**HIGH COURT FOR THE STATE OF TELANGANA**

**THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY**

**AND**

**THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

**WRIT PETITION No.34790 of 2022**

Date : 27-01-2023.

Between :

Gazala Firdous ... Petitioner

and

The State of Telangana,
Rep. by its Principal Secretary (Home),
BRKR Building, Hyderabad,
and others

... Respondents

Counsel for the petitioner: Sri C. Sharan Reddy

Counsel for the respondents: Sri Mujeeb Kumar,
learned Spl. Govt. Pleader
appearing for learned Additional
Advocate General

**The Court made the following:**

**ORDER:** (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Smt. Gazala Firdous, the mother of the detenu *viz.*, Syed AbdahuQuadri @ Kashaf, has filed the present Writ Petition, challenging the Detention Order passed by 2nd respondent, who by exercising the powers conferred 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, Fertiliser 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 (in short, 'the Preventive Detention Act'), had issued proceedings *vide* SB(I) No.158/PD-7/HYD/2022, dated 30.08.2022, and approved by the 1st respondent *vide* G.O.Rt.No.1683 General Administration (Spl. {Law & Order}) Department, dated 02.09.2022 and confirmed *vide* G.O.Rt.No.1989 General Administration (Spl. {Law & Order}) Department, dated 21.10.2022, alleging that the detenu has been habitually posting provocative and inflammatory messages and videos in social media through his Twitter account with an intention to promote enmity between Hindus and Muslims and

cause breach of communal peace and disturb the public tranquillity.

2) Heard Sri C. Sharan Reddy, the learned counsel for the petitioner, Sri Mujeeb Kumar, the learned Special Government Pleader appearing for the respondents and perused the record.

3) The case of the petitioner is that by relying only on two criminal cases, the respondent No.2 has passed the impugned detention order dated 30.08.2022. According to respondent No.2, the detenu is a 'Goonda, as he has been habitually indulging in posting provocative and inflammatory messages and videos in social media with an intention to promote enmity between Muslims and Hindus to cause breach of communal peace and disturb the public tranquillity.

4) Learned counsel for the petitioner would contend that the impugned detention order has been passed in a mechanical manner and without application of mind. Already criminal law was set into motion against the detenu. Even though the detenu was granted bail in crime No.55 of 2022 and in crime No.1520 of 2022 notice under Section 41-A Cr.P.C. was issued to the detenu, the detenu continued to be in judicial custody due to passing of the impugned detention order. Under these circumstances, the apprehension of the detaining authority that there is imminent

possibility of the detenu committing similar offences is highly misplaced. The two crimes relied on by the detaining authority do not add up to "disturbing the public order" and it is confined within the ambit and scope of the word "law and order" and there was no need for the detaining authority to invoke the draconian preventive detention law against the detenu. Hence, the impugned order tantamount to colourable exercise of power. The impugned order is legally unsustainable and ultimately, prayed to allow the Writ Petition, as prayed for.

5) On the other hand, the learned Special Government Pleader appearing for the respondents has supported the impugned order and submitted that the detenu is a 'Goonda'. He has been indulging in posting provocative and inflammatory messages and videos and thereby creating hatred and ill-will between Muslims and Hindus. Further, the apprehension of the respondent authorities that there is imminent possibility of his committing similar offence is not misconceived. The crimes allegedly committed by the detenu were causing widespread danger to communal harmony. Therefore, the detaining authority was legally justified in passing the impugned detention order. All the mandatory requirements were strictly followed by the detaining authority while passing the impugned detention order. Therefore, the impugned order is legally sustainable and prayed to dismiss

the Writ Petition. In support of his submissions, learned Special Government Pleader has relied on the judgment of the Hon'ble Supreme Court in ***Subramanian v. State of Tamil Nadu***[1].

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

> "Whether the detention order *vide* SB(I) No.158/PD-7/HYD/022, dated 30.08.2022, passed by respondent No.2, approved by the 1st respondent *vide* G.O.Rt.No.1683 General Administration (Spl. {Law & Order}) Department, dated 02.09.2022 and confirmed *vide* G.O.Rt.No.1989 General Administration (Spl. {Law & Order}) Department, dated 21.10.2022, are liable to be set aside or not?"

**POINT**:

7) In the instant case, the detaining authority while referring to four crimes registered against the detenu has relied only on two cases for preventively detaining him. The below tabular form shows the date of occurrence, the date of registration of FIR, the offence complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

| Sl. No. | Crime No. | Date of occurrence | Date of registration of FIR | Offences U/Secs. | Nature |
|---|---|---|---|---|---|
| 1. | 1520/2022 of Cyber Crime PS, CCS, Detective Department, Hyderabad | 22/23.08.2022 | 24.08.2022 | 153(A), 505(2) and 504 IPC | Non-bailable, Non-cognizable |
| 2) | 55/2022 of Chaderghat PS | 08.02.2022 | 08.02.2022 | 505 (1)(b), 153a IPC | Non-bailable Non-cognizable |

[1] (2012) 4 SCC 699

8) The allegations, in brief, made against the Detenu in the cases relied by the detaining authority for passing the impugned detention order are mentioned hereunder for better adjudication of the matter.

**(a) <u>Crime No.1520/2022 of Cyber Crime PS, CCS, Detective Department, Hyderabad.</u>**

It is alleged that on the intervening night of 22/23.08.2022, the proposed detenu along with number of supporters staged a Dharna in front of the office of the Commissioner of Police, Hyderabad, at Basheerbagh, in protest against posting of offensive video by one T. Raja Singh, MLA, in "Shree Ram Channel, Telangana', commenting against Prophet Mohammed and his life style and the detenu demanded the arrest of said Raja Singh and also raised slogans 'Naare Takbeer Allah Hu Akbar-Gustak-e-Rasool ki ek hi saza, sar tan se juda' (beheading is the only punishment for a person who disrespects of Prophet) and thereby created hatred and ill-will between the Muslim and Hindu religious communities adversely affecting the maintenance of public order.

**(b) <u>Crime No.55/2022 of Chaderghat PS</u>**

It is alleged that on 08.02.2022, the detenu had posted a video in WhatsApp instigating the people to stage 'dharna' at Pragati Bhavan, Begumpet, Hyderabad, in protest against demolition of 400 years old Qutub Shahi Masjid at Shameerpet

alleging that it was demolished due to the alleged negligence of Telangana Government, even though the removal of the mosque was done with the mutual consent of the parties involved and there was no communal and law and order issue.

9) One of the objects and reasons for enactment of the Preventive Detention Act is to ensure that the maintenance of public order in the State of Telangana and not being adversely affected by the activities of specially identified thirteen classes of known anti-social elements viz., Spurious Seed Offenders, Insecticide Offenders, Fertiliser 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, without resorting to the National Security Act, 1980, the Preventive Detention Act, 1986, has been enacted to provide for preventive detention of the persons indulging in these kind of dangerous activities.

10) Undoubtedly, under the provisions of the Preventive Detention Act, the detaining authority has the power and authority to pass a detention order against a person who is involved in committing the various crimes specified in Section 2 of the

Preventive Detention Act. The detaining authority must be satisfied that there are valid grounds for passing a detention order and unless and until such a detention order is not passed against the said person, there is every likelyhood of the said person committing more such similar offences which are likely to effect the maintenance of public order. The said detention order should be in furtherance of maintaining the public order and to the subjective satisfaction of the detaining authority. The detaining authority before passing the order of detention should be satisfied that the ordinary law dealing with criminal justice system is not sufficient to reign the detenu and that there is every likelihood of the breach of law by the detenu. It is settled law that the subjective satisfaction of the detaining authority cannot be subjected to an objective test by the Courts and the Courts cannot sit in appeal over the said order of detention. However, if the Court finds that the order of detention was not based on any valid or reasonable ground, then the said order is liable to be set aside. The detaining authority must be satisfied that the alleged crime committed by the accused falls squarely within the ambit of "public order" and cannot be dealt with under normal criminal laws or can be dealt as "law and order" problem. Apprehension of the detaining authority, however strong it may be, cannot be a valid ground for passing the detention order. The degree of difference

between the concept of "public order" and "law and order" is razor-thin and may overlap in some instances and the Courts should be very careful and cautious while testing the validity of the detention order.

11) Any detention order is sustainable only when the criminal activities of the individual largely/adversely affect the public at large or disturb the public order. Whether the alleged criminal activities or cases referred to above have the propensity to disturb the public order or not or can be dealt with under the normal Penal laws of the State are some of the primary considerations that have to be taken into consideration by the Courts. Admittedly, in this particular case, the offences alleged to have been committed by the detenu are falling under the provisions of the Indian Penal Code and the crimes are registered accordingly.

12) The Hon'ble Supreme Court as well as this Court, time and again, have held that when the individual cases can be dealt with under the normal criminal justice system, there is no need for the detaining authority to invoke the draconian preventive detention laws. That the detaining authority should be vary of invoking the immense power under the Act, if the normal penal laws are sufficient to deal with the said crime.

13) The Hon'ble Supreme Court as well as this Court, in a catena of cases, have distinguished the 'law & order' and 'public order'.

(a) In **Munagala Yadamma v. State of A.P.**[2] the Hon'ble Supreme Court has held, at paras 7 and 9, as under:

> "7. Having considered the submissions made on behalf of the respective parties, we are unable to accept the submissions made on behalf of the State in view of the fact that the decision in Rekha v. State of T.N. [(2011) 5 SCC 244], in our view, clearly covers the facts of this case as well. The offences complained of against the appellant are of a nature which can be dealt with under the ordinary law of the land. Taking recourse to the provisions of preventive detention is contrary to the constitutional guarantees enshrined in Articles 19 and 21 of the Constitution and sufficient grounds have to be made out by the detaining authorities to invoke such provisions.
>
> 9. No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act, but that in our view has to be done under the said laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial. Accordingly, while following the three-Judge Bench decision in Rekha v. State of T.N. [(2011) 5 SCC 244] we allow the appeal and set aside the order passed by the High Court dated 20-7-2011 and also quash the detention order dated 15-2-2011, issued by the Collector and District Magistrate, Ranga Reddy District, Andhra Pradesh."

---

[2] (2012) 2 SCC 386 : (2012) 1 SCC (Crl) 889

(b) In **Vasnthu Sumalatha vs. State of Andhra Pradesh**[3] a Division Bench of this Court has held as under:

> "2. Preventive detention is a serious invasion of personal liberty and such meager safeguards as the Constitution has provided, against the improper exercise of the power, must be jealously watched and enforced by the Court (Ram Krishan Bharadwaj v. State of Delhi MANU/SC/0011/1953 : AIR 1953 SC 318). Article 22(3) (b) of the Constitution of India, which permits preventive detention, is an exception to Article 21 of the Constitution. An exception cannot, ordinarily, nullify the full force of the main rule, which is the right to liberty guaranteed under Article 21 of the Constitution. An exception can apply only in rare cases. The imposition of what is, in effect, a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with the ordinary concepts of the rule of law. Rekha v. State of T.N. MANU/SC/0366/2011 : (2011) 5 SCC 244; R.v. Secy. Of State for the Home Deptt., ex p Stafford (1998) 1 WLR 503 (CA)). The law of preventive detention can only be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other. (Commr. Of Police v. C. Anita MANU/SC/0661/2004 : (2004) 7 SCC 647; Union of India v. Amrit Lal Manchanda MANU/SC/0133/2004 : (2004) 3 SCC 75).
>
> 64. "Public order" is synonymous with public safety and tranquility. Public order, if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. Disorder is no doubt prevented by the maintenance of law and order also, but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings (Ram Manohar Lohia MANU/SC/0054/1965 : AIR 1966 SC 740 ; C. Anita MANU/SC/0661/2004 : (2004) 7 SCC 467).
>
> 70. The detaining authority cannot wish away the fact that, in the grounds of detention, he has recorded his satisfaction of the need to detain the detenus as he apprehended their activities to be injurious to "public peace" and "law and order" neither of which are grounds for

[3] MANU/AP/0602/2015

> detaining a citizen, in preventive custody, under A.P. Act 1 of 1986. Even if the order and the grounds for detention are read together, the fact that the detaining authority has recorded his satisfaction in the Orders of detention on grounds of "public order", and in the grounds of detention, as affecting "public peace" and "law and order", reflect his confused state of mind, and lack of clarity of thought in satisfying himself whether the detention should be on grounds of "public order" has acquired a meaning distinct from "law and order" and, as the detaining authority is not empowered to detain citizens on grounds that their activities are injurious to "public peace and law and order", his subjective satisfaction is based on extraneous and irrelevant considerations invalidating the orders of detention."

(c) In ***Pushkar Mukherjee v. State of W.B.***[4], the Hon'ble Supreme Court, at paras 13 and 15, has held as under:

> "13.....In the present case we are concerned with detention under Section 3(1) of the Preventive Detention Act which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. Does the expression "public order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the

[4] 1969 (1) SCC 10

community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act. A District Magistrate is therefore entitled to take action under Section 3(1) of the Act to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances. In *Dr Ram Manohar Lohia* v. *State of Bihar*, [(1966) 1 SCR 709] it was held by the majority decision of this Court that the expression "public order" was different and does not mean the same thing as "law and order". The question at issue in that case was whether the order of the District Magistrate, Patna, under Rule 30(1)(*b*) of the Defence of India Rules, 1962, against the petitioner was valid. Rule 30(1)(*b*), provided that a State Government might, if it was satisfied with respect to a person that with a view to preventing him from acting in a manner prejudicial to "public safety and maintenance of public order" it is necessary to do so, order him to be detained. The order of the District Magistrate stated that he was satisfied that with a view to prevent the petitioner from acting in any manner prejudicial to the "public safety and the maintenance of law and order", it was necessary to detain him. Prior to the making of the order the District Magistrate had, however, recorded a note stating that having read the report of the Police Superintendent that the petitioner's being at large was prejudicial to "public safety" and "maintenance of public order", he was satisfied that the petitioner should be detained under the rule. The petitioner moved this Court under Article 32 of the Constitution for a writ of habeas corpus directing his release from detention, contending that though an order of detention to prevent acts prejudicial to public order may be justifiable an order to prevent acts prejudicial to law and order would not be justified by the

rule. It was held by the majority judgment that what was meant by maintenance of public order was the prevention of disorder of a grave nature, whereas, the expression "maintenance of law and order" meant prevention of disorder of comparatively-lesser gravity and of local significance. At p. 746 of the Report, Hidayatullah, J., as he then was, observed as follows in the course of his judgment:

"It will thus appear that just as 'public order' in the rulings of this Court (earlier cited), was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of the State. It is then easy to see that an act may affect law and order, but not public order just as an act may affect public order but not security of the State. By using the expression 'maintenance of law and order' the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

**15.** The difference between the concepts of a "public order" and "law and order" is similar to the distinction between "public" and "private" crimes in the realms of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are "intrinsic wrongfulness" and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr Allen has distinguished "public" and "private" crimes in the sense that some offenses primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. (*See Dr Allen's Legal Duties*, p. 249). There is a broad distinction along these lines, but differences naturally arise in the application of any such test. The learned author has

> pointed out that out of 331 indictable English offenses, 203 are public wrongs and 128 private wrongs."

(Emphasis added)

(d) In ***Rekha vs State of Tamilnadu***[5], the Hon'ble Supreme Court, at paras 23 and 30, has held as under:

> *23. ....criminal cases are already going on against the detenu under various provisions of the Indian Penal Code as well as under the Drugs and Cosmetics Act, 1940 and if he is found guilty, he will be convicted and given appropriate sentence. In our opinion, the ordinary law of the land was sufficient to deal with this situation, and hence, recourse to the preventive detention law was illegal."*
>
> 30. Whenever an order under a preventive detention law is challenged, one of the questions the court must ask in deciding its legality is : Was the ordinary law of the land sufficient to deal with the situation ? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was for selling expired drugs after changing their labels. Surely the relevant provisions in the Indian Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.

(Emphasis added)

14) Further, the Hon'ble Supreme Court while dealing with the provisions of the Preventive Detention Act has held that the personal liberty of a person is a precious right, which cannot be tampered with by invoking the draconian powers under the Preventive Detention Act.

---

[5] (2011) 5 SCC 244

(a) In the Nine-Judge Constitution Bench decision in **I.R. Coelho v. State of T.N.**[6] the Hon'ble Supreme Court has observed as follows:

> *"109. ……It is necessary to always bear in mind that fundamental rights have been considered to be (the) heart and soul of the Constitution*
>
> *49. ….. Fundamental rights occupy a unique place in the lives of civilized societies and have been described in judgments as "transcendental", "inalienable", and primordial".*

(b) In **Frances Coralie Maullin vs. W.C. Khambra**[7] a Division Bench of the Hon'ble Supreme Court has held, at para 5, as under:

> "5. We have no doubt in our minds about the role of the court in cases of preventive detention: it has to be one of eternal vigilance. No freedom is higher than personal freedom and no duty higher than to maintain it unimpaired. The Court's writ is the ultimate insurance against illegal detention. The Constitution enjoins conformance with the provisions of Article 22 and the Court exacts compliance. Article 22(5) vests in the detenu the right to be provided with an opportunity to make a representation. Here the Law Reports tell a story and teach a lesson. It is that the principal enemy of the detenu and his right to make a representation is neither high-handedness nor mean-mindness but the casual indifference, the mindless insensibility, the routine and the red tape of the bureaucratic machine."

15) Admittedly, in the present case, out of the two crimes registered against the detenu and relied by the detaining authority for passing the impugned detention order, one crime viz., Crime

---

[6] (2007) 2 SCC 1
[7] (1970) 3 SCC 746

No.55 of 2022 of Chaderghat Police Station pertains to the month of February, 2022. Therefore, after a gap of six months after registration of the crime, no nexus can be drawn between the said crime and passing of the impugned order.

16) The Hon'ble Supreme Court in a catena of cases has held that the Detaining Authority while passing the detention orders should be very cautious and careful where the person has been enlarged on bail.

(a) In **Vijay Narain Singh vs. State of Bihar**[8] a three-Judge Bench of the Hon'ble Supreme Court has held, at para 32, as under:

> "32. ..... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardized unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. **It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorizing such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court**."
>
> (Emphasis added)

[8] (1984) 3 SCC 14 : 1984 SCC (Crl) 361

(b) In ***Banka Sneha Sheela v. State of Telangana***[9], the Hon'ble Supreme Court has held as under:

> "32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground. Consequently, it is unnecessary to go into any of the other grounds argued by the learned counsel on behalf of the petitioner. The impugned judgment is set aside and the detenu is ordered to be freed forthwith. Accordingly, the appeal is allowed."

17) One of the main objectives for passing the orders under the Preventive Detention Act is to see that the detenu does not commit crimes of similar nature in the near future.

(a) The relevant observations made by this Court in ***Vasnthu Sumalatha (referred supra)***, are as under:

> 5. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. Its basis is the satisfaction of the Executive of a reasonable probability of the detenu acting in a manner similar to his past acts, and preventing him by detention from so doing. A criminal conviction on the other hand is for an act already done, by a trial and legal evidence. There is no parallel as one is punitive and the other preventive. In a criminal case a person is punished on proof of his guilt and the standard is proof beyond

[9] (2021) 9 SCC 415

reasonable doubt. In preventive detention, a man is prevented from doing something which it is necessary to prevent. ….. The order of detention is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances (Haradhan Saha MNU/SC/0419/1974 : (1975) 3 SCC 198).

38. Exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that, with a view to prevent a person from acting in a prejudicial manner as set out in the provision, it is necessary to detain such person. The words "if satisfied" in Section 3(1) of Act 1 of 1986 imports subjective satisfaction on the part of the detaining authority before an order of detention is made. The power of detention is clearly a preventive measure. It does not partake the nature of punishment. It is taken by way of precaution to prevent harm to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. (Khudiram Das MANU/SC/0423/1974 : (1975) 2 SCC 81).

(b) In ***Sama Aruna v. State of Telangana***[10], the Hon'ble Supreme Court has held, at para 16, as under:

"16. Obviously, therefore, the power to detain, under the 1986 Act can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no

[10] (2018) 12 SCC 150

> doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account."

18) In this particular case, after the grant of bail by this Court in crime No.1520 of 2022, the detenu was not involved in similar offences. Therefore, there were no compelling reasons for the Detaining Authority to pass the impugned detention order. The respondents have absolutely failed to prove the nexus between the impugned order and the crime No.55 of 2022 which was registered in the month of February, 2022. Further, the respondents have also not pointed out any similar offences involved by the detenu between the date of registration of crime No.1520 of 2022 on 24.08.2022 and passing of the impugned detention order on 30.08.2022. That being so, the apprehension of the authorities that the detenu may involve in similar offences is highly misplaced and the said apprehensions cannot be the basis for passing the detention order.

19) Admittedly, in this case, the detenu was granted bail by this Court in crime No.55 of 2022 *vide* order dated 09.02.2022 passed in Crl.P.No.1281 of 2022. In case, the detenu has violated any of the terms or conditions of the bail, the authorities are always free to seek cancellation of the bail granted to the detenu. In this

context, it is apt to note the following observations made by the Hon'ble Supreme Court in ***Banka Sneha Sheela (referred supra)***:

> "15. ..... If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the detenu, there can be no doubt that the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(a) of the Telangana Preventive of Dangerous Activities Act is make-believe and totally absent in the facts of the present case."

20) Even though much stress has been laid by the learned Special Government Pleader about the four sporadic incidents that have taken place in twin cities of Hyderabad and Secunderabad pursuant to the call given by the detenu herein, admittedly, the very same four incidents were referred for passing detention order dated 25.08.2022 against one T. Raja Singh, which is the subject matter of W.P. No.34934 of 2022. Therefore, again the very same incidents cannot be attributed to the detenu herein for passing the impugned detention order.

21) Further, the interpretation of the Preventive Detention Act in the judgment of the Hon'ble Supreme Court in ***Subramanian's case (referred supra)*** relied on by the learned Special Government

Pleader has underwent a sea change in the subsequent judgments of the Hon'ble Supreme Court in a catena of cases referred to above.

22) For the afore-stated reasons and also the propositions of law laid down in the judgments referred to above, the impugned detention order cannot be sustained and is liable to be aside.

23) In the result, the Writ Petition is allowed. The impugned detention order passed by respondent No.2 *vide* SB (1) No.158/PD-7/HYD/2022, dated 30.08.2022, approved by respondent No.1 *vide* G.O.Rt.No.1683 General Administration (Spl. Law & Order) Department, dated 02.09.2022 and confirmed by respondent No.1 *vide* G.O.Rt.No.1989 General Administration (Spl. {Law & Order}) Department, dated 21.10.2022, are hereby set aside. The respondents are directed to set the detenu *viz.,* Syed AbdahuQuadri @ Kashaf at liberty forthwith, in case he is no longer required in any other criminal case. However, we deem it fit to impose the following conditions:

1) Except the immediate family members of the detenu (numbering four), no other person shall be present inside or outside the jail when the detenu is released;
2) The detenu shall not participate or hold any celebratory rallies/meetings after his release;
3) The detenu shall not give any interviews to any kind of media houses including the print media;

4) In future, the detenu shall not make any provocative speeches against any religion or post any derogatory or offensive posts on any social media platforms like Facebook, Twitter, Whatsapp, Youtube, etc.

24) It is further made clear that the views and observations made by this Court in the present order are only for the purpose of effective adjudication of the validity of the impugned detention order only. The criminal cases registered against the detenu and pending adjudication before the Criminal Courts shall be dealt with independently on their own merits without being influenced by any of the observations made in the present order.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

_____

**A.ABHISHEK REDDY, J**

_____

**JUVVADI SRIDEVI, J**

Date : 27-01-2023
sur