

* THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

AND

* THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

+ Writ Petition No.20146 of 2020

% Date: 31.03.2021

Between:

Banka Sneha Sheela

... Petitioner

AND

The State of Telangana, rep. by
Principal Secretary, Home Department
and others.

... Respondents

! Counsel for the Petitioner : Dr. Challa Srinivasa Reddy

^ Counsel for the Respondents : Sri T. Srikanth Reddy,
Government Pleader for Home

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>HEAD NOTE:

? Cases referred

- 1) (1987) 2 SCC 364
- 2) (1970) 3 SCC 746
- 3) (2004) 7 SCC 467
- 4) (2006) 6 SCC 14

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

WRIT PETITION No.20146 of 2020

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

Smt. Banka Sneha Sheela, the petitioner, has filed this Habeas Corpus petition on behalf of her husband, Banka Ravikanth, S/o. Erraiah, aged about 34 years, the detenu, challenging the detention order, vide 47/PD-CELL/CYB/2020, dated 28.09.2020, passed by the Commissioner of Police, Cyberabad Police Commissionerate, the respondent No.2, wherein, 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 & White Collar or Financial Offenders Act, 1986 (for short "P.D. Act").

2. We have heard the submissions of Dr. Challa Srinivasa Reddy, learned counsel for the petitioner, Sri T.Srikanth Reddy, learned Government Pleader for Home appearing on behalf of Additional Advocate General for the respondents and perused the record.

3. The learned counsel for the petitioner has vehemently contended that the impugned detention order is illegal, arbitrary,

unconstitutional, improper, against the principles of natural justice and has been passed in a mechanical manner and without application of mind. All the five cases relied upon by the detaining authority for preventively detaining the detenu have been foisted against the detenu at the instigation of the complainants therein to extract money and there is no incriminating material against the detenu in the said cases. Already criminal law was set into motion against the detenu. Hence, there is no need for the respondents to invoke draconian preventive detention laws against him. The contents of the complaints in the cases relied upon by the detaining authority indicate that the detenu collected huge money under the guise of investing the same in stock market and promised good returns, but there is no mention in the said complaints that the detenu had cheated the public. Hence, the impugned detention order is unsustainable in view of the facts and circumstances of the case. Collecting huge money from public for investing in same in stock market by promising good returns, in any event, would not satisfy the word 'White Collar Offender'. The detenu is a Stock Market Trader and hails from a respectable family. All the criminal cases relied upon by the detaining authority for preventively detaining the detenu are at preliminary stage and charge-sheet is not filed in any case. Further, in all the five cases relied by the detaining authority for preventively detaining the detenu, the detenu was granted bail by the Courts concerned. But, the detenu is again detained in the prison by invoking the draconian preventive detention laws. Further, the detaining authority did not assign any reason for coming to a conclusion that the activities of the detenu are disturbing peace

and tranquility in society and affecting the public order. Further, the cases alleged against the detenu do not add up to “disturbing the public order”. They are confined within the ambit and scope of the word “law and order”. Since the detenu is alleged to be a ‘White Collar Offender’, the detenu can certainly be tried and convicted under the Penal Code. Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned detention order tantamounts to colourable exercise of power. The detaining authority has to be extremely careful while passing the detention order, since the detention *ipso facto* adversely affects the fundamental right of personal liberty enjoyed by the people under Article 21 of the Constitution of India. Thus, the detention order is legally unsustainable and ultimately, prayed to set aside the same and allow the writ petition as prayed for.

4. On the other hand, Sri T.Srikanth Reddy, learned Government Pleader for Home, would contend that the detenu is a ‘White Collar Offender’. He has repeatedly indulged in white collar offences by contacting innocent people stating that he is a High Court Advocate and inspired them to invest money in newly upcoming companies and collected more than Rs.50 lakhs from them through Phone-Pe (online) and in-person on the pretext of providing good profit by investing their money in stock market and cheated them in an organized way, creating a feeling of insecurity among public, thus disturbing peace and tranquility in society and acted in a manner, which is prejudicial to the maintenance of public order. The unlawful activities of the detenu were causing

widespread danger to the gullible public and were detrimental to the public order. The series of crimes allegedly committed by the detenu were sufficient to affect the even tempo of the society and create a feeling of insecurity in the minds of the people at large. Further, the detenu committed the alleged crimes in quick succession. The impugned detention order was passed basing on valid grounds and material placed before the respondents. All the mandatory provisions and the safeguards envisaged under the Constitution of India were strictly followed while passing the impugned detention order and hence, the impugned detention order does not suffer from illegality or impropriety. In all the cases relied by the detaining authority for detaining the detenu, the detenu got bail from the Courts concerned. Hence, with a view to prevent the detenu from further indulging in such dangerous activities in the interest of the society, the impugned detention order was passed. Preventive detention is different from punitive detention. Preventive detention is a precautionary measure basing on reasonable anticipation and it does not overlap with the prosecution. Out of five crimes relied by the detaining authority in preventively detaining the detenu, in four crimes, investigation has been completed and charge-sheets have been filed. Further, the Advisory Board, in its review meeting held on 10.11.2020, upon hearing the detenu and the concerned investigating officials and upon considering the entire material placed before it, rendered its opinion that there is sufficient cause for detention of the detenu. On considering the opinion of the Advisory Board and upon considering the entire material, the Government confirmed the impugned detention order, vide G.O.Rt.No.1954, General

Administration (Spl. (Law & Order)) Department, dated 17.12.2020. Therefore, the detaining authority was legally justified in passing the impugned detention order and ultimately, prayed to dismiss the writ petition.

5. In view of the submissions made by both sides, the point that arises for determination in this Writ Petition is:

“Whether the impugned detention order, dated 28.09.2020, passed by the Commissioner of Police, Cyberabad Police Commissionerate, respondent No.2, and the confirmation order, dated 17.12.2020, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, are liable to be set aside?”

POINT:

6. Briefly, the facts of the case are that by relying on five criminal cases registered against the detenu in Crime Nos.705/2019, 708/2019, 713/2019, 19/2020 and 29/2020, within the limits of Cyberabad Police Commissionerate, the respondent No.2-Commissioner of Police, Cyberabad Police Commissionerate, passed the detention order, dated 28.09.2020. According to the respondent No.2, the detenu is a 'White Collar Offender' and he has been habitually and continuously engaging himself in series of unlawful activities by committing criminal breach of trust and cheating the innocent public by collecting huge money under the guise of investing the same in stock market and promising good profit, in an organized way, and thereby creating large scale fear and insecurity among the gullible public, which are prejudicial to

the maintenance of public order. In all the five cases relied by the detaining authority for preventively detaining the detenu, the detenu got bail from the Court concerned. In order to prevent the detenu from indulging in similar illegal activities, which are detrimental to the public order, the impugned detention order, dated 28.09.2020, was passed, which was confirmed by the Government by order, dated 17.12.2020.

7. The material placed on record reveals that the detenu-Banka Ravikanth, S/o. Erraiah, aged about 34 years, is a 'White Collar Offender'. He, claiming as a High Court Advocate, inspired the gullible people to invest money in newly upcoming companies and collected more than Rs.50 lakhs from them through online and in-person on the pretext of providing good returns by investing their money in stock market and thereby, cheated them in an organized manner. The detaining authority relied on five cases for preventively detaining the detenu. We shall present it in a tabular column, the date of occurrence, the date of registration of FIR, the offences complained of and its nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
705/2019 of Medchal Police Station	12.12.2019	12.12.2019	Sections 420, 406, 506 of IPC	Sections 406 & 420: Cognizable/ Non Bailable Section 506 : Non-cognizable/ Bailable
708/2019 of Medchal Police Station	13.12.2019	13.12.2019	Sections 420, 406, 506 of IPC	Sections 406 & 420: Cognizable/ Non Bailable Section 506 : Non-cognizable/ Bailable
713/2019 of Medchal Police Station	14.12.2019	14.12.2019	Sections 420, 406, 506 of IPC	Sections 406 & 420: Cognizable/ Non Bailable

				Section 506 : Non-cognizable/ Bailable
19/2020 of Medchal Police Station	07.01.2020	07.01.2020	Sections 420, 406, 506 of IPC	Sections 406 & 420: Cognizable/ Non Bailable Section 506 : Non-cognizable/ Bailable
29/2020 of Pet Basheerabad Police Station	11.01.2020	11.01.2020	Sections 420, 406 of IPC	Cognizable/ Non Bailable

8. The material placed on record reveals that the detenu has been habitually committing white collar offences within the limits of Cyberabad Police Commissionerate. In first crime, i.e., Crime No.705/2019, the allegations against the detenu is that he introduced himself as a High Court Advocate and instigated the de-facto complainant therein to invest money in newly upcoming projects and promised him good returns. Believing the words of the detenu, the de-facto complainant therein paid about Rs.5,50,000/- to the detenu through Phone-Pe (online) and by way of cash. After coming to know that he was cheated, when the de-facto complainant asked the detenu to give his money back, the detenu alleged to have threatened him with dire consequences. In the second crime, i.e., Crime No.708/2019, the detenu alleged to have collected about Rs.2 lakhs from the de-facto complainant on the same pretext. In the third crime, i.e., Crime No.713/2019, the detenu alleged to have collected Rs.3 lakhs from the de-facto complainant therein. In fourth crime, i.e., Crime No.19/2020, the detenu alleged to have collected about Rs.1.6 lakhs from the de-facto complainant. In fifth crime, i.e., Crime No.29/2020, the detenu alleged to have collected around Rs.32 lakhs from the de-facto complainant therein. A perusal of the record reveals that the detenu, in greed of money, resorted to illegal activities of collecting

huge money from gullible public through on-line as well as by cash, under the guise of investing the same in stock market and cheated them with cool calculation and deliberate design, with an eye on personal profit, regardless of the consequence to the community. Further, the material placed on record reveals that the detenu committed the alleged offences in quick succession. Here, it is apt to state that the economic offences, having deep rooted conspiracies and involving huge loss of public funds, needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Similarly, white collar offence can have a large impact on the society. It is also called as a socio-economic crime, because it has a direct impact on the society, which is far more costly than the ordinary crime. These white collar crimes, by nature, are such that the injury or the damage caused as a consequence of it is so widely diffused in the large body of citizens, that their enormity as regards personage victim is almost trifling. Unfortunately, in the last few years, the country has been witnessing an alarming rise in white-collar crimes, which has affected the very fibre of the country's economic structure. Notwithstanding stringent legislations made to curb this evil, it has not been possible to eradicate the same. Therefore, any leniency in economic offence will send a wrong signal to the society at large. On the contrary, a message must reach to such offenders that there shall not be any leniency shown with respect to such activities/offences and the same shall be dealt with Iron hand. In **State of Gujarat Vs. Mohanlal Jitamalji Porwal**¹, a

¹ (1987) 2 SCC 364

Division Bench of Hon'ble Supreme Court of India, speaking through M.P.Thakkar, J (as His Lordship then was) observed as under: -

"The entire community is aggrieved, if the economic offenders, who ruin the economy of the State, are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design, with an eye on personal profit, regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters, which view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest."

9. In the instant case, a perusal of the material placed on record reveals that the detenu was granted bail by the Courts concerned in all the five cases relied upon by the detaining authority for preventively detaining him. Under these circumstances, the contention of the respondents that the illegal activities of the detenu would disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order and there is imminent possibility of the detenu again indulging in similar prejudicial activities, cannot be brushed aside.

10. It is apt to state that preventive detention is different from punitive detention. While punitive detention could be enforced under ordinary criminal law, the law of preventive detention can be enforced against habitual offenders to prevent them from committing the future similar offences, which are detrimental to the public interest, disturbing the even tempo of life and causing damage to public health. The legal parameters for testing the validity of 'preventive detention' fundamentally vary from that of

'punitive detention'. Also, 'Public order' is distinct from 'law and order'. While individual offences without affecting public at large could be considered as violating 'law and order', the offences that affect larger public and disturbs the even tempo of public life fall under the category of disturbance to public order and only in the latter category of cases, the law of preventive detention shall be enforced.

11. In the case of **Madhu Limaye Vs. Sub-Divisional Magistrate**². The Hon'ble Apex Court held as follows:

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

12. In the case of **Commissioner of Police & Others Vs. C.Anita (Smt.)**³, the Hon'ble Apex Court examined the issue of "public order" and "law and order" and observed as follows:

"The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its

² (1970) 3 SCC 746

³ (2004) 7 SCC 467

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

13. In the case of **R. Kalavathi v. State of Tamil Nadu**⁴, the Hon'ble Apex Court, while dealing with the case affecting the public order, observed that even a single act which has the propensity of affecting the even tempo of life and public tranquility would be sufficient for detention.

14. As per the clause (x) of Section 2 of the P.D.Act, a "White Collar Offender" "White collar offender" or "Financial Offender" means a person who commits or abets the commission of offences punishable under the Telangana Protection of Depositors of Financial Establishment Act, 1999 or under sections 406 to 409 or 417 to 420 or under Chapter XVIII of the Indian Penal Code, 1860.

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

⁴ (2006) 6 SCC 14

which is to prevent the anti-social and subversive elements from imperiling the welfare of the people or the security of the nation or from disturbing the public tranquility or from indulging in white collar offences. In the instant case, the commission of alleged offences by the detenu in a quick succession as indicated in the above table clearly demonstrates that the detenu, under the pretext of investing money in the newly upcoming companies, collected huge amount from the gullible people in an organized fashion, played fraud on them and when they asked him to repay the money, threatened them with dire consequences. The *modus operandi* of the detenu in the alleged offences which were committed in quick succession would certainly disturb the public peace and tranquility. So it is imperative upon the officers concerned to pass the order of detention, since the acts of the detenu are prejudicial to the maintenance of public order. The illegal activities of the detenu were of such a reach and extent, that they would certainly affect the even tempo of life and were prejudicial to the public order. The detaining authority had sufficient material to record subjective satisfaction that the detention of the detenu was necessary to maintain public order and even tempo of life of the community. The order of detention does not suffer from any illegality. The grounds of detention, as indicated in the impugned order, are found to be relevant and in tune with the provisions of the P.D.Act. Since the detenu got bail in all the five cases relied upon by the detaining authority, there is nothing wrong on the part of the detaining authority in raising an apprehension that there is every possibility of the detenu committing similar offences, which would again certainly affect the

public order. The quick succession of commission of alleged offences by the detenu makes it amply clear that there is every possibility of detenu committing similar offences in future, which are prejudicial to the maintenance of public order. The material placed on record reveals that the detenu was supplied with the documents relied upon by the detaining authority in the language known to him, i.e., Telugu, besides English. The material relied on and circumstances show that the subjective satisfaction of the detaining authority is not tainted or illegal on any account. The facts and circumstances indicate that the acts of the detenu cannot be effectively dealt with under ordinary criminal law. Under these circumstances, the detaining authority is justified in passing the impugned detention order. We do not see any merit in this Writ Petition and as such, it is liable to be dismissed.

16. The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.

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

A. RAJASHEKER REDDY, J

Dr. SHAMEEM AKTHER, J

Date: 31st March, 2021

Note:

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