

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE K. SUJANA

WRIT PETITION No.25767 OF 2023

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

Heard Mrs. Ravula Sowmya Reddy, learned counsel for the petitioner and Mr. Mujib Kumar Sadasivuni, learned Special Government Pleader representing learned Additional Advocate General appearing on behalf of the respondents.

2. This writ petition is filed to issue a writ of *habeas corpus* directing respondent No.3 to produce detenu *viz.*, Bandi Narayana S/o Sambaiah, now detained in Central Prison, Chenchalguda, Hyderabad, by setting aside the order of detention passed by respondent No.2 vide proceedings No.C1/3521/2023, dated 30.06.2023 and the consequential confirmation, if any, declaring it as illegal.

3. Respondent No.2 passed the impugned detention order dated 30.06.2023 against the detenu under the provisions of Section - 3 (2) of the Telangana Prevention of Dangerous Activities of Boot-leggers, 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 (Act No.1 of 1986) (for short 'Act No.1 of 1986'), under the category of '**Sexual Offender**' as defined under Section - 2 (v) of the Act No.1 of 1986.

4. The impugned detention order was passed by respondent No.2 - detaining authority relying on solitary crime *viz.*, Crime No.67 of 2023 registered by Peddavoora Police Station, Nalgonda District, for the offences punishable under Sections - 376D, 394 and 411 read with 34 IPC against the detenu and his associate.

5. Mrs. Ravula Sowmya Reddy, learned counsel for the petitioner, would submit that the impugned detention order was issued without application of mind. There are contradictions with regard to the version of the alleged victim in her complaints dated 28.04.2023 and 01.05.2023. The detaining authority did not consider the entire material properly including the role played by the detenu in the alleged crime. The allegations levelled against the detenu will not fall under the category of 'sexual offender'. Even then, basing on solitary

crime, the detention order was passed which is illegal. As on the date of passing detention order, the detenu continues in judicial custody and, therefore, the apprehension of detaining authority that the detenu may commit similar offences and his acts would disturb 'public order' is baseless. Without considering all the said aspects, respondent No.2 passed the impugned order of detention which is illegal and, therefore, the same is liable to be set aside.

6. On the other hand, Mr. Mujib Kumar Sadasivuni, learned Special Government Pleader representing learned Additional Advocate General appearing on behalf of the respondents would submit that the allegations levelled against the detenu are serious and dangerous in nature. To prevent him from doing so in future, respondent No.2 has passed the impugned order of detention. The detaining authority, considering the entire material available on record and after arriving at the subjective satisfaction only, passed the detention order in order to prevent the detenu from committing similar offences. Thus, there is no error in it.

7. Perusal of detention order dated 30.06.2023, grounds of detention, counter filed by respondent No.2 and the record would

reveal that the detenu and other accused in Crime No.67 of 2023 are the residents of Palnadu and Guntur Districts of Andhra Pradesh State, respectively. They used to do mason work at Poola Bazar, Market Adda of Guntur District. Thus, three of them became good friends. They were addicted to alcohol. Since they are not getting sufficient income on mason work to meet their luxuries, they have decided to commit thefts to earn easy money.

i) On 25.04.2023, they have committed theft of Bajaj Auto-rickshaw bearing registration No.AP 39V 9886 in front of Bar Shop at Poola Bazar Market of Guntur Town. A case in Crime No.146 of 2023 was registered by Lalapet Police Station, Guntur District, for the offence punishable under Section - 379 of IPC with regard to committing the theft of the aforesaid Auto-rickshaw.

ii) After committing the theft of the said Auto-rickshaw, they went to Narasaraopet in the said Auto-rickshaw. Accused No.3 committed pickpocket of Rs.6,000/- from a person at Bar Shop. They spent Rs.900/- on diesel and with the remaining amount they consumed alcohol. On 26.04.2023, they reached Srisailam via Vinukonda and Dornala in the same auto-rickshaw. There also, accused No.3 committed pickpocket of Rs.1,400/-. He left from

Srisailam without informing accused No.1 and the detenu (accused No.2). Accused No.1 and the detenu went to Sunnipenta village. They got Rs.1000/- from the sister of the detenu. They spent Rs.500/- for diesel and with the remaining amount they consumed alcohol.

iii) On the same day, they reached Haliya via Devarakonda and Mallepally, and they spent in a Temple in that night. On the next day morning *i.e.*, 27.04.2023 at about 10.00 A.M., they had liquor in a Bar and Restaurant in front of Haliya Bus Stand. At about 12.00 hours, they went to Haliya Centre and waiting to rob someone.

iv) Meanwhile, the victim woman, aged 60 years, Government Teacher, came to their auto-rickshaw and enquired whether it was going to Nagarjunasagar. Then they decided to rob her by noticing the gold ornaments in her possession. They made her to believe that the auto-rickshaw was going to Nagarjuna Sagar. Believing their words, she got into the auto-rickshaw and sat in the back seat beside the detenu. One male passenger was seated in the said auto-rickshaw in the front seat. After travelling for a short distance, the male passenger got down from the auto-rickshaw by giving Rs.10/- of travelling charge. Thereafter, on the way while they reached outskirts of *Kunkudu Chettu Thanda* village, meantime they observed the lack

of traffic on the road and decided to rob the victim woman by taking the auto-rickshaw towards the fields. Accordingly, the detenu took the victim woman mobile phone and shut her mouth to stop shouting from her and immediately drove the auto-rickshaw towards the fields and took her approximately one-kilometre distance from the main road towards the fields and stopped the auto-rickshaw at deserted place. At that time, the detenu held the victim woman tightly in the back seat of the auto-rickshaw, meanwhile accused No.1 went to near her, pulled two gold chains from her neck and gave the same to the detenu. Later, they beat and threatened to kill her with knife if she does not give her remaining gold ornaments and money. Out of fear, the victim woman gave her pair of gold ear studs, one gold rink and two gold bangles to them. Later, the detenu held her hands tightly, then taking advantage of her fear, accused No.1 forcibly raped her in the back seat of the auto-rickshaw. Thereafter, they took her hand bag and went from there by leaving her at the offence place.

v) After going a short distance in the same auto-rickshaw, they afraid that someone might catch them if they go to Guntur in the same auto-rickshaw. Therefore, they parked the auto-rickshaw on a Hill, beside left canal of outskirts of Bettela Thanda village and took

Rs.4,000/- from robbed handbag, came on the road and went to Nagarjuna Sagar by another auto-rickshaw. Later on, they threw the robbed phone in the water of Nagarjunasagar Dam by suspecting that the police would catch them through the location of phone. Accused No.1 also got head shave in Nagarjunasagar to make believe that he had come from Srisailam and on the same day, they went to Guntur by bus. They met accused No.3 and explained about the robbery-cum-rape and shown him the stolen property. The gold ring was sold by accused No.3 to an unknown person at Railway Station for Rs.6,000/- and they shared the money equally and remaining ornaments kept with them. Later, they decided to sell the remaining ornaments along with auto-rickshaw at Hyderabad to the known persons of accused No.3. Accordingly, on 04.05.2023 at about 7.00 hours, they came to *Bettela Thanda* village, took their auto-rickshaw and proceeded to Hyderabad to sell the stolen property. On the way while they reached *Thummachettu X* road, they were apprehended by the police.

8. The aforesaid facts would reveal that the detenu and his associates, accused Nos.1 and 3, were addicted to alcohol and they have decided to commit theft to get more money to meet their luxurious life. They have committed theft of auto-rickshaw from

Guntur and all the way they came to Haliya, Nagarjunasagar. They took advantage of the victim aged 60 years, a Government Teacher that she was wearing gold ornaments. They have committed theft of the same including amount and accused No.1 raped her while the detenu holding her hands tightly. Thereafter, they went to Guntur and sold some stolen property. They tried to sell the auto-rickshaw and remaining stolen property.

9. The aforesaid facts would reveal the seriousness and graveness of the offences committed by the detenu along with other accused and also the manner in which the same was committed. They took advantage of loneliness of the victim, committed rape and theft of gold ornaments and cash. Therefore, the said facts would reveal the *modus operandi*. The said acts committed by the detenu would certainly disturb the public order.

10. Perusal of the detention order would reveal that with a view to prevent the detenu from acting in a manner prejudicial to the maintenance of public order and considering the fact that with the active connivance of the detenu, his associate committed rape on the victim woman not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as

physical harm in the process. Rape is not merely a physical assault; it is often destructive of the whole personality of the victim. A murderer destroys the physical body of the victim, a rapist degrades the very soul of the helpless female and, thus, such acts create large scale fear, panic and a feeling of insecurity among the women folk, particularly, women employees and general public and have the potential to disturb public order leaving the large section of people under the grip of fear and trauma. It is also mentioned that the detenu after release on bail, there is an imminent possibility of resorting to commit similar heinous offences on women folk, which would be detrimental to public order and would create fear in the minds of women folk. In the present case, the victim woman is 60 years old and Government Teacher. The detenu and his associate did not even consider the age of the victim. It is a heinous crime. Considering all the said aspects, the detaining authority arrived at the subjective satisfaction that ordinary law under which the detenu was booked is not sufficient to deal such an offender who has no regard towards women and their dignity, came to a conclusion that unless he is detained under the detention laws, his unlawful activities cannot be curbed and accordingly passed the detention order.

11. In **Arun Ghosh v. State of West Bengal**¹, the Apex Court

held as under:

3. The submission of the counsel is that "these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this submission reference is made to three cases of this Court: *Dr. Ram Manohar Lohia v. State of Bihar* [(1966) 1 SCR 709; *Pushkar Mukherjee and Others v. State of West Bengal* [W.P. No.179 of 1968, decided on November 7, 1968: 1969 (1) SCC 10] and *Shyamal Chakraborty v. The Commissioner of Police, Calcutta and Another* [W.P. No.102 of 1969, decided on August 4, 1969: 1969 (2) SCC 426]. In *Dr. Ram Manohar Lohia's* case this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished, from acts directed against individuals which do not disturb the society to the extent of causing a

¹. (1970) 1 SCC 98

general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools

are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that 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. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public

interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia's case examples were given by Sarkar, and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. The question to ask 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 tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

12. The object of the Act No.1 of 1986 is to provide for preventive detention of Bootleggers, Dacoits etc. including Sexual Offenders, who engaged or is making preparations for engaging any of the activities as such, which affect adversely, or are likely to affect adversely, the maintenance of ‘public order’. It is apt to refer to Section - 2 (v) of the Act No.1 of 1986 and the same is as under:

“2 (v) **“Sexual Offender”** means a person who commits or abets the commission of offences in contravention of any of the provisions under the Protection of Child from Sexual Offences Act, 2012 or the offences punishable under sections 354, 354-A, 354-B, 354-C, 354-D, 376, 376-A, 376- B, 376-D, 377 or 509 of the Indian Penal Code, 1860.”

The said definition includes a person who abets the commission of offence. As discussed above, the detenu caught hold of the hands of the victim tightly and accused No.1 committed rape. Thus, the detenu falls under the category of ‘sexual offender’.

13. While passing the detention order, the detaining authority not only considered the commission of offence committed by the detenu and his associate, but also considered its impact disturbing ‘public order’. Therefore, in order to prevent the detenu from committing similar offences, the impugned detention order was passed.

14. It is not in dispute that the detaining authority can pass detention order relying on solitary crime. At the same time, the detaining authority shall consider the nature of offence and the manner in which it was committed. He has to consider the entire material on record and come to a subjective satisfaction while issuing detention

order. The detaining authority shall consider distinction between 'law and order' and 'public order' and disturbance to the public order due to the acts committed by detenu. In the present case, the detaining authority on consideration of entire material arrived at the subjective satisfaction with regard to disturbance to 'public order' due to the acts committed by the detenu.

15. The Hon'ble Supreme Court in **Ashok Kumar v. Delhi Administration**² 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.

16. In **Ram Manohar Lohia v. State of Bihar**³, the Apex Court held as under:

“...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**

². (1982) 2 SCC 403

³. AIR 1966 SC 740

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 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. 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.”

17. In **Banka Sneha Sheela v. State of Telangana**⁴, 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

⁴. (2021) 9 SCC 415

behalf of the Petitioner. The impugned judgment is set aside and the Detenu is ordered to be freed forthwith. Accordingly, the appeal is allowed.”

18. The detaining authority while invoking the powers under Section - 3 (2) of the Act No.1 of 1986, has to consider the entire material on record and come to a subjective satisfaction that due to the acts committed by the detenu, nature of offence and the manner in which the same was committed would disturb the public order. To prevent the detenu from committing similar offences, the detaining authority shall issue preventive detention order against the detenu. The Apex Court and this Court has to consider facts and circumstances of each case on case to case basis.

19. As discussed above, the detenu and his associate committed the offence of rape on the victim in broad day light and thus resulted in creation of fear and panic in the minds of general public, particularly women folk. The daring act of the detenu in a broad day light, in our opinion, affected ‘public order’ and not merely ‘law and order’. The said act, certainly, caused terror and panic among the women folk. The act in question adversely affected the even tempo of life of the women community and caused a general disturbance of

public tranquility. In the said solitary crime, the detenu theft the gold ornaments, Apple Phone and net cash of Rs.4,000/- of the victim at the point of knife. The worth of the stolen property is around Rs.1,80,000/-. Even the detenu and his associates committed theft of auto-rickshaw used in commission of the present crime and a case in Crime No.146 of 2023 was registered by Lalapet Police Station, Guntur District of Andhra Pradesh State for the offence punishable under Section - 379 of IPC.

20. As discussed above, the bail applications filed by the detenu twice were dismissed by the Court concerned considering the seriousness and graveness of the offence committed by the detenu. The detaining authority having considered all the said aspects arrived at the subjective satisfaction and passed the impugned detention order. Therefore, viewed from any angle, we are of the considered view that there is no error in the impugned detention order dated 30.06.2023 passed by respondent No.2 and the consequential approval and confirmation orders vide G.O.Rt.Nos.966 and 1126, dated 06.07.2023 and 09.08.2023, respectively. Thus, the writ petition fails and the same is liable to be dismissed.

21. The present writ petition is accordingly dismissed. In the circumstances of the cases, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.

K. LAKSHMAN, J

K. SUJANA, J

17th October, 2023

Mgr