

(2015) 04 KAR CK 0265
In the Karnataka High Court
Case No : Writ Petition (HC) No. 212 of 2014

Bhavani

APPELLANT

Vs

The Secretary, Home Department and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders,
Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 —
Section 12(1), 3(1)

Citation : (2015) 2 AKR 655 : (2016) 1 Crimes 126 : (2015) 3 KarLJ 218 :
(2015) 4 KCCR 3301

Hon'ble Judges : N.K. Patil, J;Rathnakala, J

Bench : Division Bench

Advocate : K.M. Nataraj, Senior Advocate for Vishnumurthy, for the Appellant;
H.V. Manjunatha, Additional Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—The petitioner in this petition has sought to declare the detention of Viji alias Vijendran S/o. Late Gopala alias Gopalswamy by order of detention bearing No. CRM (4)/DTN/12/2014, dated 25-8-2014 (Annexure-A) and confirmation order bearing No. HD 453 SST 2014, dated 27-9-2014 (Annexure-B) issued by respondent 2 as illegal and void ab initio and to direct the respondents 3 and 4 to release the detenu. The brief facts of the case are: petitioner is the mother of the detenu and she has questioned the correctness of the order of detention dated 25-8-2014 passed by the third respondent in exercise of the powers conferred under Section 3(1) of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1985 read with Government order dated 3-6-2014. Further it is contended that, respondent 1 by order dated 27-9-2014 has confirmed the detention order and issued an order of detention under Section 12(1) of the said Act. Further, it is the specific case of the

petitioner that, the detenu has been provided with the relied upon documents numbering 1 to 801 on which the Detaining Authority has purportedly derived subjective satisfaction and based thereupon had purportedly confirmed the order of detention. Being aggrieved by the said order of detention and the grounds of detention on which it is purported to have been confirmed, the petitioner has presented this petition.

2. We have heard learned Senior Counsel appearing for petitioner and learned Additional Government Advocate appearing for respondents 1 to 4.

3. Learned Senior Counsel appearing for the petitioner at the outset submitted that, the order of detention passed and confirmed by the Competent Authorities of the respondents are liable to be set aside on several grounds. Specifically, he has pointed out that, the detention order is vitiated for the reasons that from the relied upon documents furnished to the detenu, the documents at pages 605, 607, 610, 611, 613, 614, 616, 617, 619 and 620 are illegible and for failure to provide clear and legible copies of relied upon documents has violated Article 22(5) of the Constitution of India and failure to communicate the order of detention and thereby affecting the detenu 's right to make meaningful representation to redress his grievance. Further, it is the specific ground urged by the learned Counsel appearing for petitioner that, in view of violation of terms and conditions of the bail granted, they have not made any efforts to move the matter for cancellation of bail. Even the respondents failed to consider the relevant provisions of the Act before passing the said order and no where in the grounds of detention drew a conclusion and they have not recorded their satisfaction, the recording of which was a condition precedent for the very exercise of the power by the advisory board. To substantiate his submission, he placed reliance on the judgment of the Apex Court in the case of Bhupinder Singh v. Union of India and Others (1987) 2 SCC 234: 1987 SCC (Cri.) 328 and contended that, on account of supplying illegible copies of the documents the detenu is handicapped to make proper representation and hence, the detenu has to be released forthwith.

4. Further, he placed reliance on the judgments of the Division Bench of this Court dated 14th August, 2014 passed in W.P. (HC) No. 57 of 2014 (M.A. Illyas v. State of Karnataka and Others) and dated 29th October, 2014 in W.P. (HC) No. 129 of 2014 (Susheelamma v. The Additional Chief Secretary and Others), and submitted that, the Division Bench of this Court has consistently held that non-supplying of legible documents to the detenu violates mandatory provisions of Article 22(5) of the Constitution of India. Therefore, he submitted that the orders passed by the Competent Authorities of the respondents are liable to be set aside on this ground alone, without going further into the merit and demerits of this case.

5. As against this, learned Additional Government Advocate appearing for respondents, inter alia, sought to substantiate that the order of detention and confirmation of the same by the Competent Authorities are in strict consonance

with the relevant provisions of the said Act and following due procedures and non-supplying of legible copies shall not take away the right of the detenu nor that is ground for setting aside the order of detention and confirmation and therefore, interference by this Court is uncalled for. To substantiate the said submission, he placed reliance on the judgment of the Apex Court in the case of Powanammal Vs. State of Tamil Nadu and Another, AIR 1999 SC 618 : (1999) CriLJ 831 : (1999) 1 CTC 347 : (1999) 1 JT 31 : (1999) 1 SCALE 49 : (1999) 2 SCC 413 : (1999) 1 SCR 104 : (1999) AIRSCW 218 : (1999) 10 Supreme 450 and the order passed by the Division Bench of this Court dated 2nd December, 2014 in W.P. No. 206009 of 2014 (Sangeeta v. State of Karnataka and Others) and submitted that, the order detention and confirmation passed by the Competent Authorities is just and proper and in strict consonance with the relevant provisions of the Act having regard to the nature of offences committed by the detenu and therefore, interference by this Court is not called for. After careful consideration of the submissions made by learned Counsel appearing for both the parties, after perusal of the impugned orders passed by the Competent Authorities of the respondents as referred above, on perusal of the grounds urged in this petition, the stand taken by the respondents in their statements of objections and citations relied upon by the respective parties as referred above, it emerges that, it is the specific ground by the petitioner at para 8 that, the order of detention is vitiated for the reasons that from the relied upon documents furnished to the detenu, it would reveal that the documents at pages 605, 607, 610, 611, 613, 614, 616, 617, 619 and 620 are illegible and it violates the mandatory provisions of Article 22(5) of the Constitution of India and for failure to communicate the order of detention and thereby affecting the detenu's right to make meaningful representation. The learned Senior Counsel appearing for petitioner has placed reliance on the judgment of the Apex Court in Bhupinder Singh's case and submitted that on account of supplying illegible copies of the documents, the detenu is handicapped to make proper representation. We find some substance in the said submission. After careful perusal of the impugned orders, learned Additional Government Advocate has not disputed that illegible documents have been supplied to the detenu after taking instruction from the Competent Authority. However, he persuaded and placed reliance on the judgment of the Apex Court in Powanammal's case and the orders passed by the Division Bench of this Court and made sincere efforts to defend the case of the respondents. But we decline to accept the said submission since most of the pages of the documents are not legible as we have perused the copies of the documents supplied by the authorities to the detenu. Therefore, we are of the considered view that since most of the pages are not legible and on account of the same, detenu is not able to make proper representation before the Advisory Board to defend his case. Therefore, following the judgment to the Apex Court in Bhupinder Singh's case and also following the orders passed by the Division Bench of this Court dated 14th August, 2014 passed in W.P. (HC) No. 57 of 2014 and dated 29th October, 2014 passed in W.P. (HC) No. 129 of 2014, the petition filed by the petitioner is allowed.

The order of detention bearing No. CRM(4)/DTN/12/2014, dated 25-8-2014 (Annexure-A) and confirmation order bearing No. HD 453 SST 2014, dated 27-9-2014 (Annexure-B) issued by respondent 2 are hereby set aside.

The detenu, Viji alias Vijendran S/o. Late Gopala alias Gopalswamy, aged about 40 years, R/at No. 100, Kulappa Circle, Byrappa Road, Kammanahalli, Banswadi, Bangalore-560043, is hereby set at liberty forthwith, if he is not required in any other case. The Competent Authority of the Central Prison, Bangalore, is hereby directed to release the detenu Sri Viji alias Vijendran, S/o. Late Gopala alias Gopalswamy, immediately.

Registry is directed to fax the copy of this order to the Competent Authority of the Central Prison, Bangalore, for immediate action. Ordered accordingly.