

CASE COMMENT

AMEENA BEGUM V. THE STATE OF TELANGANA & ORS. (2023)

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CITATION: SCC On Line SC 1106

BENCH: Hon'ble Justice Surya Kant and Hon'ble Justice Dipankar Datta

JUDGEMENT: 4th September 2023

ABSTRACT

Article 22 of the Indian Constitution provides certain safeguards regarding arrests and detentions. It aims to protect the rights and liberties of individuals who are arrested or detained by the authorities. It doesn't prohibit the arrest and detention but only safeguard against illegal and arbitrary arrest and detention.

And for this purpose, on 26th February 1950, the prevention of Detention Act, 1950 came into force. Its primary objective was not to punish an individual but to prevent them from committing any future offence. It's not a punitive offence but a preventive one but over the time it was misused.

Over the period of time many judgements including the landmarks one was pronounced by the apex court of India and the case **Ameena Begum v. State of Telangana** was one of them, which was pronounced by the supreme court on September 4, 2023. The apex court while dealing with the issue of the case also highlights the purpose, the requisites and the scope of judicial reviewability of preventive detention order, further caution the government for misusing the power under preventive detention law.

Keywords: Preventive Detention Act 1950, Article 22 of Constitution of India, Judicial review

BACKGROUND OF THE CASE

This case came Under as an appeal from the judgment and order of a Division Bench of the High Court of Telangana in which a writ petition was instituted by the appellant for the release of the appellant form

detention and quashing of the detention order which was dismissed by the High court and the order for the detention of the appellant's husband ("Detenu", hereafter), was upheld.

The Commissioner of Police of Hyderabad City ("Commissioner", hereafter) passed the Detention Order against the Detenu. Detenu earlier also suffered an order of detention but however release later on bail, however even after such release, the Detenu did not stop from involving and committing crime.

The Commissioner, with a view that "the ordinary law under which he was booked is not sufficient to deal with the illegal activities of such an offender who has no regard for the society. Hence, to prevent the Detenu from acting in a manner prejudicial to maintenance of public order he need to be detained under the detention law".

The appellant submitted a representation before the advisory board for the revocation of the Detention Order. The Advisory board opined that "there is sufficient cause for the detention of the detenu ...", thereafter the Government issued an order confirming the Detention Order and directing that the detention to be extend up to 12 months, and the appellant representation was rejected.

Aggrieved by the order of extension of detention, the appellant invoked the writ jurisdiction before the High Court which was dismissed after hearing both the parties at length.

ISSUES

Whether the Detention Order is legal or not?

The issues with the Detention Order which were dealt as following:

1. whether the act committed by the Detenu comes under the purview prejudicial to 'public order'.
2. whether all relevant circumstances were considered or whether there is any extraneous consideration while issuing detention order.
3. whether there is application of mind in extending and confirming detention order up to 12 months.

JUDGEMENT

Supreme court while giving his judgment answers some of important topic related to concerned issue after hearing both the parties at length.

The purpose of preventive detention order.

While dealing with the purpose of preventive detention, the supreme court quoted the words of this court in **Haradhan Saha vs. State of West Bengal**¹ which was as "...the purpose of preventive detention is to prevent the greater evil of elements imperiling the security and safety of a State, and the welfare of the nation. Preventive detention, though a draconian and dreaded measure, is permitted by the Constitution itself but subject to the safeguards that are part of the relevant article and those carved out by the Constitutional Courts through judicial decisions of high authority which have stood the test of time..."

Court said the executive authority can take the recourse of preventive detention law when it appears to be prejudicial in public interest. It may be taken on ground of suspicion and precaution but it must be on the line of validly enacted law.

The judicial reviewability of Preventive detention order.

While dealing with this point court highlighted the paragraph 9 in the case of **Khudiram Das vs. The State of West Bengal**² which was as "But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny...."

Court had also thrown the light in the paragraph 16 of the case **Icchu Devi Choraria vs. Union of India**³, which was as "... 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".

¹ Haradhan Saha vs. State of West Bengal AIR 1974 SC 2154

² Khudiram Das vs. The State of West Bengal AIR (1975) 2 SCC 81

³ Icchu Devi Choraria vs. Union of India (1980) 4 SCC 531

The requisites of a valid Preventive detention order

Supreme court had laid down the following guidelines for constitutional courts to consider when deciding on the legality of preventive detention orders: -

- (i) the detention order must be based on the requisite satisfaction by detaining authorities.
- (ii) the detaining authority had to keep in mind all relevant circumstances and it must not base on extraneous consideration to the scope and purpose of the statute.
- (iii) If the detention order is issue for an improper purpose, or not authorized by the statute, the same be held to be ultra vires.
- (iv) The detaining authority must act independently or under the governing authority of another body.
- (v) the detaining authority, has to applying its mind to the facts of each individual case.
- (vi) The satisfaction of the detaining authority must be based on rationally probative value.
- (vii) There must be an existence of a live and proximate link between the past conduct of a person and the imperative need for detaining.
- (viii) The requisite satisfaction must be reached by taking in account some degree of rationality and prudence which are relevant to the subject-matter of the inquiry.
- (ix) The grounds of preventive detention must be precise, pertinent, relevant and not be vague; informing the detenu the grounds of detention and an opportunity for representation.
- (x) The period of detention must be in connotation as prescribed in statute.

ANALYSIS

While addressing the first issue, the court held that the existing legal framework was sufficient in order to address the offences which were in consideration and there is no need to pass such detention order against detenu.

Court here also again emphasized on difference between “law and order” and “public order”. The court pointed out various catena of judgements related to difference between “law and order” and “public order” passed by the supreme court including the judgement of **Ram Manohar Lohia vs. State of Bihar**⁴ which the court highlighted the words in paragraph 54 as “Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder...”.

⁴ Ram Manohar Lohia vs. State of Bihar (1966) 1 SCR 709

Court also emphasized on words of the **Ram Manohar Lohia (supra)** in paragraph 55 which was as “...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.”

While dealing with second issue court held that commissioner exceeded his jurisdiction and passed an order of detention which cannot be said to be a valid one. Court also held that there was no proper and direct link with the immediate need to order detention and there were also extraneous considerations while passing detention order.

While referring the judgment of **Khudiram Das (supra)** court emphasized on the words which was as “Merely because the detenu was charged for multiple offences, it could not be said that he was in the habit of committing such offences. Further, habituality of committing offences cannot, in isolation, be taken as a basis of any detention order; rather it has to be tested on the metrics of ‘public order’”.

While dealing with the incidental issue court held that period of detention may vary depending upon the facts and circumstances of each case and may not be necessary to be uniform in all cases and also it is right that government had discretion to decide upon the time period of such detention but such discretion cannot be said to be unreasonable and arbitrary, violating the fundamental rights of detenu namely article 14, 19, 21 of the constitution. Court said that government had no reasonable answer as why they extended the detention order to 12 months.

Court also emphasized the paragraph 77 of **A.K Roy v. Union of India**⁵ which was as “...The fact that a person can be detained for the maximum period of 12 months does not place upon the detaining authority the obligation to direct that he shall be detained for the maximum period...”

CONCLUSION

Supreme court while allowing the appeal, had struck down the detention order and high court judgement and order the release of detenu forthwith. The supreme court arrived to its conclusion by providing a proper justification and enlightens the hope of justice among people in judiciary that whenever there is an exercise of discretionary power by the authorities it comes under lens of judicial review.

⁵ A.K Roy v. Union of India (1982) 1 SCC 271