

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.6562 of 2021

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

Smt. Qamar, the petitioner, has filed this Habeas Corpus petition on behalf of her son, Mohammed Aslam @ Ashu, S/o. Late Salam, aged 22 years, the detenu, challenging the detention order, dated 11.12.2020, passed by the Commissioner of Police, Rachakonda Commissionerate, the respondent No.2, and the subsequent confirmation order in G.O.Rt.No.389, General Administration (Spl. (Law & Order)) Department, Government of Telangana, dated 18.02.2021, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, the respondent No.1, whereby, the detenu was detained under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Fake Document offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders & White Collar or Financial Offenders Act, 1986 (for short "P.D. Act").

2. We have heard the submissions of Smt. G.Jaya 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. The detenu is falsely implicated in the three criminal cases relied upon by the detaining authority for preventively detaining him. Admittedly, in all the three cases relied upon by the detaining authority, the detenu was granted bail by the Courts concerned. But, the detenu was again sent to judicial remand by invoking the draconian preventive detention laws. Further, the grounds on which the impugned detention order is passed are vague, stale and remote. All the three cases relied upon by the detaining authority for preventively detaining the detenu are at threshold and the guilt of the detenu is not yet been proved. Hence, the conclusion reached by the detaining authority that the detenu is a habitual offender, is without any basis. By no stretch of imagination, the acts alleged against the detenu in the grounds of detention could affect public tranquility. Further, there must be close proximity between the criminal actions of the detenu and the detention order. The subjective satisfaction reached by the detaining authority in passing the impugned detention order is tainted. 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 offences alleged, as grave as they may be, are under the Penal Code and

special law, the detenu can certainly be tried and convicted under the Penal Code and special law. 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 impugned detention order and the consequential confirmation order are legally unsustainable and ultimately, prayed to set aside the same and allow the writ petition as prayed for.

4. On the other hand, the learned Government Pleader for Home representing the respondents would contend that the detenu is a 'sexual offender'. He has been habitually involving in stalking of women, induce them to do nude whatsapp calls, capture their photos and later threaten them to fulfill his sexual lust and also extort money under the pretext of posting them in social media and thereby insulting the modesty of college going girls and even married women and thus creating large scale fear and panic among the general public, especially college going girls and married women, and acting in a manner prejudicial to the maintenance of public order, apart from disturbing peace, tranquility in the society. 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, especially college going girls and married women. 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. The offences committed in the cases relied upon for preventively detaining the detenu are heinous in nature. Further, those three offences were committed by him in quick succession. With a view to prevent the detenu from further indulging in such shameful and illegal activities in the interest of the society, the impugned detention order was passed. Further, the Advisory Board, in its review meeting, 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. Subsequently, the Government confirmed the impugned detention order, vide G.O.Rt.No.389, General Administration (Spl. (Law & Order)), Government of Telangana, Dated 18.02.2021. Further, in all the three cases relied upon by the detaining authority for detaining the detenu, the detenu got bail from the Courts concerned. Therefore, since there is an imminent possibility of the detenu committing similar shameful and inhuman offences which are prejudicial to the maintenance of public order, the impugned detention order was passed. 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 11.12.2020, passed by the Commissioner of Police, Rachakonda Commissionerate, respondent No.2, and the confirmation order, dated 18.02.2021, passed by the Principal Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana, respondent No.1, are liable to be set aside?”

6. **POINT:** The material on record reveals that by relying on three criminal cases registered against the detenu, i.e., Crime No.762/2020 of Meerpet Police Station, Crime No.228/2020 of Kandukur Police Station and Crime No.913/2020 of Uppal Police Station, the respondent No.2-Commissioner of Police, Rachakonda Commissionerate, passed the detention order, dated 11.12.2020. According to the respondent No.2, the detenu is a ‘sexual offender’. He has been habitually committing shameful and inhuman offences of Extortion, Assault or use of criminal force to women with intent to disrobe, Cheating, Voyeurism, Stalking, Criminal intimidation, against the college going girls and married women and thereby creating large scale fear and panic among the general public in the locality concerned, especially college going girls and married women, and acting in a manner prejudicial to the maintenance of public order apart from disturbing peace and tranquility in the society. In all the three cases relied upon by the detaining authority, the detenu got bail from the Courts concerned. In order to prevent the detenu from further indulging in such shameful and illegal activities, the impugned detention order, dated 11.12.2020, was passed, which was confirmed by the Government by order, dated 18.02.2021.

7. The material placed on record also reveals that the detenu- Mohammed Aslam @ Ashu, S/o. Late Salam, who is a 'sexual offender', has been habitually indulging in shameful activities, i.e., stalking of women, induce them to do nude whatsapp calls, capture their photos and later threaten them to fulfill his sexual lust and also extort money under the pretext of posting them in social media and thereby insulting the modesty of college going girls and even married women. His illegal activities are detrimental to the maintenance of public order and created panic among the general public in the locality concerned. The detaining authority relied on three cases for preventively detaining the detenu. We shall present them in a tabular column the date of occurrence, the date of registration of FIR, the offences complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

Crime No.	Date of Occurrence	Date of registration of FIR	Offences	Nature
762/2020 of Meerpet Police Station	31.10.2020	31.10.2020	Sections 384, 354B, 417, 420 of IPC and Section 67A of Income Tax Act.	Sections 384, 354B & 420 of IPC and Section 67A of Income Tax Act : Cognizable/Non-Bailable Section 417 of IPC : Non-cognizable/Bailable
228/2020 of Kandukur Police Station	02.11.2020	02.11.2020	Sections 354C r/w 511, 354D, 506 of IPC	Sections 354C & 354D of IPC : Cognizable/Bailable Section 506 : Non-cognizable/Bailable
913/2020 of Uppal Police Station	03.11.2020	03.11.2020	Section 354D of IPC	Cognizable/ Bailable

8. It is evident from the record that the detenu is 22 years old. He discontinued his B.Tech first year in Sri Datta Engineering College, Sheriguda, Ibrahimpatnam, in the year 2016, and joined in the same college as dance master in the year 2019. He used to move close with the girl students on the pretext of teaching dance

to them and makes friendship with them. Later, he procures their phone numbers and starts talking with them. He traps girl students into his close companion with his glib talks, takes their photos intimately while they are learning dancing without their knowledge and later, threatens them with dire consequences to fulfill his sexual desires. He also does not hesitate to extort money from them on the same pretext. He procures his classmates through Facebook and induces them to share their pics and to chat in Whatsapp video call and takes their pics in screenshots. He also forces them to do nude video calls and in due course, he takes screen shots, stores them in his phone and later, threatens them that he would post them in social media if they do not participate in sexual intercourse with him and also extort money from them.

9. In the first crime, i.e., Crime No.762/2020, it is alleged that the detenu came into close contact with the complainant therein, who is a married women. She was working as a lecturer in the same college where the detenu was working as dance master. The detenu developed friendship with her and started calling her through whatsapp video calls. With his glib talks, the detenu induced her to make nude whatsapp calls. One day, while the detenu and the complainant were in nude whatsapp call, the detenu captured screenshots of the complainant without her knowledge and stored them in his mobile phone. Later, he showed the said screenshots to the complainant and asked her to meet him once. Before lockdown, he even went to the house of the complainant and participated in sexual intercourse with her in the absence of her husband, by promising to delete the screenshots from his mobile

phone. In September, 2020, he again sent the same screenshots to the complainant. When the complainant questioned him as to why he did not delete the screenshots as promised, he replied that those screenshots were restored and that he lost his mobile phone and the person who found his mobile phone is demanding Rs.3 lakhs for not posting those screenshots in social media and asked her to arrange money. Believing the detenu, the complainant transferred Rs.10,000/- through Phonepe to his account. When the complainant suggested the detenu to lodge a complaint with the police, the detenu stated that if they go to police station, their image would be tarnished. After realizing that the detenu is wantonly extorting money from her, she narrated the whole episode to her husband and lodged a complaint with the police concerned.

10. In the second crime, i.e., Crime No.228/2020, the complainant is a graduate, aged 21 years. She stated in the subject complaint that she completed her B.Tech., in the year 2020. When she was studying B.Tech., first year, she came into contact with the detenu in the college and started a friendly relationship at the beginning. Later, the detenu collected her nude pictures and started harassing and blackmailing her to love him for three years. When she rejected his proposal, he intensified his torture and threatened her that he would post her nude pictures in social media if she does not love him.

11. In the third crime, i.e., Crime No.913/2020, the complainant stated that she is 22 years old and she is batchmate of the detenu. The detenu failed in academics and was removed from the college.

For the past three months, the detenu started harassing her by sending messages through his mobile phone and forcing her to send her pictures and also acting as he likes her.

12. The alleged shameful and inhuman activities of the detenu would certainly traumatize the victims, their family members and women, and would certainly cause a feeling of insecurity to their modesty. The aforementioned horrendous acts of the detenu shows his extreme perversity and proclivity, which would create a feeling of extreme fear and anxiety among the victim women and the people in the locality concerned and such activities, affecting the society at large, are certainly prejudicial to the maintenance of public order. Further, the material placed on record reveals that the detenu was released on bail in all the three cases relied upon by the detenu. Under these circumstances, the contention of the respondents that there is imminent possibility of the detenu committing similar offences which would be detrimental to public order unless he is prevented from doing so by an appropriate of detention order, cannot be brushed aside.

13. Here, it is apt to state that a women or a girl, in the tradition bound society of India, would be extremely reluctant to lodge a report with the police with regard to an incident, which is likely to reflect on her chastity. She would be conscious of the danger of being hated or being looked down by the society, including her own family members, relatives, friends and neighbors. She would face the risk of losing the love and respect of her own husband and her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure

an alliance with a suitable match from a respectable family. In view of these factors, the victims of sexual abuse and their relatives are not too keen to bring the culprit/s to book. Sexual violence against women, apart from being a dehumanizing act, is an unlawful intrusion into the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and leaves behind a traumatic experience. The Courts are, therefore, expected to deal with cases of sexual abuse against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. Sexual abuse not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm. A murderer destroys the physical body of the victim, but a sexual assaulter degrades the very soul of a helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of sexual abuse. Sexual abuse against women needs to be dealt with sternly and severely. To show mercy in such heinous crimes would be a travesty of justice and the plea for leniency would be wholly misplaced.

14. Further, 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 future similar offences, which are detrimental to the public interest, disturbing the even tempo of life and causing damage to peace and tranquility in the society. 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.

15. In the case of **Madhu Limaye Vs. Sub-Divisional Magistrate**¹. 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."

16. In the case of **Commissioner of Police & Others Vs. C.Anita (Smt.)**², 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

¹ (1970) 3 SCC 746

² (2004) 7 SCC 467

maintenance of the public order. If a contravention in its 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."

17. As per the clause (v) of Section 2 of the P.D.Act, a "*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 (Central Act 32 of 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;

18. In the instant case, having regard to the *modus operandi* of the detenu and the three crimes registered against him in quick succession, the respondent No.2, in our considered view, has rightly held that detenu is a 'sexual offender' under clause (v) of Section 2 of Act 1 of 1986, and recorded his satisfaction that the activities of the detenu are prejudicial to the maintenance of public order, and that ordinary law may not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities. The material relied upon and circumstances show that the subjective satisfaction of the detaining authority is not tainted or illegal on any account. 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.

19. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

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

A. RAJASHEKER REDDY, J

Dr. SHAMEEM AKTHER, J

12th July, 2021
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