

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

**THE HONOURABLE SRI JUSTICE A.ABHISHEK REDDY
AND
THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY**

WRIT PETITION NO: 40841 OF 2022

Between:

Akram Chand Patel, S/o Chand yousuf Patel, Aged 35 years, occ. Self
Employed, R/o 21, Budhawar Peth, Karad, Satara, Maharashtra-411110.

...PETITIONER

AND

1. The State of Telangana, Rep.by its Principal Secretary, General Administration (Spl. Law & Order) Department, Secretariat Buildings, Hyderabad.
2. The Commissioner of Police, Rachakonda Commissionerate, Vayupuri Colony, Beside Malkajgiri Court Complex, Neredmet, Medchal-Malkajgiri District.
3. The Superintendent of Jails, Cherlapally, Medchal District.
4. The Station House Officer, Uppal Police Station, Uppal, Medchal-Malkajgiri District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to Writ Of Habeas Corpus under Article 226 of Constitution of India directing the 2nd Respondent to produce Aslam Chand Patel, S/o Chand Yousuf patel, Aged 37 years, R/o Varunji Village, Karad Thaluk, Satara District, Maharashtra State, who is now detained in 3rd Respondents prison before this Hon'ble Court and he may be released forthwith by setting aside proceedings No.150/ PD-CELL/CCRB/RCKD/2022 dated 22/09/2022 passed by the 2nd Respondent and confirmed by the advisory board vide G.O. Rt. No. 1856, dt. 29/9/2022 for being illegal, unconstitutional, arbitrary and violation of the fundamental rights guaranteed under the Constitution of India

**Counsel for the Petitioner: SRI. NAGESHWAR RAO PUJARI
Counsel for the Respondents: ADDL ADVOCATE GENERAL
The Court made the following: ORDER**

**THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY
AND
THE HON'BLE SRI JUSTICE A.SANTHOSH REDDY**

WRIT PETITION No.40841 of 2022

ORDER: {Per the Hon'ble Sri Justice A.Abhishek Reddy }

Sri Akram Chand Patel, the petitioner, has filed the present writ petition seeking a writ of Habeas Corpus, on behalf of his brother, Aslam Chand Patel, the detenu, challenging the detention order *vide* No.150/PD-CELL/CCRB/RCKD/2022, dated 22.09.2022, passed by the respondent No.2-Commissioner of Police-cum-Additional District Magistrate, Rachakonda Commissionerate, whereby, the detenu was detained under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, 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 (in short, 'the PD Act'), and the consequential approval order *vide* G.O.Rt.No.1856, General Administration (Spl. (Law & Order)) Department, dated

29.09.2022, passed by the Secretary to Government (FAC), Government of Telangana.

2. Heard Sri Nageshwar Rao Pujari, the learned counsel for the petitioner, Sri Mujib Kumar, the learned Special Government Pleader representing the learned Additional Advocate General appearing for the respondents and perused the record.

3. The case of the petitioner is that based on a recent solitary crime registered against the detenu viz., Crime No.693 of 2022 of Uppal Police Station, registered for the offences under Sections 376 (2), 420, 467, 468, 471, 370, 370 (A), 366 (A), 366 (B), 109, 114 r/w 149 I.P.C, Sections 5, 6 and 17 of Protection of Children from Sexual Offences Act, 2012, (for short, 'POCSO Act') and Sections 3, 4, 5 and 6 of Immoral Traffic (Prevention) Act, 1956 (for short 'PITA'), the respondent No.2 has passed the impugned detention order, dated 22.09.2022. According to the respondent No.2, the detenu is an 'Immoral Traffic Offender' and he along with his associates has been indulging in human trafficking, procuring girls from Bangladesh under the guise of providing livelihood, exploiting and forcibly dragging them into prostitution business and thereby living on the earnings of prostitution. Thus, the detenu has been engaging himself in

unlawful acts and indulging in the acts of organizing prostitution clandestinely by acting as a leader/member of criminal gang to make quick money in short period and living on the earnings of prostitution and thereby his activities are prejudicial to the maintenance of public order and health as well in the society. Subsequently, the impugned detention order was approved by the Government *vide* G.O.Rt.No.1856, dated 29.09.2022.

4. Learned counsel for the petitioner would submit that the impugned detention order has been passed in a mechanical manner and without application of mind. The detaining authority relied on the solitary case for preventively detaining the detenu. Admittedly, in the solitary case relied upon by the detaining authority, the two bail applications filed by the detenu were dismissed and the third bail application is pending. Thus, the detenu continues to be in judicial custody as on the date of passing of the impugned detention order. Despite the same, the detention order was passed against the detenu on the apprehension that there is every possibility of the detenu getting bail and releasing from jail and on such release, there is imminent possibility of his indulging in similar prejudicial activities again, which is unjustified. Further, the alleged crime

does not add up to "disturbing the public order" and it is confined within the ambit and scope of the word "law and order". Since the offences alleged are under the Indian Penal Code, POCSO Act and PITA, the detenu can certainly be tried and convicted under the Penal Code and the said special laws. Thus, there was no need for the detaining authority to invoke the draconian preventive detention law against the detenu. Hence, the impugned orders tantamount to the colourable exercise of power. The impugned orders are legally unsustainable and ultimately prayed to set aside the same and allow the writ petition as prayed for.

5. On the other hand, the learned Special Government Pleader has supported the impugned orders and submitted that the detenu is an "Immoral Traffic Offender" and he along with his associates has been indulging in human trafficking for the sake of prostitution and running organized prostitution business with girls/women to make quick money in short period and living on the earnings of prostitution and thereby acting in a manner prejudicial to the maintenance of public order. Since the detenu is making persistent attempts to come out of the jail by moving bail petitions one after the other, the apprehension of the detaining authority that there is every

possibility of the detenu getting bail and on releasing from jail, there is imminent possibility of his indulging in similar prejudicial activities again is not misconceived. The criminal activities of the detenu not only endanger the family system but also create social unrest causing widespread health hazards to the general public. Therefore, the detaining authority and the Government are legally justified in passing the impugned orders. All the mandatory requirements were strictly followed by the detaining authority while passing the impugned detention order. The impugned orders are legally sustainable and ultimately, prayed to dismiss the Writ Petition.

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

“Whether the impugned detention order vide No.150/PD-CELL/CCRB/RCKD/2022, dated 22.09.2022, passed by the respondent No.2, and the consequential approval order vide G.O.Rt.No.1856, General Administration (Spl. (Law & Order)) Department, dated 29.09.2022, passed by the Secretary to Government, General Administration (Spl. (Law & Order)) Department, Government of Telangana are liable to be set aside?”

POINT:

7. In catena of cases, the Hon’ble Supreme Court had clearly opined 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 draconian preventive detention laws against an individual. Hence, according to the Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

8: In **Ram Manohar Lohia v. State of Bihar**¹, the Hon'ble Supreme Court has, in fact, deprecated the invoking of the preventive law in order to tackle a law and order problem. It was observed that every breach of public peace and every violation of law may create a 'law and order' problem, but does not necessarily create a problem of 'public order'. The distinction has to be borne in mind in view of what has been stated in the grounds of detention.

9. In **Kanu Biswas v. State of West Bengal**², the Hon'ble Supreme Court, while discussing the meaning of word 'public order', held that the question whether a man has only

¹ AIR 1966 SC 740

² (1972) 3 SCC 831

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 extent of the reach of the act upon the Society.

10. In the present case, the detaining authority, based on the solitary crime indicated above, has passed the impugned detention order. We shall present it in a tabular form 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
Cr.No.693/ 2022 of Uppal PS	Prior to 11.07.2022	11.07.2022	Sections 376 (2), 420, 467, 468, 471, 370, 370 (A), 366 (A), 366 (B), 109, 114 r/w 149 I.P.C, Sections 5, 6 and 17 of POCSO Act and Sections 3, 4, 5 and 6 of PITA	Sections 376 (2), 420, 467, 468, 471, 370, 370 (A), 366 (A), 366 (B), 109, 114 and Section 5, 6 and 17 of POCSO Act: Cognizable/ Non-bailable Sections 3, 4 5 and 6 of PITA: Cognizable

11. As seen from the material placed on record, the solitary crime relied upon by the detaining authority for preventively detaining the detenu relates to immoral trafficking. In the solitary crime relied on by the detaining authority, the two bail

applications filed by the detenu were dismissed and the third bail application is pending. Thus, the detenu continues to be in judicial custody as on the date of passing of the impugned detention order. Therefore, the apprehension of the detaining authority that there is every possibility of the detenu getting bail and releasing from jail after producing sureties and on such release, there is imminent possibility of his indulging in similar prejudicial activities again is highly misplaced. It is the bounden duty of the Police to inform the learned Public Prosecutor about the conduct of the detenu and to hand over the entire case record available against him. The police are supposed to be vigilant in collecting the whole data against the detenu and furnish the same to the Public Prosecutor/Additional Public Prosecutor to defeat the bail application of the *detenu*. Moreover, criminal law was already set into motion against the detenu. Since the detenu has committed offences punishable under the Indian Penal Code, POCSO and PITA, the said crime can be effectively dealt with under the provisions of the Penal Code and the special laws and there was no need for the detaining authority to invoke draconian preventive detention law against him.

12. For the foregoing reasons, the impugned orders are legally unsustainable and are liable to be set aside.

13. In the result, the Writ Petition is allowed. The impugned detention order *vide* No.150/PD-CELL/CCRB/RCKD/2022, dated 22.09.2022, passed by the respondent No.2, and the consequential approval order *vide* G.O.Rt.No.1856, dated 29.09.2022, are hereby set aside. The respondents are directed to set the detenu, namely, Aslam Chand Patel S/o. Chand Yousuf Patel, at liberty forthwith, in case he is no longer required in any other criminal case.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

SD/-A.V.S.PRASAD
ASSISTANT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The Principal Secretary, General Administration (Spl. Law & Order) Department, Secretariat Buildings State of Telangana, Hyderabad.
2. The Commissioner of Police, Rachakonda Commissionerate, Vayupuri Colony, Beside Malkajgiri Court Complex, Neredmet, Medchal-Malkajgiri District.
3. The Superintendent of Jails, Cherlapally, Medchal District.
4. The Station House Officer, Uppal Police Station, Uppal, Medchal-Malkajgiri District.
5. Two CCs to ADDL ADVOCATE GENERAL, High Court for the State of Telangana, at Hyderabad [OUT]
6. One CC to SRI. NAGESHWAR RAO PUJAR, I Advocate [OPUC]
7. Two CD copies

B M

SW

BSK

HIGH COURT

DATED:22/12/2022

ORDER

WP.No.40841 of 2022



ALLOWING THE WRIT PETITION
WITHOUT COSTS

10 copies
BSK
14/10/23