

IN THE HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.21513 of 2021

Between:

P.Rambabu, S/o Muthaiah

... Petitioner

And

The State of Telangana,
reptd., by its Chief Secretary,
Hyderabad and two others.

... Respondents

JUDGMENT PRONOUNCED ON 24.01.2022

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

AND

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No
3. Whether their Lordships wish to
see the fair copy of the Judgment? : Yes/No

JUSTICE A.RAJASHEKER REDDY

Dr. JUSTICE CHILLAKUR SUMALATHA

**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA**

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< Gist:

> Head Note:

! Counsel for the Petitioner: Mr. A.Jagan

^ Counsel for the Respondents: Assistant Government Pleader
for Home
for Additional Advocate General

? Cases Referred:

1. AIR 1966 SC 740
2. (1972) 3 SCC 831

**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA**

WRIT PETITION No.21513 of 2021

ORDER: *(per Hon'ble Dr. Justice Chillakur Sumalatha)*

With a request to invoke Article 226 of the Constitution of India and thereby to issue an order in the nature of writ of Habeas Corpus declaring the order, *vide* G.O.Rt.No.1840, General Administration (Spl. Law & Order) Department, dated 18.8.2021, whereby the order of detention dated 05.06.2021 was confirmed, as illegal, unconstitutional and violation of the fundamental rights guaranteed under the Constitution of India, the petitioner, projecting the grievance of his brother-Punem Raju, approached this Court.

2. The facts of the case and the grounds urged in nutshell are that Punem Raju (hereinafter be referred as “the detenu”, for brevity) is the brother of the petitioner and he was detained invoking 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, (hereinafter be referred as “the P.D. Act”, for brevity) on the ground that his activities are prejudicial to

the maintenance of public order and that, to prevent him from further indulging in such type of activities, his detention is necessary. It is stated that the order of detention dated 05.06.2021 was passed in a mechanical manner and the allegation that the detenu will be causing public disorder is without any basis and indeed, the detenu was granted bail, in the crimes registered against him, by the Criminal Courts. It is further stated that the Police concerned failed to get the real culprits booked and the detenu is involved in false cases and the detention of the detenu is nothing but violation of his fundamental rights, more particularly the right to freedom of life and liberty and therefore, the detention order is not maintainable. It is further stated that the allegation of respondent No.2 is that the detenu is involved in 12 criminal cases, but those cases are based upon a confessional statement alleged to have been given by the detenu before a Police officer and therefore, the said confessional statement is invalid and on that ground alone, the impugned order of detention is liable to be set aside. It is also stated that the impugned order was passed without serving complete material to the detenu and thus, the said order of detention is vitiated under law and further, the offences alleged to have been committed by the detenu do not fall under the criteria which requires detention and thus, the impugned order is liable to be set aside.

3. Heard the submission of the learned counsel appearing for the petitioner as well as the learned Assistant Government Pleader for Home for learned Additional Advocate General. Also, gone through the contents of the counter-affidavit filed by respondent No.2

4. In the light of the relief sought for and the grounds based on which the relief is claimed, the point that falls for consideration is:

Whether the order of detention dated 05.6.2021 issued under Section 3(2) of the P.D. Act and the confirmation of the said order of detention through G.O.Rt.No.1840, General Administration (Spl. Law & Order) Department, dated 18.8.2021, are sustainable under law.

5. Projecting his version, the learned counsel for the petitioner submitted that the detenu was initially booked for 12 property offences alleged to have been committed by him which are punishable under Sections 457, 454 and 380 I.P.C. and indeed, the detenu did not commit any such house burglary as alleged and further, contending that those activities are prejudicial to the maintenance of public order and they disturb the peace, tranquillity and social harmony in the society, invoking the provisions of the P.D. Act, the detenu was detained and indeed, the detenu did not commit any such offences and all those offences are based on a confessional statement alleged to have been given by the detenu, but no such confessional statement was given by the detenu, and even if he had given any such confessional statement, as the same was given during the custody of Police, the said

confessional statement is inadmissible in evidence and further, the detenu was granted conditional bail and he is complying with the conditions, but without observing all these factors, only with a sole intention to further detain him illegally, the P.D. Act was invoked and narrating the detenu as goonda, he is detained in Central Prison, Chenchalguda, Hyderabad, and that the order of detention was confirmed subsequently through G.O.Rt.No.1840, dated 18.8.2021, without proper verification and giving justifiable reasons for such detention and therefore, the petitioner is before this Court for justice.

6. Per contra, the learned Assistant Government Pleader for Home for learned Additional Advocate General contended that the acts of the detenu were causing a sense of insecurity and fear in the minds of general public and as his unlawful activities were prejudicial to the maintenance of public order and as those activities were disturbing peace, tranquillity and social harmony in the society, the order of detention was passed against the detenu and therefore, the grounds urged by the petitioner are unjustifiable. Learned Assistant Government Pleader further stated that the necessary procedure contemplated under law was followed and after hearing the detenu, the Advisory Board rendered its opinion and basing on the said opinion, the order of detention was confirmed and thus, there is no violation of any legal provision. Learned Assistant Government Pleader further

stated that the detenu is involved in 12 property offences falling within the limits of Khammam Police Commissionerate and Mahabubabad Districts, *vide* Crime Nos.44/2020, 47/2020, 120/2020, 141/2020, 239/2020, 248/2020 and 258 of 2020 of Karepalli Police Station, Crime Nos.26/2020, 205/2020, 107/2020 and 108/2020 of Kamepally Police Station, Khammam District and Crime No.162/2020 of Garla Police Station, Mahabubabad District and mere grant of bail in those cases do not prevent the application of P.D. Act and to prevent the detenu from committing any further offences and also to safeguard the public at large, the order of detention was passed and indeed, the detenu is a habitual offender and therefore, considering his past history, the provisions of the P.D. Act were invoked and therefore, the order of detention and the confirmation of the said order though the aforesaid G.O. are justifiable.

7. A perusal of the material available on record reveals that the detaining authority placed reliance on five crimes for passing the order of detention against the detenu which are as follows:-

- (1) A case in Crime No.44 of 2020 of Karepalli Police Station alleging that the detenu committed offences punishable under Sections 457 and 380 I.P.C.
- (2) A case in Crime No.120 of 2020 of Karepalli Police Station alleging that the detenu committed offences punishable under Sections 454 and 380 I.P.C.

- (3) A case in Crime No.141 of 2020 of Karepalli Police Station alleging that the detenu committed offences punishable under Sections 454 and 380 I.P.C.
- (4) A case in Crime No.239 of 2020 of Karepalli Police Station alleging that the detenu committed offences punishable under Sections 454 and 380 I.P.C.
- (5) A case in Crime No.258 of 2020 of Karepalli Police Station alleging that the detenu committed offences punishable under Sections 454 and 380 I.P.C.
8. The contents of the counter-affidavit filed by respondent No.2 reveals that in the first case i.e., in Crime No.239 of 2020 of Karepalli Police Station, the detenu obtained bail and in the rest of the cases, he has not moved any bail applications. The contents of the counter-affidavit also reveal that in all those five cases, charge sheets were filed and the cases are pending trial. Admittedly, when an accused moves a bail application for grant of bail in case of non-bailable offences, notice would be served upon the State and the State, represented by the Public Prosecutor, would be given an opportunity to oppose the bail application and only upon hearing the Public Prosecutor, orders would be rendered in the bail applications. Even if the Court grants bail, the State is having every authority to seek for cancellation of bail before the Court concerned or to apply to the higher forum challenging the order of grant of bail. However, in the case on hand, the State does not appear to have done so while bail

was granted to the detenu in Crime No.239 of 2020 of Karepalli Police Station. The admitted version of the State is that in the remaining four cases, the detenu has not moved any bail applications and therefore, the detenu might have been in judicial custody. In such a scenario, , this Court does not understand as to why again an order of detention was passed against the detenu.

9. A perusal of the G.O. which is under challenge reveals that it was issued in a mechanical manner without at least revealing the plea taken by the detenu before the Advisory Board and the reasons as to why the opinion of the Advisory Board was taken into consideration for confirming the order of detention. When the case on hand is gone through, we are of the considered view that the offences which are alleged to have been committed by the detenu at best falls within the ambit of “law and order” and not under “public order”.

10. In catena of decisions, the Hon’ble Supreme Court clearly held that there exists vast difference between “law and order” and “public order” and only when public at large is adversely affected by the unlawful activities of a person, then those activities of that person can be held to be disturbing public order. The Hon’ble Supreme Court also envisaged that while invoking the provisions of the P.D Act which affects the fundamental right to freedom of life and liberty of an individual, the detaining authority should be more careful and only when convincing and justifiable grounds exist and when

there is dire necessity to invoke such a law, the provisions of the P.D. Act have to be invoked.

11. In one such cases i.e., in the case of **Ram Manohar Lohia v. State of Bihar**¹, indicating the distinction between “public order” and “law and order”, the Hon’ble Supreme Court observed as follows:-

“We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained, public disorder is the apprehended result. 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. Does the expression “public order” take in every kind of disorders or only some of them? The answer to this serves to distinguish “public order” from “law and order” because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order,

¹ AIR 1966 SC 740

it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.”

12. The apprehension of the detaining authority is that in case, the detenu is set at liberty, he would take advantage of the liberty thus granted and would involve in further offences and therefore, detention is essential. However, such an apprehension should not form basis for misplaced detention. Also, as earlier indicated, the present case at best falls within the purview of “law and order” but not within the purview of “public order”. Dealing with this aspect, the Hon’ble Supreme Court in a case between **Kanu Biswas Vs. State of West Bengal**² held as follows:-

“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. Public order is what the French call ‘order publique’ and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect

² (1972) 3 SCC 831

merely an individual leaving the tranquillity of the society undisturbed?”

13. The offences alleged to have been committed by the detenu are lurking house trespass or house breaking by night and thefts in dwelling houses. Thus, those acts do not fall within the ambit of disturbance of public order. Those cases can be tried by the Courts of law and all endeavor by the State is to see that by producing authentic and convincing evidence, the accused gets convicted. Also, the State by rendering necessary assistance to the Court can get those criminal cases disposed of on merits as expeditiously as possible. But, employing shortcut method and thereby passing order of detention cannot be permitted and therefore, such order becomes illegal and unsustainable.

14. Thus, for the foregoing reasons, we are of the view that the relief sought for has to be granted. Resultantly, the Writ Petition is allowed. The impugned order of detention dated 05.6.2021 passed by respondent No.2 and the consequential confirmation order *vide* G.O.Rt.No.1840, General Administration (Spl. Law & Order) Department, dated 18.8.2021 passed by respondent No.1 are hereby set aside. The respondents are directed to set the detenu by name Punem Raju, S/o Late Muthaiah, at liberty forthwith, if he is not required to be kept in judicial custody in other criminal cases.

15. Pending Miscellaneous Petitions, if any shall stand disposed of. No costs.

JUSTICE A.RAJASHEKER REDDY

Dr. JUSTICE CHILLAKUR SUMALATHA

24.01.2022

Note:

LR copy to be marked.

B/o

dr