2022 LiveLaw (SC) 559

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
C.T. RAVIKUMAR; SUDHANSHU DHULIA, JJ.
JUNE 22, 2022
CRIMINAL APPEAL NO. 908 OF 2022 (@ SLP (CRL.) NO. 4260 OF 2022
SHAIK NAZNEEN *versus* **THE STATE OF TELANGANA & ORS.**

Constitution of India, 1950; Article 22 - Preventive Detention - the powers to be exercised under this law are exceptional powers which have been given to the government for its exercise in an exceptional situation -A law and order situation can be dealt with under the ordinary law of land. *(Para 12 & 13)*

Public Order & Law and order - Distinction - The distinction between law and order situation and a public order situation has been dealt with by the Supreme Court in a catena of decisions. ***Ram Manohar Lohia vs State of Bihar AIR 1966 SC 740 followed (Para 15)***

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; Section 3(1) - A bare reading of the aforesaid provision shows that the "maintenance of public order" has a crucial bearing here and unless the government is justified in holding that the act of the detenu is prejudicial to the maintenance of public order, the preventive detention would be bad and would be in violation of Articles 21 and 22 of the Constitution of India as it encroaches upon the liberty and freedom of an individual. *(Para 9)*

(Arising out of impugned final judgment and order dated 25-03-2022 in WP No. 35519/2021 passed by the High Court for the State of Telangana at Hyderabad)

For Petitioner(s) Mr. Rahul Gupta, AOR Mr. D. Sudershan, Adv. Mr. J. Tulsiram, Adv.

For Respondent(s) Ms. Bina Madhavan, Adv. Mr. S. Udaya Kumar Sagar, AOR Ms. Akanksha Mehra, Adv.

O R D E R

Leave granted.

1. This appeal challenges the order dated 25.03.2022 passed by the High Court of Judicature for the State of Telangana at Hyderabad by which the Habeas Corpus Writ Petition bearing No. 35519 of 2021 of the petitionerwife challenging the order of prevention of detention of her husband has been dismissed.

2. The brief facts of the case are that the prevention detention order was passed against the husband of the petitioner on 28th October, 2021 by the Commissioner of Police, Rachakonda Commissionerate on grounds that the detenu was involved in gold chain snatching offences, where victims were mostly women. He has been doing this

since the year 2020 in the States of Andhra Pradesh and Telangana. He was involved in as many as 36 gold chain snatching offences. Earlier, the detenu, along with three others, had formed a gang to commit these offences in order to make quick money. It was alleged that they had come to Hyderabad in a car bearing No. AP 39 TU 5033 and took shelter in a lodge. Their *modus operandi* was to first conduct recce of some residential areas and after selecting a suitable residential area, lift two wheelers and motor cycles which were then used in the chain snatching offences. Although according to the Authority the detenu was involved in more than 30 cases but only 4 cases of chain snatching were considered as ground for detention, as the other cases were reported to be behind the proximity period and out of the jurisdiction of Commissionerate. The four cases on which reliance has been placed are as under:

"(1) Crime No. 355 of 2021 for the offences under Sections 392, 411 read with 34 IPC of Medipally Police Station.
(2) Crime No. 358 of 2021 for the offences under Sections 392, 411 read with 34 IPC of Medipally Police Station.
(3) Crime No. 532 of 2021 for the offence under Section 392 read with 34 IPC of Medipally Police Station.
(4) Crime No. 533 of 2021 for the offences under Sections 392, 411 read with 34 IPC of Medipally Police Station."

3. In short, against the detenu the F.I.Rs primarily an offence of 'robbery' under section 392 of the Indian Penal Code. The detention order also says that the crimes were committed in broad day light and have thus resulted in creation of fear and panic in the minds of the general public, especially women and hence, the Government had to interfere in order to "maintain public order".

4. The said four cases were allegedly committed by the detenu within a span of two months between 06.05.2021 to 26.07.2021 and were committed within the jurisdiction of one police station i.e., Medipalli police station. In all these cases, the detenu had moved bail applications before the concerned Metropolitan Magistrate and was granted bail under Section 167 (2) Cr.P.C, which is commonly known as 'default bail' and the detenu was released on 16.10.2021. The detention order was later passed on 28.10.2021, which was subsequently confirmed by the Advisory Council on 13.01.2022, i.e., within the stipulated time. The detenu is under detention since 28.10.2021.

5. The Preventive Detention Law, under which the powers have been exercised is a long winded statute called the "Telangana Prevention of Dangerous Activities of Boot-Leggers, 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"(hereinafter referred to as `the Act'). Powers have been exercised under Section 3 of the Act which reads as under:

"3. (1) The Government may, if satisfied with respect to any boot-legger, dacoit, drugoffender, goonda, immoral traffic offender [Land-Grabber, Spurious Seed Offender, Insecticide Offender, Fertilizer Offender, Food Adulteration Offender, Fake Document Offender, Scheduled Commodities Offender, Forest Offender, Gaming Offender, Sexual Offender, Explosive Substances Offender,

Arms Offender, Cyber Crime Offender and White Collar or Financial Offender] that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said subsection:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the mean time, it has been approved by the Government."

6. The powers have been exercised in the present case under section 3(1) of the Act. Under the aforesaid provision, inter alia, a detention order can be passed against a "goonda". A "goonda" has been defined under Section 2 (g) of the Act, which reads as under:

"2. g) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code;

7. Since the allegation is that the detenu is involved in four cases of chain snatching i.e., robbery, which comes under offences given under Chapter XVII of the Indian Penal Code, he has been declared a habitual offender and thus a "goonda" vide the detention order dated 28.10.2021.

8. Now under section 3(1) of the Act, detention order can be passed, inter alia, against a "goonda", "with a view to prevent him from acting in any manner prejudicial to the maintenance of public order…". Due to the detenu's alleged involvement in four criminal cases relating to "robbery" he has been declared a "goonda" and it is said that this is acting in a manner which is "prejudicial to the maintenance of public order".

9. A bare reading of the aforesaid provision shows that the "maintenance of public order" has a crucial bearing here and unless the Government is justified in holding that the act of the detenu is prejudicial to the maintenance of public order, the preventive detention would be bad and would be in violation of Articles 21 and 22 of the Constitution of India as it encroaches upon the liberty and freedom of an individual.

10. The detention order was challenged by the wife of the detenu in a Habeas Corpus petition before the Division Bench of the Telangana High Court. The ground taken by the petitioner before the High Court was that reliance has been taken by the Authority of four cases of chain snatching, as already mentioned above. The admitted position is that in all these four cases the detenu has been released on bail by the Magistrate. Moreover, in any case, the nature of crime as alleged against the petitioner can at best be said to

be a law and order situation and not the public order situation, which would have justified invoking the powers under the Preventive Detention Law. This, however did not find favour with the Division Bench of the High Court, which dismissed the petition, upholding the validity of the detention order.

11. Shri Rahul Gupta, learned counsel for the Petitioner before this Court has confined his arguments on two aspects. Firstly, the detenu is allegedly involved in four criminal cases where he has been granted bail, and that too has been granted as the prosecution, in all four cases, failed to file its charge sheet in time. Now they cannot resort to the law of Preventive Detention. Secondly, even assuming the allegations of the prosecution to be correct, then too it only reflects a "law and order" problem and not a "public order" problem as mentioned under the Act.

12. There is absolutely no doubt in our mind that the facts and circumstances of the case as alleged in the detention order dated 28.10.2021 though does reflect a law and order situation which can be dealt with under the ordinary law of land, and there was absolutely no occasion for invoking the extraordinary powers under the law of Preventive Detention. The reasons assigned by the authority in its detention, justifying the invocation of the provisions of the detention law are that the detenu has been granted bail in all the four cases and since he is likely to indulge in similar crime, hence the order of preventive detention.

13. The reason why bail was granted in all four cases, however, has not been given. Bail was granted in all the four cases due to the inability of the prosecution, which did not complete its investigation in time. The bail had to be given as the charge sheet was not filed by the police in all the cases within the stipulated period of 60 days. The fault thus lies with the prosecution.

14. The other reason assigned is that the Trial Court while granting bail did not lay down any conditions. This is again a wrong presentation of the case. Conditions were not imposed simply as it was a default bail, and in bail of this nature conditions are not liable to be imposed.

15. Having heard the learned counsel for the petitioner and learned counsel for the State of Telangana, we are of the considered view that in the present case invocation of the Preventive Detention Law against the petitioner was not justified. The powers to be exercised under the Preventive Detention Law are exceptional powers which have been given to the Government for its exercise in an exceptional situation as it strikes hard on the freedom and liberty of an individual, and thus cannot be exercised in a routine manner. The distinction between law and order situation and a public order situation has been dealt with by the Supreme Court in a catena of decisions. In the case of Ram Manohar Lohia Vs. State of Bihar, it has been held as under:

51. "We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? 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 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 if 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.

52 .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. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

16. In two recent decisions[1], this Court had set aside the detention orders which were passed, under the same Act, i.e., the present Telangana Act, primarily relying upon the decision in Dr. Ram Manohar Lohia case (supra) and holding that the detention orders were not justified as it was dealing with a law and order situation and not a public order situation.

17. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case.

18. In fact, in a recent decision of this Court, the Court had to make an observation regarding the routine and unjustified use of the Preventive Detention Law in the State of Telangana. This has been done in the case of **Mallada K. Sri Ram Vs. The State of Telangana & Ors. 2022 6 SCALE 50**, it was stated as under :

"17.It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public orderand relying on stale materials while passing the orders of detention. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards."

[1] **1 Banka Sneha Sheela Vs. State of Telangana (Crl.A.No.733/202; Mallada K. Sri Ram Vs. State of Telangana (Crl.A. No. 561/2021)**

19. In view of the above, the appeal stands allowed. The order of detention dated 28.10.2021 and order dated 25.03.2022 of the Division Bench of the High Court of Telangana are set aside. The detenu shall be released forthwith, in case he is not required in any other case.

CRIMINAL APPEAL NO. 909 OF 2022 (@ SLP (CRL.) NO. 4283 OF 2022
SYED SABEENA *versus* **THE STATE OF TELANGANA & ORS.**

O R D E R

Leave granted.

1. This appeal challenges the order dated 25.03.2022 passed by the High Court of Judicature for the State of Telangana at Hyderabad by which the Habeas Corpus Writ Petition bearing No. 35523 of 2021 of the petitionerwife challenging the order of prevention of detention of her husband has been dismissed.

2. The brief facts of the case are that the prevention detention order was passed against the husband of the petitioner on 28th October, 2021 by the Commissioner of Police, Rachakonda Commissionerate on grounds that the detenu was involved in gold chain snatching offences, where victims were mostly women. He has been doing this since the year 2020 in the States of Andhra Pradesh and Telangana. He was involved in as many as 36 gold chain snatching offences. Earlier, the detenu, along with three others, had formed a gang to commit these offences in order to make quick money. It was alleged that they had come to Hyderabad in a car bearing No. AP 39 TU 5033 and took shelter in a lodge. Their *modus operandi* was to first conduct recce of some residential areas and after selecting a suitable residential area, lift two wheelers and motor cycles which were then used in the chain snatching offences. Although according to the Authority the detenu was involved in more than 30 cases but only 4 cases of chain snatching were considered as ground for detention, as the other cases were reported to be behind the proximity period and out of the jurisdiction of Commissionerate. The four cases on which reliance has been placed are as under:

"**(1)** Crime No. 355 of 2021 for the offences under Sections 392, 411 read with 34 IPC of Medipally Police Station.
(2) Crime No. 358 of 2021 for the offences under Sections 392, 411 read with 34 IPC of Medipally Police Station.
(3) Crime No. 532 of 2021 for the offence under Section 392 read with 34 IPC of Medipally Police Station.
(4) Crime No. 533 of 2021 for the offences under Sections 392, 411 read with 34 IPC of Medipally Police Station."

3. In short, against the detenu the F.I.Rs primarily an offence of 'robbery' under section 392 of the Indian Penal Code. The detention order also says that the crimes were committed in broad day light and have thus resulted in creation of fear and panic in the minds of the general public, especially women and hence, the Government had to interfere in order to "maintain public order".

4. The said four cases were allegedly committed by the detenu within a span of two months between 06.05.2021 to 26.07.2021 and were committed within the jurisdiction of one police station i.e., Medipalli police station. In all these cases, the detenu had moved

bail applications before the concerned Metropolitan Magistrate and was granted bail under Section 167 (2) Cr.P.C, which is commonly known as 'default bail' and the detenu was released on 16.10.2021. The detention order was later passed on 28.10.2021, which was subsequently confirmed by the Advisory Council on 12.01.2022, i.e., within the stipulated time. The detenu is under detention since 28.10.2021.

5. The Preventive Detention Law, under which the powers have been exercised is a long winded statute called the "Telangana Prevention of Dangerous Activities of Boot-Leggers, 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"(hereinafter referred to as `the Act'). Powers have been exercised under Section 3 of the Act which reads as under:

"3. (1) The Government may, if satisfied with respect to any boot-legger, dacoit, drugoffender, goonda, immoral traffic offender [Land-Grabber, Spurious Seed Offender, Insecticide Offender, Fertilizer Offender, Food Adulteration Offender, Fake Document Offender, Scheduled Commodities Offender, Forest Offender, Gaming Offender, Sexual Offender, Explosive Substances Offender, Arms Offender, Cyber Crime Offender and White Collar or Financial Offender] that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said subsection:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in subsection (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the mean time, it has been approved by the Government."

6. The powers have been exercised in the present case under section 3(1) of the Act. Under the aforesaid provision, inter alia, a detention order can be passed against a "goonda". A "goonda" has been defined under Section 2 (g) of the Act, which reads as under:

"2. g) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code;

7. Since the allegation is that the detenu is involved in four cases of chain snatching i.e., robbery, which comes under offences given under Chapter XVII of the Indian Penal

Code, he has been declared a habitual offender and thus a “goonda” vide the detention order dated 28.10.2021.

8. Now under section 3(1) of the Act, detention order can be passed, inter alia, against a “goonda”, “with a view to prevent him from acting in any manner prejudicial to the maintenance of public order…”. Due to the detenu’s alleged involvement in four criminal cases relating to “robbery” he has been declared a “goonda” and it is said that this is acting in a manner which is “prejudicial to the maintenance of public order”.

9. A bare reading of the aforesaid provision shows that the “maintenance of public order” has a crucial bearing here and unless the Government is justified in holding that the act of the detenu is prejudicial to the maintenance of public order, the preventive detention would be bad and would be in violation of Articles 21 and 22 of the Constitution of India as it encroaches upon the liberty and freedom of an individual.

10. The detention order was challenged by the wife of the detenu in a Habeas Corpus petition before the Division Bench of the Telangana High Court. The ground taken by the petitioner before the High Court was that reliance has been taken by the Authority of four cases of chain snatching, as already mentioned above. The admitted position is that in all these four cases the detenu has been released on bail by the Magistrate. Moreover, in any case, the nature of crime as alleged against the petitioner can at best be said to be a law and order situation and not the public order situation, which would have justified invoking the powers under the Preventive Detention Law. This, however did not find favour with the Division Bench of the High Court, which dismissed the petition, upholding the validity of the detention order.

11. Shri Rahul Gupta, learned counsel for the Petitioner before this Court has confined his arguments on two aspects. Firstly, the detenu is allegedly involved in four criminal cases where he has been granted bail, and that too has been granted as the prosecution, in all four cases, failed to file its charge sheet in time. Now they cannot resort to the law of Preventive Detention. Secondly, even assuming the allegations of the prosecution to be correct, then too it only reflects a “law and order” problem and not a “public order” problem as mentioned under the Act.

12. There is absolutely no doubt in our mind that the facts and the circumstances of the case, as alleged in the detention order dated 28.10.2021 though does reflect a law and order situation which can be dealt with under the ordinary law of land, and there was absolutely no occasion for invoking the extraordinary powers under the law of Preventive Detention. The reasons assigned by the authority in its detention, justifying the invocation of the provisions of the detention law are that the detenu has been granted bail in all the four cases and since he is likely to indulge in similar crime, hence the order of preventive detention.

13. The reason why bail was granted in all four cases, however, has not been given. Bail was granted in all the four cases due to the inability of the prosecution, which did not complete its investigation in time. The bail had to be given as the charge sheet was not filed by the police in all the cases within the stipulated period of 60 days. The fault thus lies with the prosecution.

14. The other reason assigned is that the Trial Court while granting bail did not lay down any conditions. This is again a wrong presentation of the case. Conditions were not imposed simply as it was a default bail, and in bail of this nature conditions are not liable to be imposed.

15. Having heard the learned counsel for the petitioner and learned counsel for the State of Telangana, we are of the considered view that in the present case invocation of the Preventive Detention Law against the petitioner was not justified. The powers to be exercised under the Preventive Detention Law are exceptional powers which have been given to the Government for its exercise in an exceptional situation as it strikes hard on the freedom and liberty of an individual, and thus cannot be exercised in a routine manner. The distinction between law and order situation and a public order situation has been dealt with by the Supreme Court in a catena of decisions. In the case of Ram Manohar Lohia Vs. State of Bihar, it has been held as under:

51. "We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? 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 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 if 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.

52 .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. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

16. In two recent decisions[2], this Court had set aside the detention orders which were passed, under the same Act, i.e., the present Telangana Act, primarily relying upon the decision in Dr. Ram Manohar Lohia case (supra) and holding that the detention orders

[2] **Banka Sneha Sheela Vs. State of Telangana (Crl.A.No.733/2021); Mallada K. Sri Ram Vs. State of Telangana (Crl.A. No. 561/2021)**

were not justified as it was dealing with a law and order situation and not a public order situation.

17. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case.

18. In fact, in a recent decision of this Court, the Court had to make an observation regarding the routine and unjustified use of the Preventive Detention Law in the State of Telangana. This has been done in the case of Mallada K. Sri Ram Vs. The State of Telangana & Ors. 2022 6 SCALE 50, it was stated as under:

"17.It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public orderand relying on stale materials while passing the orders of detention. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards."

19. In view of the above, the appeal stands allowed. The order of detention dated 28.10.2021 and order dated 25.03.2022 of the Division Bench of the High Court of Telangana are set aside. The detenu shall be released forthwith, in case he is not required in any other case.