenue in the year 2020, i.e., Crime No.368/2020 of Keesara Police Station, the respondent No.2- Commissioner of Police, Rachakonda Commissionerate, passed the impugned detention order, dated 06.10.2020. According to respondent No.2, the detenue, along with her associates, formed into a syndicate and had been engaging herself in unlawful illegal activities of organizing prostitution clandestinely by acting as a leader/member of criminal gang to make easy buck in a short period and she had been running online prostitution racket for pimping and receiving payment and thereby, acting in a manner

prejudicial to the maintenance of public order and public health at large. Earlier, the detainee was involved in as many as fourteen criminal cases of immoral trafficking in the limits of erstwhile Cyberabad Commissionerate during the years 2013 and 2015. In order to prevent the detainee from further indulging in such illegal activities, which are detrimental to the public order, the impugned detention order, dated 06.10.2020, was passed, which was confirmed by the Government by order, dated 17.12.2020.

9. In the present case, the detainee is allegedly involved in a criminal case, i.e., Crime No.368/2020. We shall present it in a tabular column the date of occurrence, the date of registration of FIR, the offences complained of and their nature, such as bailable/non-bailable and cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
368/2020 of Keesara Police Station	28.07.2020	28.07.2020	Section 370(A)(ii) of IPC and 3, 4 & 5 of Immoral Traffic (Prevention) Act, 1956.	Cognizable/ Non-Bailable

10. The material placed on record reveals the detaining authority placed reliance on a single case, i.e., Crime No.368/2020 registered on 28.07.2020. The facts of the said case are that the Special Operations Team of Malkajgiri Zone received credible information about online brothel business being run and soliciting customers in the limits of Keesara. The police decided to conduct decoy operation to fish out the accused, secured the phone number of brothel organizer, called him posing as clients and told him the requirement of women. A male person responded to the said call

and said that four women are available at that moment and that each girl would cost Rs.10,000/- and asked to send Rs.1,000/- through Google Pay as advance and confirmation of booking. Acting as a tipoff, the decoy constable sent an amount of Rs.1,000/- to the given mobile number and asked to bring the girls to Rampally X Roads. At about 1830 hours, one male person brought four women in a car to Rampally X Road. During the course of discussion with the said person, the police rounded them and took them to custody. On being questioned, the said person pleaded ignorance, but later confessed that he along with the detainee are running organized brothel business by soliciting customers through social media for making each buck. Initially, the detainee was absconding, but later, she was arrested in connection with the said crime relied by the detaining authority and remanded to judicial custody. Police recorded her confessional statement and seized one Renault Kwid Car bearing registration No.TS-08-GQ-0028 used for transportation of victims to the customers and four cell phones used for communication purpose, under a cover of panchanama. The police rescued three West Bengal state origin women and sent them to Rescue Home after recording their statements under Section 161 of Cr.P.C. Later, the police addressed a letter to the Manager, HDFC Bank, Sainikpuri Branch, to furnish the details of Google Pay transaction, who in turn furnished the account details stating that the said account was opened in the name of Surya Kumari Kongarapu, R/o.H.No.1-1-29/2/12, Maruthinagar, Jai Jawan Colony, Kapra-62, where the detainee used to reside long back. The detainee moved two bail petitions before the Courts concerned and the same were

dismissed. Learned counsel for the petitioner contends that the detenue was granted bail in the said crime by the Court concerned vide order, dated 26.03.2021, passed in CrI.M.P.No.56 of 2021 and produced a copy of the said order before this Court. A perusal of the said order reveals that it was passed subsequent to the filing of counter affidavit by respondent No.2 on 02.02.2021 and hence, there is no mention of the same in the counter affidavit. Thus, it is clear that as on the date of passing of the impugned detention order, its confirmation and filing of counter affidavit by respondent No.2, the detenue continued to be in judicial custody.

11. The material placed on record further reveals that the detenue was earlier involved in as many as 14 offences of immoral trafficking and running prostitution business. In order to curb the illegal activities of the detenue, an order of detention was passed against her on 23.11.2015, vide Proc No.54/PD/CCRB/CYB/2015 and she was detained in Special Prison for Women at Chanchalguda, Hyderabad. Challenging the said detention order, the detenue filed W.P.No.157 of 2016 before the erstwhile High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh. A perusal of the order, dated 21.06.2016, passed by a Division Bench of this Court in the said writ petition reveals that the Division Bench of this Court, during the hearing of the case, suggested the detenue to leave Hyderabad for a period of one year. Counsel for the detenue informed the Court that the detenue is prepared to leave the Telangana State itself for a period of one year as she is the native of Guntur District and that the detenue was prepared to give an undertaking to that effect.

Accordingly, the Division Bench was pleased to set aside the said detention order on some conditions, which are extracted hereunder:

"(i) The detainee shall leave the Hyderabad Metropolitan Development Authority Area and live outside the said area at least for a period of one year; and

(ii) The detainee shall submit a written undertaking to the above mentioned effect addressed to the respondent No.3 and handover the same to the Superintendent, Central Prison for Women, Chenchalguda, Hyderabad, before she is released from the jail."

12. With utter disregard to the above directions of this Court, the detainee again involved in similar immoral trafficking offence within a period of one year from the date of her release from prison, vide Crime No.319 of 2017, dated 20.04.2017, registered for the offences punishable under Sections 370, 370(A)(2) of IPC and Sections 4, 5 & 6 of PITA, which is referred to as her antecedent criminal history, and she was remanded to judicial custody. She moved bail petition in the said crime and she was released from prison on bail. She further indulged in commission of offence in Crime No.368/2020, as detailed above, which shows that despite arrest by police several times on the charges of running prostitution business and facing trial before the Courts in the criminal cases, the detainee could not mend her ways and repeatedly resorted to similar criminal activities, as soon as her release from prison in each case. Basing on the above facts and circumstances and in view of the inclination, propensity and potentiality of the detainee to indulge in immoral trafficking activities, the detaining authority passed the impugned detention order, with a view to prevent the detainee from further indulging in such criminal activities, which are detrimental to maintenance of

public order. Under these circumstances, it cannot be held that there was non-application of mind by the detaining authority in passing the impugned detention order or that the impugned detention order tantamounts to colourable exercise of power. Further, there is no bar to pass a detention order even against a person who is in prison.

13. It is apt to state that preventive detention is different from punitive detention. While punitive detention could be enforced under ordinary criminal law, the law of preventive detention can be enforced against habitual offenders to prevent them from committing further offences. The legal parameters for testing the validity of 'preventive detention' fundamentally vary from that of 'punitive detention'. Also, 'Public order' is distinct from 'law and order'. While individual offences without affecting public at large could be considered as violating 'law and order', the offences that affect larger public and disturbs the even tempo of public life fall under the category of disturbance to public order and only in the latter category of cases, the law of preventive detention must be enforced.

14. In the case of **Madhu Limaye Vs. Sub-Divisional Magistrate**¹¹, the Hon'ble Apex Court held as follows:

"The acts which disturb public tranquility or are breaches of the peace should not be given a narrow meaning, but should be given a liberal interpretation. For the expression 'in the interest of public order' is very wide amplitude."

¹¹ (1970) 3 SCC 746

15. In Commissioner of Police & Others Vs. C.Anita (Smt.)¹², the Hon'ble Apex Court examined the issue of "public order" and "law and order" and observed as follows:

"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 public order 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 the 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 the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?" This question has to be faced in every case on its facts."

16. I have gone through the citations relied by the learned counsel for the petitioner. In **Kamsani Sanjeeva's** case (1 supra), a Division Bench of this Court held that this Court cannot go into the subjective satisfaction arrived by the detaining authority, but when once the detaining authority passed the detention order without application of mind and without furnishing copies of documents, which form basis for passing of detention order, vitiates the detention order and the detention order is liable to be set aside. In the instant case, as stated above, there is no non-application of mind by the detaining authority and the detenu

¹² (2004) 7 SCC 467

was supplied with order of detention along with the grounds of detention and the material referred and relied upon in the grounds of detention. Hence, the said citation is not helpful to the petitioner. In **Gorre Lakshmi's** case (2 supra), the detention order was passed apprehending that the detenu therein would be released on statutory bail under Section 167(2) Cr.P.C., in the crimes relied therein, since the mandatory period of remand was completed. Under those circumstances, this Court held that detention order was unwarranted on the premise that the detenu would be released on mandatory bail under Section 167(2) Cr.P.C., as the very purpose of mandatory bail is to ensure that the accused is not kept under prolonged custody. That is not the case in this writ petition. In **Abdul Latif's** case (3 supra), the Hon'ble Apex Court held that in a Habeas Corpus proceeding, it is not a sufficient answer to say that the procedural requirements of the Constitution and the statute have been complied with before the date of hearing and therefore, the detention should be upheld. The procedural requirements are the only safeguards available to a detenu since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with, if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard. In **Jai Singh's** case (4 supra), the Hon'ble Apex Court held that the liberty of a subject is a serious matter and it is not to be trifled with in casual, indifferent and routine manner. In **Ajay Dixit's** case (5 supra), the Hon'ble Apex Court held that when a challenge is made to a detention on the ground that stale and irrelevant grounds were the basis for

detention, then the detenu is entitled to be released and to that extent, the order is subject to judicial review on the ground of sufficiency of grounds. In **Ram Baochan Dubey's** case (6 supra), the Hon'ble Apex Court held that mere service of grounds of detention is not a compliance of the mandatory provisions of Article 22(5) of the Constitution of India, unless the grounds are accompanied with the documents which are referred to or relied on in the grounds of detention. In **Devi Lal Mahto's** case (7 supra), the Hon'ble Apex Court, relying on earlier judgments, held that one can envisage a hypothetical case in which a preventive detention order may have to be made against a person already deprived of his personal liberty by being confined or detained in jail, but in such a situation the detaining authority must show awareness of this fact that the person against whom the detention order is proposed to be made is already in jail and is incapable of acting in a manner prejudicial to the maintenance of public order and yet for the reasons which may appeal to the District Magistrate on which his subjective satisfaction is grounded, a preventive detention order is required to be made. It is further held that this awareness must appear either in the order or in the affidavit justifying the impugned detention order when challenged. In **Anant Sakharam Raut's** case (8 supra), the Hon'ble Apex Court set aside the detention order therein holding that there was clear non-application of mind on the part of the detaining authority about the fact that the petitioner therein was granted bail when the order of detention was passed. In **Ramveer Jatav's** case (9 supra), the Hon'ble Apex Court held that the detaining authority cannot, by an affidavit filed in Court, supplement what is stated in the grounds of

detention or add to it. In **Makhan Singh Tarsikka's** case (10 supra), the Hon'ble Apex Court held that service of order of detention on a person whilst he was in jail custody is invalid. While there cannot be any dispute with regard to the law laid down in the cited decisions, the facts of the said decisions are entirely different from the facts of the case on hand. It is settled principle of law that each case shall be decided on its own merit. After going through the cited decisions, we find that in none of the cited decisions, similar circumstances exist, to accede and act upon the request of the detainee. Hence, the cited decisions are not helpful to the detainee.

17. In **R. Kalavathi v. State of Tamil Nadu**¹³, the Hon'ble Apex Court, while dealing with the case affecting the public order, observed that even a single act which has the propensity of affecting the even tempo of life and public tranquility would be sufficient for detention.

18. As per the clause (i) of Section 2 of the P.D.Act, an "immoral traffic offender" means a person who commits or abets the commission of any offence under the Immoral Traffic (Prevention) Act, 1956.

19. It is pertinent to state that the personal liberty of an individual, which the law preserves and protects, can also be taken away by following the procedure established by law, when it is used to jeopardize the public good and not merely private interests. An order of detention is not a curative or reformatory or

¹³ (2006) 6 SCC 14

punitive action, but a preventive action, the avowed object of which is to prevent the anti-social and subversive elements from imperiling the welfare of the people or the security of the nation or from disturbing the public tranquility. In the instant case, the repeated commission of alleged offences by the detainee would certainly disturb the public peace and tranquility. So, it is imperative upon the officers concerned to pass the order of detention, since the acts of the detainee are prejudicial to the maintenance of public order. The illegal activities of the detainee were of such a reach and extent, that they would certainly affect the even tempo of life and were prejudicial to the public order. The detaining authority had sufficient material to record subjective satisfaction that the detention of the detainee was necessary to maintain public order and even tempo of life of the community. The order of detention does not suffer from any illegality. The grounds of detention, as indicated in the impugned order, are found to be relevant and in tune with the provisions of the Telangana Preventive Detention Act. The material placed on record further reveals that the order of detention, along with the grounds of detention and the material referred to and relied upon in the grounds of detention, were supplied to the detainee in the language known to her, i.e., English, besides Telugu. The material relied on and circumstances show that the subjective satisfaction of the detaining authority is not tainted or illegal on any account. The facts and circumstances indicate that the acts of the detainee cannot be effectively dealt with under ordinary criminal law/special law.

20. Before parting, it is pertinent to state that trafficking of women is the gravest form of abuse. Thousands of women are being trafficked everyday and they are forced to lead lives of slavery in brothel houses, guesthouses etc. Article 23 of the Constitution of India specifically prohibits traffic in human beings and begar and other similar forms of forced labour and further mandates that any contravention of the said provision shall be an offence punishable in accordance with law. The offenders, right from the traffickers to the end-users, exploit the vulnerability of the trafficked person. Consequences of human trafficking have devastating effect on the society as a whole. The physical abuse, torture, psychological and emotional trauma of the victims of human trafficking is clearly destructive and unacceptable in any civilized society.

21. For the foregoing reasons, we do not see any merit in this writ petition and as such, it is liable to be dismissed.

22. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

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

A. RAJASHEKER REDDY, J

Dr. SHAMEEM AKTHER, J

24th September, 2021
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