

(2015) 12 KAR CK 0162
In the Karnataka High Court
Case No : WP(HC) 200012/2015

Basavarajayya Swamy

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 22(5)
Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders,
Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 —
Section 13, 2, 3, 3(1)

Citation : (2015) 12 KAR CK 0162

Hon'ble Judges : A.N. Venugopal Gowda and G. Narendra, JJ.

Bench : Division Bench

Advocate : Avinash A. Uploankar, Advocate, for the Appellant; R.V. Nadagouda,
Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

G. Narendra, J.—The petitioner before the Court is the detenu undergoing incarceration in the Raichur District Prison, having been detained under the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Audio-Video Pirates Act, 1985 [hereinafter referred to as "the Act" for short], vide detention Order bearing No. JIRA/MAG/GUMNIKA/25/2015-16 dated 07.07.2015 issued under Section 3 of the Act and subsequently, confirmed by the State Government vide its Order dated 20.08.2015.

2. The Detaining Authority-2nd respondent herein is of the opinion that the detenu has indulged and taken up crime as a way of life since two decades viz., he has been indulging in the notorious activity of conducting "Matka" game and he is a habitual offender and that he has organized a gang to conduct "Matka" activity, which is nothing but gambling, prohibited under the Karnataka Police Act. It is further stated that the "Matka" is gambling, whereby the public are induced by offering odds at the rate 1:80 and thereafter deceiving them. In that,

the majority of public who fall prey to this inducement are the lower and middle income group, who secretly indulged in this gambling activity, drawn by the magnitude of the odds and harbour dreams of striking it rich overnight and that the detenu has been successfully carrying on this activity and has been exploiting the public and in the process, ruining many homes leading to his antisocial activities having a direct and indirect bearing on the social order and civil society and after having gone through the report and the documents and having independently examined them, he has arrived at a conclusion that the activities of the detenu are prejudicial to the maintenance of the public order and hence he has invoked the powers vested in him under Section 3(1) of the Act. He has deemed it necessary to invoke powers vested in him under sub-Section (1) of Section 3 of the Act as he has formed an opinion that the detenu is a gambler as defined under Clause (f) of Section 2 of the Act and issued the Detention Order on 07.07.2015.

3. The petitioner has assailed the detention and the subsequent order of confirmation by the State Government, confirming the detention, on several grounds. Firstly, it is contended that the impugned order of detention is at the instance of the respondent-police without following due process of law. That the respondent-police have been threatening him with dire consequences as he had made a complaint against certain officials and in response to the complaint, they got issued the Detention Order. It is admitted that the Detention Order was served on 07.07.2015 itself and the grounds of detention have also been served. The English version of the Order of Detention and grounds of detention have also been furnished to the detenu and that the Government by its impugned Order dated 20.08.2015 has passed the Detention Order for the maximum period of 12 months in one go and the same is illegal. That the impugned action is arbitrary and violative of Articles 14 , 21 and 22(5) of the Constitution of India. That the 1st respondent [State Government] who received the report forwarded by the 3rd respondent [Sponsoring Authority] has not applied its mind and the Detention Order does not reflect application of mind. That the subjective satisfaction is vitiated because the words "three months" in Kannada version is not forthcoming in the translated version. In that, the order of confirmation passed for the entire period of 12 months with the clause of renewing it every three months is against the provisions of sub-Section (2) of Section 3 and Section 13 of the Act and the expression "habitual" is of a great consequence and it signifies the person to be a habitual offender who by force of habit is accustomed to commit crimes repeatedly or persistently. But, nowhere is any circumstance or material forthcoming in the grounds of detention. Hence it is reflective of non-application of mind. The Detaining Authority has lost sight of the fact that in all the pending cases, the petitioner has been released on bail and there is no complaint of violation of any conditions nor an application for cancellation of bail is made.

4. Though several grounds have been urged in the petition, the petitioner's counsel while addressing his argument before this Court has restricted his

contentions to viz., (1) non-application of mind, (2) the right to representation is not made known, (3) the subjective satisfaction of the Detaining Authority is not forthcoming, (4) the Detention Order must be confirmed within 12 days and (5) the Detaining Authority must state in the Detention Order that the representation can be made to him and must be made before the passage of 12 days i.e., prior to the order of confirmation by the State Government as the Detaining Authority is vested with the right of revoking the Order of Detention and that the right of representation to the Detaining Authority is not made out.

5. The State/respondents have filed a detailed statement of objections sworn to by the 2nd respondent. The Additional Advocate General vehemently countered the submission and supported the correctness and the legality of the Detention Order.

6. The petitioner's counsel contends that the impugned Order of Detention suffers from the vice of non-application of mind and hence it vitiates the continued detention of the detenu. He would elaborate stating that the Order of Detention reveals that the Detaining Authority has passed the Order of Detention on the same day of receipt of the report from the Sponsoring Authority. He would state that it is humanly impossible for any person to peruse the voluminous records and pass the Order of Detention on the same day.

7. A perusal of the petition would show that only a truncated version of grounds of detention is annexed to the petition i.e., only the grounds of detention and the annexure to the grounds of detention has not been placed before the Court. To better appreciate this contention, this court has summoned the report of the Sponsoring Authority, which consists of about 260 and odd pages and after a perusal of the contents of the report, which has been summoned by us, we are of the opinion that the contention is not well founded. The compilation consists of a report by the 3rd respondent, detailing various cases in which the petitioner is involved, that is the prejudicial activities in which he continues to involve himself and which necessitates the Sponsoring Authority calling for his preventive detention. This Court has indulged in the exercise only in order to ascertain the veracity of the contention. Apart from placing on record the Order of Detention and the grounds of detention alone and their translated version, the petitioner has not deemed it fit to place before the Court the relied upon material and hence we conclude that the petitioner's contention of non-application of mind is without basis.

8. The next contention is that subjective satisfaction, is not forth-coming from the reading of the Order of Detention and from the grounds of detention. As a case in point, he would state that the mere fact that the Detaining Authority has failed to take into account the acquittals and also of the fact that the punishment prescribed is only a fine are sufficient to demonstrate the lack or absence of subjective satisfaction.

9. Per contra, learned Additional Advocate General would submit that the

Detaining Authority is not only alive to this fact, but has considered them in detail, which would take us to the grounds of detention and it is obvious that the Detaining Authority was not only alive to the number of cases that has been registered, but also the result of each cases and the status of each cases as on date. That apart, he has specifically held that the conviction and the levy of penalty in one case and filing of innumerable cases have not acted as a deterrent to the detenu. Apart from the cases, the Detaining Authority has also elaborated on various reasons and grounds, which has convinced him to pass the Detention Order. The Detaining Authority is also alive to the fact that the rowdy sheet was opened against him as way back as 1992 and MOB Card has also been opened against him in the year 2007. He has also reasoned that despite the externment proceedings initiated against him in 2014, the detenu and his associates have continued with the prejudicial activities. He is alive to the fact that cases are being registered against the detenu on a regular basis since 2002. The Detaining Authority would also refer to the fact of amassing of the wealth and he has opined that the wealth has been amassed out of the income solely generated from these illegal activities. He is also aware that the detenu has educated himself only in Kannada Medium and has not pursued any Degree Course and that he was eking out his livelihood by engaging in minor labour works and thereafter the wealth has been amassed by deceiving the public by inducing them to participate in the prohibited activity of "Matka". The Detaining Authority is also alive to the fact of various vehicles used by the detenu for facilitating his prejudicial activities. He is alive to the fact of the flourishing political career of the detenu's brother and he is being funded by the funds obtained out of the "Matka" activities. To concise, it would be relevant to quote the following:

"In spite of the conviction, in the form of fine amount, in one of the cases registered against you, it has been found that you along with your associates have been continuously engaged in "Matka" activities, as per the records available with the police. No complaint has been lodged against you and your associates by any of the public fearing your anti-social activities. Further, the witnesses in the cases registered against you have not supported the prosecution in the court being afraid of your Goonda activity and as a result the cases have ended in acquittal."

10. The above extract clearly demonstrates the fact that the Detaining Authority has considered all the material and hence has arrived at a conclusion that the detenu is a compulsive violator of law and that the normal process of law is insufficient to act as a deterrent or to restrain the detenu from refraining himself from the prejudicial activity. Further the quote fortifies the finding of the Court that the plea of absence of subjective satisfaction is fallacious. "Therefore, there is no doubt that you will create problem for public peace and order if you are let free in the eyes of law. As the existing ordinary laws have not been able to curtail your anti-social activities, it is felt necessary to detain you under the Goonda Act in order to prevent you from indulging in the aforesaid activities and to re-establish public peace and order".

11. Thus it is apparent that the Detaining Authority has convinced itself of the detenu's propensity to continue indulging in the prejudicial activities and that the existing ordinary laws are not capable of curtailing his antisocial activities. Hence, we are of the opinion that the contention regarding absence of subjective satisfaction has to fail and is accordingly rejected.

12. In support of the above contention, the petitioner has relied upon the Judgment of the Hon''ble Apex Court, reported in Vijay Kumar Vs. Union of India (UOI) and Others, . In the said case, the Hon''ble Apex Court was pleased to hold that the Order of detention is vitiated as the Detaining Authority has not disclosed in the ground of detention, the compelling reasons for passing the order of detention, even though the detenu was already in prison in another case and hence, the Hon''ble Apex Court concluded that the non-consideration of this material fact demonstrates non-application of mind and consequently vitiates the impugned order. The facts of the case are at variance with the facts on hand. The distinguishing fact in the case on hand is that the detenu was freely roaming in the society and carrying on his activities without any hindrance and the Detaining Authority has clearly narrated that neither opening of the rowdy sheet in 1992 or M.O.B. Card in 2007 or initiation of externment proceedings in 2014 or the registration of 19 cases acted as a deterrent. In fact, he has clearly stated that ordinary laws are not sufficient to prevent the detenu from indulging in the prejudicial activities in the immediate future nor were they capable of curtailing his propensity to continue in indulging in the prejudicial activities, which has seriously affected the public peace and order and has a deleterious effect on the induced public.

13. The next contention is that the Detaining Authority has not made known to the detenu of his right to make representation to the Detaining Authority himself. In this regard, the petitioner's counsel would draw our attention to the multiple pronouncements by this Court reported in Smt. Anitha Vs. Commissioner of Police, By B.G. Jyothiprakash Mirji, State of Karnataka and Senior Superintendent, Central Prison, and another reported Judgment of this Court in Kusuma Vs. The State of Karnataka and Others . He has also relied on another unreported Judgment of this Court in Writ Petition [HC] No. 1/2014 disposed of on 07.07.2014. A reading of the Judgments would clearly demonstrate that this Court was inclined to quash the Order of Detention and released the detenu on the ground that the Detaining Authority has not made known to the detenu of his right to make a representation to the Detaining Authority himself, as it is also vested with the right of revoking the Order of Detention.

14. Per contra, learned Additional Advocate General take us through the Detention Order and in particular to the second paragraph of page 2 of the Order of Detention, where it has been clearly stated;

Therefore, in the event, the detenu desires to make a representation to the Detaining Authority, he may do so by forwarding his representation through the Jail Authorities and he would submit that the contention on behalf of the detenu

is baseless and deserves to be rejected.

15. The petitioner's counsel countering the same would further elaborate stating that the detenu has not been made known it is his absolute right because, he has been misled by the words "if you are desirous" and was under impression that it is not of much consequence. The communication ought to have been even more elaborately and specifically worded by stating that you have a right and you must represent to the Detaining Authority. This contention in our estimation is fallacious and is not consistent with the provisions of Article 22(5) of the Constitution. Only a duty is cast on the Detaining Authority to keep the detenu informed of his right to make a representation if he is aggrieved by the order, either to the Detaining Authority or to such other Authority, which is empowered either to revoke the detention or recommend revocation of the detention. In the present case, the detenu has admitted that he has not made any representation till date. In the considered opinion of this Court, the mandate of law as imposed by Article 22(5) of the Constitution and the law expounded by the Hon'ble Apex Court in a catena of decisions, is complied with as the detenu is made known of his right to make a representation. The right to represent is an individual choice and at the option of the detenu and no person can be compelled to represent. Hence the contention being unacceptable stands rejected.

16. The next contention is that the impugned Order of detention has been passed in violation of mandate of sub-Section (2) of Section 3 of the Act. He would draw the attention of this Court to the proviso to sub-Section (2):

"3. Power to make orders detaining certain persons.-

(1) The State Government may, if satisfied with respect to any bootlegger or drug-offender or gambler or goonda or immoral traffic offender or slum-grabber that with a view to prevent 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 persons 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 or Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner or Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the sub-section:

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 State 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 State 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 meantime, it has been approved by the State Government."

He would rely on the Judgment reported in *Cherukuri Mani Vs. The Chief Secretary, Government of Andhra Pradesh and Others*, ; wherein the Hon''ble Apex Court while interpreting the provisions of Section 3 of the Andhra Pradesh Act, has been pleased to observe as follows:

"12. A reading of the above provisions makes it clear that the State Government, District Magistrate or Commissioner of Police are the authorities, conferred with the power to pass orders of detention. The only difference is that the order of detention passed by the Government would remain in force for a period of three months in the first Instance, whereas similar orders passed by the District Magistrate or the Commissioner of Police shall remain in force for an initial period of 12 days. The continuance of detention beyond 12 days would depend upon the approval to be accorded by the Government in this regard. Sub-section (3) makes this aspect very clear. Section 13 of the Act mandates that the maximum period of detention under the Act is 12 months.

13. Proviso to Sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, exceeding three months, at a time. It means that, if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time" assumes significance in this regard."

17. He would state that this Court in several cases following the law laid-down by the Hon''ble Apex Court has been pleased to quash the Order of Detention and in this regard, he would rely upon the Judgments of this Court in WPHC No. 105/2014, disposed off on 04.08.2014 and WPHC No. 100012/2015 disposed off on 05.08.2015. He would submit that the Order of Detention is passed for a period of 12 months in one go and the same is violative of the provisions of sub-Section (2) of Section 3 of the Act and hence the Order of Detention is vitiated and it also vitiates the continued detention of the detenu.

18. Per contra, learned Additional Advocate General would draw the attention of this Court to the Order of Detention and the grounds of detention; wherein it has been stated that;

A reading of the above would clearly demonstrate that the initial Order of

Detention has been specifically made only for a period of 3 [three] months from the date of the detention. Hence, neither the said contention nor the citations relied on by the petitioner are of any avail to him. Even otherwise, learned Additional Advocate General would point out that this Court in W.P. No. 206431/2014 [GM-RES] disposed off on 19.12.2014 has after noting the interim order of stay granted by the Hon''ble Apex Court against the order passed by this Court in WPHC No. 105/2014 has been pleased to reject the said contention as the said citations are inapplicable to the case on hand for the reason that initial Order of Detention impugned Annexure-"A" has been passed only for a period of 3 months as provided and in compliance with the provisions of sub-Section (2) of Section 3 of the Act.

19. That apart, even a reading of the other Judgment rendered in WPHC No. 100012/2015 disposed off on 05.08.2015 by this Court would show that this Court has interpreted the said provision and held as follows:

"9..... It means that if the Government intends to detain an individual under the Act for the maximum period of twelve months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time assumes significance in this regard."

In the case on hand, as pointed out earlier, the Order of Detention was initially passed only for 3 months. The subsequent order of confirmation by the Government impugned at Annexure-"B" would clearly reads as follows:

i.e., the Government has stated that in compliance with the Order of the Hon''ble Apex Court, the detention is extended by 3 months subject to the condition that it would review the same after lapse of 3 months. The Judgment of this Court as reported in the case of WPHC No. 105/2014 holding that the subsequent extension of period after the initial Order of Detention cannot be for a maximum period has been stayed by the Apex Court and the Hon''ble Apex Court has granted the interim Order after being aware of the fact that the said Judgment has been passed following the Judgment in Cherukuri Mani's case. Hence, we are inclined to rely upon the order of this Court rendered in W.P. No. 206431/2014 [GM-RES] and WPHC No. 200012/2014 disposed of on 16.09.2014; wherein this Court has distinguished between the order passed at the first instance of the Detaining Authority and the order passed by exercising powers under Section 13 of the Act.

20. In view of the above discussion, we see that the records indicate that the detenu has been continuously indulging in the notorious activity of "Matka" and it has been continued over for last two decades having a deleterious effect on the public and it is also proved prejudicial and detrimental to the maintenance of the public order and rule of law. It is seen neither opening of the rowdy sheet in 1992 nor opening of the "M.O.B." card in 2007 or externment proceedings

initiated in 2014 have had any deterrent effect on the detenu. Neither initiation of 19 prosecutions nor the conviction in one had the effect of curtailing his illegal activities. In view of the facts and circumstances, we are of the considered opinion that the Detaining Authority has rightly concluded regarding the propensity of the petitioner to indulge in prejudicial activity and that they have rightly satisfied themselves that the only method of curbing the prejudicial activities by the detenu is by detaining him under the Act. We do not find any grounds, which vitiates either the initial Order of Detention or the subsequent order confirming the extension of detention by further period of three months. Various acts of the detenu attract the provisions of the Act as revealed in the grounds of detention. It demonstrates that the detenu is a habituated to crime as a way of life with scant regard to the justice system or to the various authorities. Hence, we are of the view that all procedural and statutory safeguards have been fully complied with by the Detaining Authority and the State Government and we are in agreement with the reasoning of the Detaining Authority. Accordingly, the writ petition stands dismissed.