

*** THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND**

*** THE HON'BLE SRI JUSTICE PULLA KARTHIK**

+ WRIT PETITION No.45999 OF 2022

% Date: 10.03.2023

Between

Ashiya Banu

... Petitioner

AND

**\$ The State of Telangana,
Rep. by its Principal Secretary,
General Administration
(Spl. (Law & Order) Department,
Secretariat, Hyderabad and others.**

... Respondents

! Counsel for the petitioner : Ms. R. Sowmya Reddy

**^ Counsel for the Respondents : Sri S. Mujib Kumar,
Special Government Pleader
for Addl. Advocate General**

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> HEAD NOTE:

? Cases referred

C/15

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA**

WRIT PETITION No.45999 OF 2022

#Between:

Ashiya Banu

...Petitioner

AND

The State of Telangana,
Rep. by its Principal Secretary,
General Administration
(Spl. (Law & Order) Department,
Secretariat, Hyderabad and others

... Respondents

!Counsel for the petitioner

: Ms. R. Sowmya Reddy

Counsel for the Respondents

: Sri S. Mujib Kumar,
Special Government Pleader
for Addl. Advocate General

DATE OF JUDGMENT PRONOUNCED: 10.03.2023

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE PULLA KARTHIK**

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE PULLA KARTHIK**

WRIT PETITION No.45999 OF 2022

ORDER: (per AKS,J)

Smt. Ashiya Banu, the petitioner, has filed this Habeas Corpus petition on behalf of her husband, Mohammed Afsar @ Sahil, S/o. late Mohammed Afzal, the detenu, challenging the detention order *vide* No:59/PD-CELL/CYB/2022, dated 17.12.2022, passed by the respondent No.2-Commissioner of Police, Cyberabad Commissionerate, whereby, the detenu was detained under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Fake Document offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (for short, 'Act 1 of 1986'), and the consequential confirmation order *vide* G.O.Rt.No.246, General

Administration (Spl. (Law & Order)) Department, dated 17.02.2023, passed by the Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana.

2. Heard Ms. R. Sowmya Reddy, learned counsel for the petitioner and Sri S. Mujib Kumar, learned Special Government Pleader, representing the learned Additional Advocate General appearing for the respondents.

3. Learned counsel for the petitioner had contended that the detenu was detained *vide* the impugned detention order, dated 17.12.2022, by invoking the provisions under the Act 1 of 1986 for the alleged crime registered against him i.e., Crime No.1375 of 2022 of Gachibowli Police Station, registered for the offences under Sections 370 and 370(A)(2) I.P.C. and Sections 3, 4, 5 and 6 of Immoral Traffic (Prevention) Act, 1956. The detenu was arrested in connection with the said crime on 02.12.2022 and still he is in judicial remand and the detaining authority, without application of mind, has mechanically passed the impugned detention order, dated 17.12.2022, alleging that the detenu is causing disturbance and harm to the general public.

The respondents must consider the relevant facts and then only, they can invoke the provisions under the Act 1 of 1986 against the detenu, provided the detenu is disturbing the public peace and order as on the date of passing of the impugned detention order. As admittedly, the detenu was in judicial remand as on the date of passing of the impugned detention order i.e., on 17.12.2022, the question of detenu disturbing the peace and affecting the general public would not arise. Therefore, the impugned orders are passed without application of mind.

4. Learned counsel for the petitioner further contended that the issue whether the provisions under the Act 1 of 1986 can be invoked based upon a solitary crime or not, was considered by a Division Bench of this Court in W.P.No.30726 of 2022, dated 23.09.2022, wherein this Court has held that the provisions under the Act 1 of 1986 cannot be invoked based upon a solitary crime. Therefore, appropriate orders be passed in the Writ Petition by setting aside the impugned orders.

5. On the other hand, the learned Special Government Pleader appearing for the respondents had contended that the detenu is an immoral traffic offender and he was involved in a

serious crime, which was affecting the general public, more particularly, the young women. Therefore, the detaining authority was justified in passing the impugned detention order. There are no merits in the Writ Petition and the same is liable to be dismissed.

6. Learned Special Government Pleader further contended that the detenu was involved in identical crimes in the years 2011 and 2016, which would mean that there was history of criminal record against him. Further, the bail application moved by the detenu in the solitary crime relied on by the detaining authority was coming up for orders and as there is every possibility for the detenu to be released on bail and that after release, he may involve in identical crimes once again, the detaining authority has invoked the provisions under the Act 1 of 1986 against the detenu, in order to protect the general public. Therefore, on these grounds also, the Writ Petition is liable to be dismissed.

7. This Court, having considered the rival submissions made by the learned counsel for the parties, is of the view that the detaining authority has invoked the provisions under the Act 1 of

1986 against the detenu based on a solitary crime registered against him and the issue whether the provisions under the Act 1 of 1986 can be invoked based upon a solitary crime or not, was considered by this Court in W.P.No.30726 of 2022, dated 23.09.2022, wherein this Court has held that the provisions under the Act 1 of 1986 cannot be invoked based upon a solitary crime. Therefore, following the aforesaid order, dated 23.09.2022, passed by this Court in W.P.No.30726 of 2022, the impugned orders are liable to be set aside.

8. In the result, the Writ Petition is allowed. The impugned detention order *vide* No:59/PD-CELL/CYB/2022, dated 17.12.2022, passed by the respondent No.2, and the consequential confirmation order *vide* G.O.Rt.No.246, General Administration (Spl. (Law & Order)) Department, dated 17.02.2023, passed by the Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, are hereby set aside. However, it is made clear that since the detenu is in judicial remand, this Court is not directing for release of the detenu. There shall be no order as to costs.

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

ABHINAND KUMAR SHAVILI, J

PULLA KARTHIK, J

Date: 10-03-2023.

Note: L.R. copy to be marked.
B/O.MD

Note: -
Issue C.C. in four days.
B/O.KVR