

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT: HYDERABAD  
CORAM:  
\* THE HON'BLE SRI JUSTICE K. LAKSHMAN  
AND  
HON'BLE SMT. JUSTICE P. SREE SUDHA  
+ WRIT PETITION NO.33560 OF 2023**

**% Delivered on:07.06.2024**

**Between:**

# Chandrakanth Siddharth Kamble .....Petitioner

And

\$ The State of Telangana rep.

by Principal Secretary

and others,

.....Respondents.

! For Petitioner

: Sri A.venkatesh,  
Ld.Sr.Counsel representing  
Sri R.Anurag, Ld. Counsel,

^ For Respondents

: Sri Swaroop Oorella,  
Special Govt.Pleader

< Gist :

> Head Note :

? Cases Referred :

<sup>1</sup> (2008) 3 SCC 613

<sup>2</sup> (2006) 8 SCC 212

<sup>3</sup> 2023 INSC 734

<sup>4</sup> AIR 2007 SC 861

<sup>5</sup> (1982) 2 SCC 403

<sup>6</sup> (1974) 1 SCC 195

<sup>7</sup> (1966) 1 SCR 709

<sup>8</sup> (1970) 1 SCC 98

<sup>9</sup> (1992) 2 SCC 177

<sup>10.</sup> (2011) 5 SCC 244

<sup>11</sup> (1972) 3 SCC 831

<sup>12</sup> 2022 SCC OnLine SC 1333

<sup>13</sup> (1984) 3 SCC 14

<sup>14</sup> (2021) 9 SCC 415

<sup>15</sup> 2022 SCC OnLine SC 424

<sup>16</sup> (1980) 4 SCC 531

<sup>17</sup> (2018) 12 SCC 150

<sup>18</sup> 1992 (Suppl.1) SCC 496

<sup>19</sup> WRIT PETITION (CRL.) NO.77 OF 2008, Supreme Court of India.

<sup>20</sup> (2017) 13 SCC 519

<sup>21</sup> (2015) 13 SCC 722

<sup>22</sup> (2023) 9 SCC 587

**HON'BLE SRI JUSTICE K. LAKSHMAN**  
**AND**  
**HON'BLE SMT. JUSTICE P. SREE SUDHA**  
**WRIT PETITION No.33560 OF 2023**

**ORDER:** (Per Hon'ble Sri Justice K. Lakshman)

Heard Sri A. Venkatesh, learned Senior Counsel, representing Sri R.Anurag, learned Counsel for petitioners and Sri Swaroop Oorilla, learned Special Government Pleader, representing Additional Advocate General, for respondents.

2. This Writ Petition is filed by the petitioner to declare/quash the Preventive Detention Order dated 02.06.2021 bearing No. 65/PD CELL/CYB/2021 issued and also proclamation notice dated 24.01.2023 bearing No.65/PD.Cell/CYB/ 2021-23 issued by 2<sup>nd</sup> respondent, as illegal.

**FACTS:-**

3. The petitioner engaged in the garment trading business in the State of Maharashtra for the past decade. However, he was surprised to see proclamation notice dated 24.01.2023 bearing No. 65/PD-Cell/CYB/2021-23 affixed to the wall of his house in the first week of

April 2023. Allegedly, a Preventive Detention order was issued against him on 02.06.2021, declaring him as a Fake Document Offender under the Act by Respondent No. 2 herein.

4. The petitioner contends that in the proclamation notice, it is alleged that notices issued against him have been returned unserved despite all possible efforts, and he has been wilfully absconding and concealing himself to evade the execution of the alleged detention order dated 02.06.2021, thereby obstructing the process of law.

5. Upon perusing the contents of the proclamation notice, he immediately made efforts to obtain a copy of detention order No. 65 through an Advocate. He had filed an application under the Right to Information Act, 2005 (hereinafter referred to as the "RTI Act") to the Public Information Officer, PD Cell of Respondent No. 2, requesting to provide the following information:

- a. Provide a copy of Detention Order No. 65 passed under the Act by the PD Cell of Cyberabad, undersigned at the office of 2<sup>nd</sup> respondent.
- b. Provide detailed information about the grounds of detention under the Act, recorded before the issuance of the preventive detention order.
- c. Provide a copy of the proceedings for the detention.

6. The petitioner states that, subsequently, he was informed that the RTI application was transferred to the Public Information Officer, ACP CCRB via C.No.A6/94/RTI/Cyb/2023 dated 20.04.2023. The 2<sup>nd</sup> respondent issued a reply dated 05.05.2023, bearing C.No.A-6/94/RTI/Cyb/2023, stating that the information sought is related to the Special Branch (SB) and is exempted from furnishing under sub-section (4) of Section 24 of the RTI Act, 2005, and as per G.O. Ms. No. 667, General Administration (GPM & AR) Department dated 30.09.2007 of the Government of Andhra Pradesh. In the reply letter dated 05.05.2023 stated that such information cannot be furnished as it pertains to a third party and the detention order was still not executed.

7. The petitioner contends that the Preventive Detention order is causing serious injury to his life and liberty as a citizen. It is an extreme measure employed by the State when ordinary criminal law is insufficient to control activities causing disturbance to Public Order. The State has sufficient remedies available under the general laws for any omission or commission, and arbitrarily labelling the petitioner as a fake document offender without specifying the alleged crimes, is unjust. In the present case, there is no disturbance to Public Order and not affected the maintenance of Law and Order. Therefore, the order of

detention based on a solitary crime and the consequential Preventive Detention orders are unlawful.

8. The petitioner herein filed W.P.No.32202/2023 challenging the proclamation notice dated 24.01.2023 in order to procure a copy of Preventive Detention order. This Court, vide order dated 22.11.2023, disposed of the same holding as follows:

“This Court without expressing any opinion on merits of the case, deems it appropriate to dispose of the Writ Petition granting liberty to the petitioner to approach the 2<sup>nd</sup> respondent for receiving the copy of the Preventive Detention Order within a period of two (02) weeks from today. Further, the impugned notice issued vide Proceedings No.65/PD-Cell/CYB/2021-23 dated 24.01.2023 is hereby suspended for a period of two (2) weeks. It is made clear that in the event of the petitioner approaches 2<sup>nd</sup> respondent to receive copy of the Preventive Detention Order, the 2 respondent shall not arrest the petitioner for a period of one week, subject to the petitioner giving an undertaking that he will surrender himself immediately after expiry of one week. It is also made clear that if the petitioner does not approach respondent No.2 to receive a copy of the Preventive Detention Order within the aforesaid period of two weeks, the respondent authorities are at liberty to proceed further against the petitioner, in accordance with law.”

9. The petitioner approached the 2<sup>nd</sup> respondent on 06.12.2023. Respondent No. 2 served a copy of the Preventive Detention order dated 02.06.2021 and the petitioner received a copy of the detention order, providing an undertaking that he would surrender himself immediately

after one week. However, instead of surrendering himself after one week from 06.12.2023, the petitioner filed the present writ petition on 11.12.2023.

10. Respondents mechanically issued the proclamation notice without making any attempt to serve the Preventive Detention order. Mere allegation of creating fake documents does not warrant invoking the Act by the respondents, which is a gross abuse of statutory power. Therefore, the Preventive Detention order and proclamation notice issued are ex-facie illegal and ought to be set aside as the order passed by Respondent No. 2 is based on false and baseless allegations

11. 2<sup>nd</sup> respondent filed counter denying the allegations made by the petitioner and contending as follows:-

- i. The petitioner is a Fake Document Offender as he has purportedly engaged in a series of unlawful activities, including forgery and swapping SIM cards of unknown persons linked to their bank accounts. These actions resulted in fraudulent transfers of funds, causing financial loss amounting to lakhs of rupees to the unsuspecting public. These activities were carried out in an organized manner within the jurisdiction of the Cyberabad Police Commissioner, leading to widespread panic and insecurity among

the public, which is prejudicial to the maintenance of Public Order.

- ii. In the year 2020, within a span of four months, the petitioner was purportedly involved in two cases registered by the Cyber Crime Police Station vide Cr.Nos.584 of 2020 for the offences punishable under sections 420, 468, 471 and 120-B of IPC and Section 66-C of the Information Technology Act (IT Act).
- iii. The allegations levelled against the petitioner are that he has repeatedly engaged in the cases of forgery, swapping of SIM cards of unknown persons linked to their bank accounts, resulting in substantial financial losses to the public. Such acts of the petitioner disturbed peace and tranquillity in the society. Thus, prejudicing the maintenance of Public Order within the jurisdiction of Cyberabad Police Commissioner.
- iv. The said acts of the petitioner fall under the definition of a fake document offender as per Section-2 (p) of the Telangana Prevention Of Dangerous Activities of Boot-Leggars, 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 (Act No. 1 of 1986) (Hereinafter referred to as “the Act”) Act, which defines a person who creates false documents with an intent to cause damage or injury to the public or any person, or to induce someone to part with property, or to enter into any express or implied contract, or commits offenses punishable under Chapter XVIII of the IPC, or abets in doing such offenses.

- v. Invoking the provisions of the Act against the petitioner is necessary to prevent him from engaging in activities prejudicial to the maintenance of Public Order. Ordinary laws under which the petitioner is charged are deemed insufficient to curb his alleged dangerous and unlawful activities, necessitating his prevention under the detention laws.
- vi. Petitioner was arrested on 20.01.2021 at 1700 hours in Cr.No. 584 of 2020 and remanded to Judicial Custody on 21.01.2021. The petitioner's arrest was regularized in Cr. No. 1021 of 2020 registered for the offences punishable under Section 420 of IPC

and Section 66-C and D of IT Act. Now the petitioner is lodged in Dhanbad Prison, Kasturiba Nagar, Jharkhand, in Cr. No. 70 of 2020 registered for the offences punishable under Section 419, 420, 467, 468, 471, 120(B) IPC, and Section 66 (C) and 66 (D) of IT Act, 2000-2008 of Cyber Crime PS, Dhanbad.

- vii. In Cr. No. 584 of 2020, the petitioner filed two bail petitions vide Cr.L.M.P.Nos.60 of 2021 and 121 of 2021. The Court granted bail imposing certain conditions that he shall execute a personal bond for Rs.30,000/- each with two sureties for likesum each. The petitioner was also required to appear before the concerned Station House Officer every Wednesday between 11:00 am to 05:00 pm till filing of the charge sheet and furnish the required sureties to obtain the release order on 08.03.2021 in Cr. No. 1021 of 2020. The petitioner filed a bail petition vide CrI M.P.No. 118 of 2021. The trial Court granted bail imposing certain conditions.
- viii. The petitioner was previously involved in three other offenses. Viz: Cr.Nos.107 of 2016 for the offences punishable under Sections 419, 420, 465, 467, 468, 471 read with 34 IPC of Cyber Crime Police Station, Mumbai; Cr.No.02 of 2020 for the offences punishable under Sections 465, 468, 471, 420 IPC, and Section 66

(D) and (C) of IT Act, 2000 of Cyber Crime Police Station, Thrissur, Kerala, and Cr.No.70 of 2020 for the offences punishable under Sections 419, 420, 467, 468, 471, 120 (B) IPC, and Section 66 (C) and 66(D) of IT Act, 2000-08 of Cyber Crime P.S. Dhanbad.

- ix. In a series of forgery offenses, including swapping cards of unknown persons linked to their bank accounts, resulting in substantial financial losses to the public. Considering the bail petitions filed by the petitioner in the aforementioned cases and the possibility of the petitioner furnishing required sureties for release from jail, Respondent No. 2 believes that the petitioner's unrestricted movement poses a risk to the society. There is a likelihood of the petitioner engaging in similar prejudicial activities, such as impersonation and fraudulent financial transactions, which could disrupt Public Order. Thus, it is necessary to prevent him from doing so through appropriate detention.

12. Sri A.Venkatesh, learned Senior counsel appearing for the petitioner contends as follows:-

- i. Criminal law was already set in motion.

- ii. There is no disturbance to the Public Order due to the alleged acts committed by the petitioner.
- iii. At the most, the said acts come under the purview of the Law and Order.
- iv. Bail was granted to the petitioner in both the crimes relied upon by the 2<sup>nd</sup> respondent in issuing impugned detention order.
- v. The allegations levelled against the petitioner herein are that he has committed forgery and swapping of SIM cards of individuals linked to their bank accounts, resulting in fraudulent transactions amounting to approximately Rs.2 Crores. The said allegations are at the most amounts to Law and Order, but not to Public Order.
- vi. The Investigating Officers have not filed any application seeking cancellation of bail on the ground that the petitioner has violated the conditions imposed by the learned Magistrate while granting bail.
- vii. There is violation of Section 3(3) of the Act. Relevant material was not placed before the Advisory Board. Therefore, the Advisory Board was not having an occasion

to examine the material placed before it before granting approval vide G.O.Rt.No.1266, dated 10.06.2021.

- viii. 2<sup>nd</sup> respondent has revoked the detention order issued against co-accused vide order dated 04.09.2021.
- ix. 2<sup>nd</sup> respondent cannot refer the cases which are not within his jurisdiction.
- x. Thus, the impugned detention order is in violation of Section 6(a) and (b) of the Act.
- xi. Section 1(2) of the Act says that the Act extends to the whole of the State of Telangana. Therefore, 2<sup>nd</sup> respondent cannot even refer the cases which are outside his jurisdiction.
- xii. Section 6 of the Act says that Detention Order not to be invalid or inoperative on certain grounds. No detention order shall be invalid or inoperative merely by reason that the person to be detained thereunder, though within the State, is outside the limits of the territorial jurisdiction of the officer making the order, or the place of detention of such person though within the State, is outside the said limits.

- xiii. The petitioner is resident of Maharashtra. Therefore, 2<sup>nd</sup> respondent is not having jurisdiction to issue the impugned detention order.

13. Sri Swaroop Oorilla, learned Special Government Pleader, contends as follows:-

- i. The present writ petition is not maintainable since it is at pre-execution stage.
- ii. The petitioner has violated the order dated 22.11.2023 in W.P.No.32203 of 2023. The allegations levelled against the petitioner herein are serious in nature and due to the said acts, there was fear in the minds of the general public. Therefore, there is public disorder.
- iii. To prevent the petitioner in committing such offences, the impugned detention order was passed by the 2<sup>nd</sup> respondent. There is no error in it.
- iv. The Preventive Detention order can be passed even relying on solitary crime/incident. In the present case, 2<sup>nd</sup> respondent has relied on two cases where the allegations are serious against the petitioner herein. Non-filing of applications seeking cancellation of bail is not a ground to

challenge the impugned detention order. It is altogether different aspect.

14. With the said submissions, he sought to dismiss the present writ petition.

15. It is relevant to note that vide order dated 22.11.2023, this Court granted liberty to the petitioner to approach 2<sup>nd</sup> respondent for receiving a copy of the Preventive Detention order within a period of two weeks from that day. The impugned order was suspended for a period of two weeks. 2<sup>nd</sup> respondent was also directed to furnish a copy of the order to the petitioner in case the petitioner approaches him to receive a copy of the order and also not to arrest the petitioner for a period of one week subject to the petitioner giving undertaking that he will surrender himself immediately after expiry of one week.

16. Thus, this Court granted protection to the petitioner for a period of two weeks. He has filed the present writ petition on 11.12.2023 itself and this Court granted interim order. Therefore, the said contention of the learned Special Government Pleader that the petitioner filed the present writ petition without surrendering himself, is not acceptable.

17. It is further contended that the Preventive Detention Order was validly issued by the competent authority, which cannot be invalidated due to the petitioner's evasion of arrest. The petitioner should not be allowed to yield benefit from his own wrongdoing.

18. Perusal of the impugned Preventive Detention order would reveal that the 2<sup>nd</sup> respondent had issued the said order relying on the following cases:-

- i) Cr.No.584 of 2020 for the offences punishable under sections 420, 468, 471 and 120-B of IPC and Section 66-C of the IT Act, pending on the file of Cyber Crime Police Station.
- ii) Cr.No.1021 of 2020 for the offences punishable under section 420 of IPC and Section 66-C and D of IT Act,

19. In both the said crimes, allegations levelled against the petitioner are that he along with others committed forgery and swapping of SIM cards of unknown persons which are linked to their bank accounts resulting in fraudulent transactions thereby cheated the public to the tune of Rs.2 Crores.

20. It is relevant to note that in both the crimes, learned Magistrates have granted bail to the petitioner herein on imposition of certain conditions. The Investigating Officers in the said crimes did not



file any applications seeking cancellation of bail on the ground that the petitioner has violated the conditions imposed in the orders while granting bail and that the petitioner has committed similar offences while he was on bail.

21. There is no dispute with regard to the legal position that even relying on the solitary crime, the Preventive Detention order can be passed. At the same time, detaining authority has to consider the entire material placed before him, the allegations levelled against the petitioner, nature of the allegations and come to a conclusion that the due to the said acts of the petitioner, there is disturbance to the Public Order. He has to record the subjective satisfaction in the order. He has to issue the Preventive Detention order, only to prevent the petitioner from committing similar offences.

22. In the present case, there is no consideration of the said aspects, more particularly, the aspect that the 2<sup>nd</sup> respondent on consideration of entire material placed before him came to a subjective satisfaction that due to the acts committed by the petitioner there is disturbance to the Public Order.

23. As rightly contended by the learned senior counsel for the petitioner that the aforesaid two crimes were registered basing on the

complaints given by two complainants and the criminal law was already set on motion.

24. As rightly contended by Sri A.Venkatesh, learned Senior Counsel that the Act extends to the whole of the State of Telangana. 2<sup>nd</sup> respondent has no jurisdiction to take cognizance of the offences/events/incidents outside his jurisdiction.

25. Section 2(p) of the Act deals with the definition of 'Fake Document Offender' and the same is relevant and is extracted below:-

“Fake Document Offender” means a person who makes any damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or commits the offence punishable under Chapter-XVIII of the IPC or who abets in doing such things/offences:

26. There is no consideration of the said contents by the 2<sup>nd</sup> respondent while issuing the impugned detention order.

27. It is also relevant to note that Section 3(3) of the Act says that the detention order shall remain in force for a period of 12 days after issuing the said order unless in the meantime it has been approved by the Government. In the present case, the impugned order is dated 02.06.2021 and it was approved by the Board vide GO.Rt.No.1266, dated 10.06.2021. Therefore, there is no violation of Section 3(3) of the

Act by the respondents as contended by the learned counsel for the petitioner.

28. Preventive Detention is often referred as Jurisdiction of Suspicion as held by the Apex Court in **State of Maharashtra Vs. Bhaurao Punjabrao Gawande**,<sup>1</sup> It must be remembered that in cases of preventive detention, no offence is proved and the justification of such detention is suspicion or reasonable probability.

29. The Constitution Bench of Apex Court in **M. Nagaraj Vs. Union of India**<sup>2</sup> observed :

“It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race.”

30. Three-Judge Bench of the Apex Court in **Pesala Nookaraju v Govt. of Andhra Pradesh**<sup>3</sup> examined the essential concept of preventive detention as:

“17....the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the

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<sup>1</sup>(2008) 3 SCC 613

<sup>2</sup>(2006) 8 SCC 212

<sup>3</sup>2023 INSC 734

other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between the prosecution in a Court of law and a detention order under the Act 1986. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond the reasonable doubt, whereas in the other a person is detained with a view to prevent him from doing such act(s) as may be specified in the Act authorizing preventive detention.”

31. Nine-Judge Constitution Bench of Apex Court in **I.R. Coelho v. State of T.N.**<sup>4</sup> 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.”

32. In **Ashok Kumar v. Delhi Administration**,<sup>5</sup> the Apex Court observed that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing.

33. In **Kuso Sah vs. The State of Bihar**<sup>6</sup>, the Apex Court held that infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder.

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<sup>4</sup>AIR 2007 SC 861

<sup>5</sup>(1982) 2 SCC 403

<sup>6</sup>(1974) 1 SCC 195

The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised.

34. In **Ram Manohar Lohia v. State of Bihar**,<sup>7</sup> Constitution Bench of the Apex Court held that the detaining authority has to consider the disturbance caused by the acts committed by the detenu. The detaining authority shall consider the distinction between “Public Order” and “Law and Order” and further held as follows:-

“54...Does the expression “Public Order” take in every kind of disorder or only some? 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, it must affect the community or the public at large.** A mere disturbance of Law and Order leading to disorder is thus

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<sup>7</sup>(1966) 1 SCR 709

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.

55. 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 disorders 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 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.”**

35. Similar view was reiterated by the Apex Court in **Arun Ghosh v. State of West Bengal**.<sup>8</sup>

36. The Apex Court in **Harpreet Kaur (Mrs) v. State of Maharashtra**,<sup>9</sup> distinguished difference between ‘Public Order’ and ‘Law and Order’

24. Crime is a revolt against the whole society and an attack on the civilisation of the day. Order is the basic need of any organised civilised society and any attempt to disturb that order affects the society and the community. **The distinction between breach of ‘Law and Order’ and**

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<sup>8</sup>(1970) 1 SCC 98

<sup>9</sup>(1992) 2 SCC 177

disturbance of 'Public Order' is one of degree and the extent of reach of the activity in question upon the society. In their essential quality, the activities which affect 'Law and Order' and those which disturb 'Public Order' may not be different but in their potentiality and effect upon even tempo of the society and public tranquillity there is a vast difference. In each case, therefore, the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether his activities are prejudicial to maintenance of 'Public Order' or only 'Law and Order'.

37. The Apex Court in **Rekha vs. State of Tamil Nadu**<sup>10</sup>, held that:-

“ 29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the Rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be 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 of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this

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<sup>10</sup>(2011) 5 SCC 244

situation. Hence, in our opinion, for this reason also the detention order in question was illegal.”

38. In **Kanu Biswas v. State of W.B.**,<sup>11</sup> the Apex Court relying on **Ram Manohar Lohia** (supra) noted that preventive detention can only be invoked in cases of breach of Public Order. The Court explained the difference between Law and Order and Public Order by stating that Public Order is said to be affected when the action of the detenu is in the nature of adversely affecting the even tempo of life of the community which causes a general disturbance of public tranquility. The relevant paragraphs are extracted below:

“7. 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, according to the dictum laid down in the above case, 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 public” 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 merely an individual leaving the tranquillity of the society undisturbed?**”

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<sup>11</sup>(1972) 3 SCC 831



39. In **Sushanta Kumar Banik v. State of Tripura**,<sup>12</sup> the Apex Court held that the preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence, whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to.

40. In **Vijay Narain Singh v. State of Bihar**,<sup>13</sup> a three Judge Bench of the Apex Court had an occasion to deal with the expression 'habitually' and held that the expression 'habitually' would mean 'repeatedly' or 'persistently' implying a thread of continuity, stringing together similar repetitive acts, and a single act or omission would not characterize as an act of 'habitual'. The Apex Court was of the opinion that to qualify as a 'habit', a person must have grown accustomed to leading a life of crime, whereby it would be a force of habit, inherent or

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<sup>12</sup>2022 SCC OnLine SC 1333

<sup>13</sup>(1984) 3 SCC 14

latent, in an individual with a criminal instinct, with a criminal disposition of mind, that makes him as dangerous to society in general.

41. In **Banka Sneha Sheela v. State of Telangana**,<sup>14</sup> the Apex Court held as under:

“13. There can be no doubt that for ‘Public Order’ to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects ‘Law and Order’ but before it can be said to affect ‘Public Order’, it must affect the community or the public at large.”

“24. **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.”

42. In **Mallada K. Sri Ram vs. State of Telangana**<sup>15</sup>, upon examination of the facts of the case, the Apex Court held in paragraph No.12 as follows:

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<sup>14</sup>(2021) 9 SCC 415

<sup>15</sup> 2022 SCC OnLine SC 424

“12. There is absolutely no doubt in our mind that the facts and circumstances of the case as alleged in the detention order dated 28.10.2021 though does reflect a Law and Order situation which can be dealt with under the ordinary law of land, and there was absolutely no occasion for invoking the extraordinary powers under the law of Preventive Detention. The reasons assigned by the authority in its detention, justifying the invocation of the provisions of the detention law are that the detenu has been granted bail in all the four cases and since he is likely to indulge in similar crime, hence the order of preventive detention.”

43. The Apex Court held that a mere apprehension of a breach of Law and Order is not sufficient to meet the standard of adversely affecting the “maintenance of Public Order”. Referring to the principle laid down by it in **Ram Manohar Lohia**(supra) and **Banka Sneha Sheela** (supra), the distinction between a disturbance to Law and Order and a disturbance to Public Order was discussed.

44. The Apex Court and this Court time and again held that the detention orders shall be passed in rarest of rare cases that too, to prevent the *detenu* from committing similar offences which may disturb the Public Order. Also that there is a vast difference between “Law and Order” and “Public Order”. The offences which are committed against a particular individual fall within the ambit of “Law and Order”. It is only when the public at large is adversely affected by the criminal activities

of a person, the conduct of a person is said to disturb the “Public Order”. Moreover, individual cases can be dealt with by the criminal justice system. Therefore, there is no need for the detaining authority to invoke the provisions of the Act, 1986 for passing order of detention against an individual. Invoking of such law adversely affects the fundamental right of personal liberty which is guaranteed and protected by Article 21 of the Constitution of India. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority.

45. In **Ichhu Devi Choraria vs. Union of India**<sup>16</sup>, the Apex Court the judicial commitment to strike down illegal detention in paragraph No.5 enumerated as in under;

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<sup>16</sup>(1980) 4 SCC 531

“5. .... The burden of showing that the detention is in accordance with the procedure established by law has always been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. **This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detenu even though the detention may have been valid till the breach occurred. The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.**”

46. In a different context, in **Sama Aruna vs. State of Telangana**<sup>17</sup> while considering the circumstances of preventive detention and the prognosis to be adopted by the detaining authorities was enumerated by the Apex Court in paragraph No.16 which is as follows:-

“The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the

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<sup>17</sup>(2018) 12 SCC 150

surrounding circumstances. The **live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention.**

47. Learned Special Government Pleader relied on the principle laid down by the Apex Court in **Additional Secretary to the Government of India vs. Smt. Alka Subhash Gadia**<sup>18</sup> and contended that this Court cannot interfere with the order at pre-execution stage and has a limited scope.

48. We have carefully gone through the above observations in **Alka Subhash Gadia's case** (supra) and we are of the opinion that the five grounds mentioned therein on which the Court can set aside the detention order at the pre-execution stage are only illustrative not exhaustive as held by the Apex Court in **Deepak Bajaj vs State of Maharashtra**<sup>19</sup>. Therefore, the contention of the learned Special Government Pleader that the present writ petition is not maintainable at a pre-execution stage is unsustainable.

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<sup>18</sup>1992 (Suppl.1) SCC 496

<sup>19</sup>WRIT PETITION (CRL.) NO.77 OF 2008, Supreme Court of India.

49. The Apex Court in **Lahu Shrirang Gatkal vs State of Maharashtra**<sup>20</sup> while dealing with an issue of non-mentioning the duration of detention, after considering the principle in *Cherukuri Mani vs. Chief Secretary to Government of A.P.*<sup>21</sup>, held as follows:-

7. It is well settled that a presumptive legislation such as the present Act needs to be given a strict interpretation. As noted above proviso to subsection (2) of Section 3 prescribes a thing to be done in a particular manner following a particular procedure. Therefore, the proviso to subsection (2) of Section 3 envisages a period to be specified in the order with a maximum cap of six months at the first instant. **From the above analysis, it is clear that respondent No. 3 could not have passed such a blanket order of detention without specifying the period of detention, as has been done in this case.**

50. In view of the above settled law, coming to the case on hand, perusal of the detention order issued by respondent No.2 and the subsequent approval order from Government, it is evident that there is no mention of the duration of the detention. Thus, both the said orders passed by the relevant authorities are not in accordance with the provisions of law.

51. It is regrettable that despite the directives of the Apex Court and this Court, preventive detention continues to be routinely invoked by the

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<sup>20</sup> (2017) 13 SCC 519

<sup>21</sup> (2015) 13 SCC 722

authorities in the State of Telangana. As stated supra, preventive detention should only be used in the most exceptional circumstances. It is only when an individual's actions have the potential to affect Public Order that preventive detention may be warranted. This Court has observed on numerous occasions that authorities often fail to differentiate between actions that impact Law and Order and those that impact Public Order. Therefore, it is imperative that the officers responsible for issuing detention orders are properly educated about the severe nature of preventive detention. Additionally, it is expected that authorities will accurately distinguish between situations involving Law and Order and those involving Public Order before ordering detention.

52. In **Ameena Begum vs. State of Telangana**<sup>22</sup>, the Apex Court issued guidelines to be examined by any Constitutional Court when called upon to test the legality of the detention order and the said guidelines are as follows:-

- (i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated,

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<sup>22</sup>(2023) 9 SCC 587



would be the sine qua non for the exercise of the power not being satisfied;

- (ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;
- (iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;
- (iv) the detaining authority has acted independently or under the dictation of another body;
- (v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;
- (vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;
- (vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;
- (viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and

relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

- (ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and
- (x) The timelines, as provided under the law, have been strictly adhered to. Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong.

53. In similar circumstances, this Court vide order dated 14.06.2023 in W.P.No.8486 of 2023 after elaborately referring to catena of principles laid down by the Apex Court, issued the following directions:-

- i. The authorities before ordering detention shall distinguish between a Law and Order situation and a Public Order situation keeping in view the aforesaid discussion;
- ii. Grounds of detention shall be informed to the detenu at the earliest including the opportunity such detenu has to make a representation to the Advisory Board against the order of detention;

- iii. The detention order shall be placed for review before the Advisory Board at the earliest including the representation of the detenu, if any;
- iv. The Advisory Board before preparing its report on the validity of the detention order shall consider the entire material placed before it and shall record a finding how Public Order will be affected if the detention is not confirmed;
- v. The Advisory Board shall also hear the detenu, if such detenu seeks a hearing. This Court would like to further stress that the detenu shall be informed about his right to be heard before the Advisory Board;
- vi. The Advisory Board's report shall state reasons for its conclusions as it performs a quasi-judicial function.

54. As discussed supra, there is no consideration of the said aspects in the present case while issuing impugned detention order by 2<sup>nd</sup> respondent.

55. Even after issuance of the said directions by this Court, the State is issuing Preventive Detention orders in a mechanical manner without due consideration of the said directions.

56. In catena of judgments, both the Apex Court and this Court have consistently distinguished between "Law and Order" and "Public Order." Offences that target specific individuals fall under the category of "Law and Order." It is only when the criminal activities of an

individual adversely affect the public at large that their conduct is deemed to disturb “Public Order.” Moreover, individual cases can be addressed by the criminal justice system without the need for resorting to the draconian preventive detention laws against an individual. The invocation of such laws undermines the fundamental right to personal liberty guaranteed and protected by Article 21 of the Constitution of India.

57. Coming to the case on hand, though the detenu was released on bail on 08.03.2021, the detention order was passed only on 02.06.2021. In fact, if the detenu was absconding and was not available for the service of the Preventive Detention order, the authorities could have taken steps for cancellation of the bail and for forfeiture of the surety amount deposited. Admittedly, no such recourse has been taken. If the respondents were really sincere and anxious to serve the order of detention without any delay, it was expected of them to approach the Court concerned which granted bail for its cancellation, by pointing out that the detenu had violated the conditions imposed and thereby enforce his appearance or production as the case may be. Admittedly, no such steps were taken instead, it was explained that several attempts were made to serve the copy by visiting his house on many occasions.

58. Without availing the said remedies, respondent No.2 cannot mechanically pass orders of detention and respondent No.1 cannot approve the same. Thus, there is no consideration of the aforesaid aspects and the principle laid down by the Apex Court and the Division Benches of this Court in the aforesaid decisions. Further, the respondents have to invoke/pass Preventive Detention orders in rarest of rare cases.

59. In the present case, the Petitioner was granted bail, after giving an opportunity of hearing to the State. If the Petitioner subsequently committed any offence or violated any condition of bail, the State ought to have approached the concerned Court for cancellation of bail. Issuance of a Preventive Detention order which drastically curtailed the Petitioner's right to liberty under Article 21 of Constitution of India, is certainly neither the most suitable nor the least restrictive method of preventing the Petitioner from engaging in any further alleged criminal activity.

60. The cases registered against the petitioner are clearly within the purview of the standard criminal justice system and, if proved beyond reasonable doubt, can be appropriately punished by a competent court of law. Therefore, there was no necessity for the detaining authority to

issue the impugned detention order. We are of the considered view that the regular laws of the land were adequate to address this matter, and thus, resorting to preventive detention laws was unwarranted and is liable to be set aside.

61. As discussed supra, vide order dated 04.09.2021, 2<sup>nd</sup> respondent has revoked Preventive Detention order issued against the co-accused of the petitioner.

62. In the light of the above discussion, noting that the petitioner herein is already enlarged on bail on 08.03.2021, this Writ Petition is allowed and the impugned Preventive Detention Order dated 02.06.2021 bearing No. 65/PD CELL/CYB/2021 and also Proclamation Notice dated 24.01.2023 bearing No.65/PD.Cell/CYB/2021-23 issued by 2<sup>nd</sup> respondent, are hereby set aside.

As a sequel thereto, any miscellaneous petitions pending, if any in this Writ Petition shall stand closed.

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**JUSTICE K. LAKSHMAN**

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**JUSTICE P.SREE SUDHA**

**Date:07.06.2024.**

**Note. L.R. copy to be marked.**

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