
(2016) 05 RAJ CK 0180
In the Rajasthan High Court
Case No : Habeas Corpus No. 103 of 2016

Dhan Raj Vaishnav

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 21

Rajasthan Prevention of Anti-Social Activities Act, 2006 — Section 3(1)

Citation : (2017) 1 CriLR 101

Hon'ble Judges : Mr. Gopal Krishan Vyas and Mr. G.R. Moolchandani, JJ.

Bench : Division Bench

Advocate : Mr. Gokulesh Bohra, Advocate, for the Petitioner; Mr. S.K. Vyas, Addl. Advocate General, for the Respondents

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J. - In this habeas corpus petition, the petitioner, Dhanraj Vaishnav, has challenged the order (Annex.2) dated 8.3.2016 passed by Executive Magistrate-cum-Police Commissioner, Jodhpur, whereby the Police Commissioner while exercising power under Section 3 (2) of Rajasthan Prevention of Anti Social Activities Act, 2006 (for brevity, hereinafter referred to as "Act of 2006") has ordered for detention of the petitioner. So also the order dated 8.3.2016 (Annex.2) was approved by the State Government under Section 3 (3) of the Act of 2006 vide order dated 24.4.2003 (Annex.3), whereby the petitioner was detained for one year w.e.f. 9.3.2016 to 8.3.2017.

2. As per facts of the case, the Deputy Commissioner of Police (West), Police Commissionerate, Jodhpur, submitted a report to the Executive Magistrate-cum-Police Commissioner, Jodhpur, averring therein that 32 cases have been registered against the petitioner under Indian Penal Code, Arms Act and other Acts in various Police Stations of Jodhpur. Out of 32 cases, the petitioner has been convicted in 5 cases and acquitted in 9 cases on the basis of compromise in between the parties and in two cases, he was acquitted by the concerned Court.

It is also reported that 16 cases are pending against the petitioner in the nature of house breaking, robbery, dacoity, attempt to murder, suicide and under the Arms Act etc. According to report, the petitioner was found to be habitual offender because as per charges against him he was involved in a case various offences in Jodhpur city, therefore, he is "dangerous person" creating law and order problem in Jodhpur city. It is also reported that under Section 110 Cr.P.C. he was bound down to keep peace and good behaviour in 10 cases. A history sheet was also opened against the petitioner, therefore, the police was minutely watching the activities of the petitioner.

3. The Police Commissioner, Jodhpur after examining the entire criminal activities passed an order for detention previously on 14.9.2015 but subsequently the matter was not confirmed by the Advisory Board as per provisions of the Act of 2006, therefore, the petitioner was released on 3.11.2015. After release, an F.I.R. No. 82/2016 was registered against the petitioner under Sections 327 and 392 of I.P.C. and on twice occasions, the petitioner was bound down by the Executive Magistrate-cum-Police Commissioner, therefore, the case of the petitioner was considered afresh on the basis of material available on record for detention under Section 3 of the Act of 2006.

4. The Executive Magistrate-cum-Police Commissioner, Jodhpur passed an order on 8.3.2016 for detention and forwarded the same to the Government for confirmation. The details of the activities and cases registered against the petitioner are placed on record as Annex.1. The aforesaid order was issued by the Police Commissioner, Jodhpur on the basis of number of cases registered against the petitioner to maintain law and order of the city. The order of detention was placed before the Advisory Board for approval and after approval the State Government passed an order dated 28.4.2016 for detention of petitioner w.e.f. 9.3.2016 to 8.3.2017.

5. In this habeas corpus petition, both these orders are under challenge.

6. Learned Counsel for the petitioner submits that under Article 21 of the Constitution of India, the every citizen has a right of life and liberty, but without considering the material after due application mind, the Police Commissioner, Jodhpur, as well as State Government passed order for detention against the basic principal of law, therefore, the detention order is not in consonance with the provisions of the Act of 2006.

7. Learned Counsel for the petitioner vehemently argued that previously order dated 14.9.2015 was passed for detention of the petitioner for one year under the provisions of Act of 2006 by the Police Commissioner, Jodhpur but the Advisory Board, did not approve the said order of detention, therefore, the State Government vide order dated 3.11.2015 set aside the order of detention and released the petitioner from detention. After release, to create material on 13.2.2016, 14.2.2016 twice proceedings were initiated by the Police Station Chopasani Housing Board under Sections 107, 110 (3) and 117 of Cr.P.C. and

three cases under Section 4/825 of Arms Act, and Sections 323, 324 and 392 and 327 of I.P.C. at Police Stations, Chopasani Housing Board and Pratap Nagar, Jodhpur.

8. According to petitioner's Counsel at the time of passing the order by the Police Commissioner as well as by the State Government, the material has not been considered properly by the authorities so as to take action against the petitioner for detention, therefore, both the orders impugned in this petition deserve to be quashed and set aside.

9. Learned Counsel for the petitioner further argued that after releasing on 3.11.2015 two proceedings were initiated against him for keeping peace and in two other cases he was acquitted after compromise. Therefore, it is obvious that the Advisory Board was under obligation to consider the important aspect of the matter that first detention order passed on 14.9.2015 was not approved because petitioner was already in detention in other case and without application of mind, and after releasing on 3.11.2015, 3 false cases were registered and twice the petitioner was bound down for certain period to maintain peace without any basis.

10. It is further submitted that the ground upon which the Advisory Board earlier set aside the order passed by the Police Commissioner, Jodhpur, was very much in existence, but the subsequent order of approval has been passed for detention without considering the grounds upon which previously order was passed by the same Advisory Board. Therefore, the approval given by the Advisory Board for subsequent detention order dated 8.3.2016 is not sustainable in law because the approval of detention order by the Advisory Board is against the principles of natural justice, the Advisory Board was under obligation to take into consideration the material available on record objectively for the purpose of granting its approval but without assigning proper reason to treat the petitioner as dangerous person, the detention order has been approved by the Advisory Board. Therefore, it is a case in which the petitioner has wrongly been treated as dangerous person so as to pass detention order against him for one year. The material, which has been taken into consideration for passing the detention order is not of serious nature to treat the petitioner "dangerous person" but the Police Commissioner, Jodhpur, as well as State Government illegally passed the order for detention, in violation of fundamental rights of the petitioner granted under the Constitution of India.

11. Learned Counsel for the petitioner lastly argued that the petitioner has wrongly been detained under the Act of 2006, which is obvious from the fact that earlier on the basis of 29 cases, the order of detention was not approved by the Advisory Board, but after some time, again those 29 cases along with three cases registered subsequently, were considered to detain the petitioner for one year.

12. Per contra, learned Addl. Advocate General argued that the Act of 2006 was promulgated by the State Government for the purpose of maintaining the law

and order situation and to save the society from habitual offenders. In this case, in all 32 cases were registered against the petitioner, therefore, it was felt necessary to take action against the petitioner under the Act, it cannot be said that the detention order has been passed illegally or in contravention of any rules and regulations or in violation of fundamental right of the petitioner.

13. The entire material and cases were considered by the Police Commissioner, Jodhpur and the Advisory Board. Thereafter detention order has been passed by the State Government for detention of the petitioner for a period of one year. According to learned Counsel for the respondents, the petitioner falls under the definition of "dangerous person" as enumerated in the Act of 2006 and, therefore, the order passed by the Police Commissioner, Jodhpur dated 8.3.2016 was approved by the Advisory Board and thereafter confirmed by the State Government, therefore, the orders do not call for any interference in the petitioner. The writ petition may kindly be dismissed.

14. After hearing the learned Counsel for the parties, we have perused the entire material available on record.

15. As per record following cases were registered against the petitioner since the year 1991 to February, 2016, the details are mentioned herein below in tabular form:

dz0 la0

eq0 ua

rkjh[k dk;eh

/kkjk

Fkkuk tgka vfHk;ksx ntZ gqvk gks

pktZ"khV uEcj o fnukad

sts0 ,Q0 uEcj

U;k;ky; dk uke

urhtk dksVZ

1

211

1]7]1991

341]323]324 HkknI

mn; efUnj

151] 29@7]1991

287@1992

„ets,e ua03 tks/kiqj

ltk fn0 22@8@1994 sdks 3 ihvks ,DV ds rgr izrkfM+r ,o :a 100 tqekZuk

2

479

12@12@1994

341] 323 HkknIZ

mn; efUnj

305] 29@12@1994

33@1995

„ets,e ua0 3 tks/kiqj

28@10@1996 tfj;s jkthukes cjh

3

361

25@9@1995

458] 327] 427] 323 HkknIZ

mn; efUnj

207] 30@9@1995

2761@1995

„ets,e ua0 3 tks/kiqj

24@2@1998 tfj;s jkthukes cjh

4

128

19@3@2000@ 307] 324] 341] 323] 334 HkknIZ

ljkjiqjk

90] 29@4@2000

43@2000

,M+hts ua0 3 tks/kiqj

4@10@2000 dks tfj;s jkthuke cjh

5

234

25@7@2000

147] 148] 149] 341] 323] 435 HknlZ0 o 4@25 vkElZ ,DV o 3 ihM+hihih ,DV

"kkL=h uxj

11] 25@8@2000

162@2008

ts ,eua0 5 tks/kiqj egkuxj

iSf.M+x V~k;y

6

235

25@7@2000

365] 120 HkknIZ0 o 4@25 vkElZ ,DV

"kkL=h uxj

119] 25@8@2000

163@2008

ts ,eua0 5 tks/kiqj egkuxj

iSf.M+x V~k;y

7

29

21@1@2001

307] 324] 323] 34 Hkknal0 o 4@25 vkElZ ,DV

ljnkjiqjk

59] 29@3@2001

201@2001

lhts,e tks/kiqj

28@2@2006 dks lk{; ds vHkko esa nks"keqDr

8

240

10@6@2003

341] 323] 34 Hkknla

izrkiuxj

137] 19@6@2003

489@2004

,lhts tsM+h ts,e ua0 8 tks/kiqj

19@7@2005 dks tfj;s jkthuke cjh

9

11

13@1@2005@ 307] 323] 327 Hkknla

pkSgk cksM+Z

9] 31@1@2005

229@2005

lhts,e tks/kiqj

ltk fn0 20@2@2007 dks N% ekg dBksj dkjkokl o rhu gtkj :0 tqekZuk

10

20

22@1@2005

341] 323] 327] 382] 34 Hkknlaa

pkSgk cksM+Z

18] 18@2@2005

229@2005

lhts,e tks/kiqj

ltk fn0 22@8@2015 tfj;s jkthukek cjh

11

511

19@1@2007

341] 323] 452] 341] 384 Hkknla

ljnkjiqjk

11] 31@1@2007

64@2007

lhts,e tks/kiqj

iSf.M+ax dksVZ

12

51

19@1@2007

341] 323] 327] 382] 34 Hkknla

mn; eafnj

55] 21@3@2007

1556@2012

xzke U;k;ky; e.M+ksj tks/kiqj

ltk fnukad 25@1@2014 dks : 500 tqekZuk o vne vnk;xh tqekZuk ikap fnol lk/
kkj.k dkjkokl

13

22

20@1@2007

4@25 vkElZ ,DV

pkSgk cksM+Z

14] 30@1@2007

50@2007

,e ,e ua0 8 tks/kiqj

iSf.Max dksVZ

14

95

8@5@2007

147] 148] 149] 341] 323] 325] 427] 307 Hkknla

QykSnh

161] 6@9@2007

19@2007

,M+hts Qyksnh tks/kiqj

12@10@2009 dks tfj;s jkthukek cjh

15

96

8@5@2007

147] 148] 149] 323] 341] 325] 427] 307 Hkknla0

QykSnh

162] 6@9@2007

1099@2007

,M+hts Qyksnh tks/kiqj

iSf.M+ax dksVZ

16

97

8@5@2007

147] 148] 149] 452] 307] 395] 37] 323] 341] 325] 427] 246,] 412 Hkknla0

QykSnh

163] 11@9@2007

21@2007

,M+hts Qyksnh tks/kiqj

12@10@2009 dks tfj;s jkthukek cjh

17

447

24@12@2007

147] 341] 322] 149 Hkknla

izrkiuxj

283] 31@12@2007

809@2012

xzke U;k;ky; e.M+ksj tks/kiqj

ltk fnuakd 5@12@2014 dks ,d ekg dk lk/kkj.k dkjkokl

18

166

16@6@2008

451] 341] 323] 34 Hkknla

pkSgk cksM+Z

149] 28@6@2008

190@2008

,e ,e ua0 8 tks/kiqj

18@9@2008 dks tfj;s jkthukek cjh

19

265

5@10@2008

147] 148] 149] 323] 307] 424 Hkknla o 4@25 vkelZ ,DV

pkSgk cksM+Z

301] 30@11@2008

20@2009

,e ,e ua0 8 tks/kiqj

iSf.M+ax dksVZ

20

268

5@10@2008

309] 189 HkknIZ

pkSgk cksM+Z

257] 24@10@2008

1984@2012

xzke U;k;ky; e.M+ksj tks/kiqj

ltk fnuakd 5@12@2014 dks nks ekg dk lk/kkj.k dkjkokl

21

324

25@11@2008

341] 323] 324] 307] 34 Hkknla o 4@25 vkeIZ ,DV

pkSgk cksM+Z

323] 21@12@2008

20@2009

,lhts,e ua0 1 tks/kiqj

iSf.M+ax dksVZ

22

89

22@3@2009

341] 352] 353] 385 Hkknla

pkSgk cksM+Z

83] 18@4@2009

145@2009

,e ,e ua0 8 tks/kiqj

23

94

1@4@2009

4@25 vkElZ ,DV

pkSgk cksM+Z

77] 5@4@2009

124@2009

,e ,e ua0 8 tks/kiqj

iSf.M+ax dksVZ

24

286

15@9@2009

323] 324] 307] 327] 365 Hkknal

pkSgk cksM+Z

289] 1@10@2009

1075@2009

,e ,e ua0 8 tks/kiqj

fnukad 26@6@2010 dks vHkko esa nks"k eqDr fd;k x;k

25

360

3@11@2011

4@25 vkElZ ,DV
pkSgk cksM+Z
344] 19@11@2011
460@2011
,e ,e ua0 8 tks/kiqj
iSf.M+ax dksVZ
26
108
5@3@2012
341] 323] 147 Hkknla
izrkiuxj
118] 31@3@2012
531@2014
vfr0 eqegk] eftlhch vkbZ dSlst] tks/kiqj
iSf.Max dksVZ
27
57
16@3@2012
452] 352] 393 Hkknla
pkSgk cksM+Z
52] 31@3@2012
36@2012
,e ,e ua0 8 tks/kiqj
iSf.M+ax dksVZ
28
80
6@4@2014
341] 307] 323] 427] 324 Hkknla o 4@25 vkElZ ,DV
pkSgk cksM+Z
62] 24@4@2014

3@2015

,M+hts 4 tks/kiqj egkuxj

fnukad 1@9@2015 tfj;s jkthukek cjh

29

243

12@9@2015

4@25 vkElZ ,DV

pkSgk cksM+Z

236] 28@9@2015

137@2015

,e ,e ua0 8 tks/kiqj egkuxj

iSf.Max dksVZ

30

3

6@1@2016

4@25 vkElZ ,DV

pkSgk cksM+Z

01] 28@1@2016

03@2016

,e,e ua0 8 tks/kiqj egkuxj

iSf.Max dksVZ

31

3

7@2@2016

341] 323 HkknIZ

pkSgk cksM+Z

24] 19@2@2016

31@2016

,e ,e u0 8 tks/kiqj egkuxj

iSf.M+ax dksVZ

32

8

20@2@2016

392] 327 HkknIZ

izrkiuxj

31] 24@2@2016

82@2016

,lh ,e ,e ua0 2 tks/kiqj egkuxj

iSf.Ma+x dksVZ

16. On ten occasions, the petitioner was bound down by the District authorities since 2006 to 2016. The details of the same are given in tabular form:

dza- laa0

bLrxklk uaa0 o is"k fnuakd

/kkjk

Fkkuk

dksVZ dk vkns"k

1

2] 17@4@2006

110 tk QkS0

pkSgk cksM+Z

fnukad 18@7@2006 dks ikcUn

1048 ls 1049 rd

2

12] 18@12@2007

110 tk QkS0

pkSgk cksM+Z

fnukad 18@12@2006 dks ,d o"kZ ds fy, ikcUn o 10 gtkj :i;s dk eqpydk

1050 ls 1052 rd

3

304] 13@1@2008

107 151 tk QkS

pkSgk cksM+Z

5 gtkj ds tekur eqpydk ij 8 ekg ds fy, ikcUn

1053 ls 1060 rd

4

2291] 23@3@2009

107 151 tk QkS

pkSgk cksM+Z

10 gtkj dk tekur eqpdyk o ,d o"kZ ds fy;s ikcUn

1057 ls 1060 rd

5

4561] 6@6@2009

107 151 tk QkS

pkSgk cksM+Z

10 gtkj dk tekur eqpydk o 8 ekg ds fy; ikcUn 1061 ls 1063 rd

6

1] 2@3@2011

110 tk QkS0

pkSgk cksM+Z

25 gtkj ds tekur eqpyds ij ,d o"kZ ds fy; usd pyr ds fy, ikcUn

1064 ls 1069 rd

7

75] 16@9@2012

107] 116 3 151 tk QkS

pkSgk cksM+Z

10 gtkj ds tekur eqpyds ij 6 ekg ds fy, ikcUn

1070 ls 1084 rd

8

1692] 27@8@2013

110 tk QkS

pkSgk cksM+Z

25 gtkj ds tekur eqpyds ij ,d o"kZ ds fy;s usdpyu ds fy, ikcUn

1085 ls 1093 rd

9

419] 13@2@2016

107] 116] 3] 151 tk QkS

pkSgk cksM+Z

10 gtkj dk tekur eqpydk o 6 ekg ds fy;s ikcUn

1094 ls 1100 rd

10

430] 14@2@2016

107] 116] 3] 151 tk QkS

pkSgk cksM+Z

25000 gtkj ds tekur eqpydk o 6 ekg ds fy;s ikcUn

1101 ls 1115 rd

17. In this case, admittedly before passing the order of detention on 8.3.2016, earlier an order for detention was passed by the Police Commissioner on 14.9.2015 but that order was not approved by the Advisory Board, therefore, the order of detention was quashed by the State of Rajasthan on 3.11.2015.

18. We have summoned record for deciding the instant habeas corpus petition and perused the material available on record and the order of the Advisory Board dated 12.10.2015, whereby the earlier detention order dated 14.9.2015 was set aside and a direction was issued to release the petitioner forthwith. The operative portion of the said order dated 12.10.2015 passed by the Advisory Board is quoted herein below for ready reference:

"The Board has considered the rival submissions.

It is a case where the order of detention was passed when the detenu was already behind bars. As per representation off the detenu, he was arrested by the police on 12.9.2015. This fact has not been disputed by the Commissioner of Police, Jodhpur. He has stated that the detenu was arrested by the police in F.I.R. No. 243/2015 dated 12.9.2015 for the offence under Section 4/25 Arms Act. He was produced before the learned Magistrate on 13.9.2015. The learned Magistrate has sent him to judicial custody.

In view off aforesaid, case of the detenu is covered by the judgment in the case of Rupnarayan @ Rupa Meena (supra). Therein, looking to the glaring lapse on

the part of the detaining authority, detention order so as ratification order passed by the State Government were quashed as detention order was passed on the date when detenu was already behind bars in some other case.

In the present case, though the detaining authority was having knowledge that the detenu was in judicial custody in F.I.R. No. 243 dated 12.9.2014 registered with Police Station-Chopasani Housing Board, Jodhpur, however, no compelling reasons have been given in the order of detention to detain the detenu under the Act of 2006 as is required in view of the judgment of the Hon"ble Supreme Court in the case of Huidrom Konungjao Singh v. State of Manipur, (2012) 7 SCC 181.

In view of the discussion made above, the Board is of the view that the detention order in respect of the detenu Dhanraj Vaishnav has been passed without application of mind as after knowing the fact that the detenu was already in judicial custody in some other case, however, no compelling reasons were mentioned for detaining the detenu as stated above in the judgment of the Hon"ble Supreme Court in the case of Huidrom Konungjao Singh (supra).

In the result, we disapprove the order of detention dated 14.9.2015 and the ratification order passed by the State Government dated 22.9.2015. The report of the Advisory Board be sent immediately to the Government so that detenu may be released forthwith, if not wanted in other case."

19. Upon perusal of the above order passed by the Advisory Board, it is obvious that the order of detention was quashed on the ground that detenu was already in judicial custody in some other cases and no compelling reasons were mentioned for detaining the detenu. It is true that after passing the order to release the petitioner on 3.11.2015 on the basis of order of the Advisory Board dated 12.10.2015, three more cases were registered against the petitioner, therefore, again the order impugned dated 8.3.2016 was passed by the Police Commissioner, in exercising of powers under Section 3 (2) of the Act of 2006 and that order was placed before the Advisory Board for approval. The Advisory Board approved the detention order on 4.4.2016. We have perused the order dated 4.4.2016 whereby the detention order dated 8.3.2016 passed by the police Commissioner, Jodhpur was confirmed. The operative part of the said order of approval passed by the Advisory Board dated 4.4.2016 is quoted herein below for ready reference: -

"In the instant case, earlier the detention order was not approved by the Board looking to the fact that the order was passed at the stage when the detenu was already behind the bars. He has committed offence thereupon also. We are of the opinion that neither the judgment in the case of Swaroop Ram (supra) nor the facts submitted by the detenu help him in any manner. The ratio propounded by the Apex Court in catena of cases justifies the detention and cannot be ignored casually. It cannot be for the reason that those judgments are not in reference to the Act of 2006. It is more so when ratio propounded applies

to the case. The Board thus going by the ratio propounded by the Apex Court inclined to approve the order. If it is ignored then cannot mean that judgment off the Apex Court has no application to the facts off the case.. We are unable to accept the plea taken by the detainee.

For the reasons given above and taking into consideration overall facts of the case, we find reasons to approve the order of detention passed under the Act of 2006 as the detainee is a threat to the public order which cannot be ignored casually by the Board.

In the case of Poonam Chand Bhadu v. State of Rajasthan & Ors., D.B. Habeas Corpus Petition No. 5/2015, decided on 10.2.2015 again the detention order was considered in reference to one aspect about leader of gang, whereas, the detention of "dangerous person" is elaborate. In the similar case, the detention is held to be justified by the Apex Court. We are unable to take a different view than what has been expressed by the Apex Court and is binding. Accordingly, we approve the detention order dated 8.3.2016 passed by the competent authority.

The order may be sent to the Government for further orders as per provisions of the Act of 2006."

20. In pursuance of above approval order, the State Government passed the order (Annex.3) dated 28.4.2016 for detention of the petitioner up to 8.3.2017.

21. Upon consideration of the entire facts of the case, it emerges that the same Advisory Board while taking into consideration the entire material, except 3 cases, opined vide order dated 12.10.2015 that the detention order passed by the Police Commissioner, Jodhpur dated 14.9.2015 is illegal, then how the same Board can take a different view. In our opinion, there is no dispute with regard to law laid down by the Hon"ble Supreme Court but at the same time at the time of passing order for detention which affects the liberty of a person, the record is required to be objectively so as to form an opinion that person against whom, order is required to be passed, is "dangerous person".

22. Admittedly, out of 32 cases registered against the petitioner since the year 1991, 16 cases were already decided by the concerned Trial Court. After releasing on 3.11.2015, three cases were registered against the petitioner, out of which first case was registered on 6.1.2016 under Section 4/25 of the Arms Act at Police Station Chopasani Housing Board, second case was registered under Sections 323 and 341 of I.P.C. in the same Police Station and the third case was registered under Sections 392 and 327 of I.P.C. on 20.2.2016 at Police Station Pratap Nagar. Upon consideration of the nature of the offence, which is said to be committed after release i.e. after 3.11.2015, it cannot be said that the assessment of the Police Commissioner or Advisory Board to treat the petitioner as "dangerous person", is justified. No case of dacoity, rape or murder or serious nature, which affects the public order, involving punishment of life imprisonment, was registered against the petitioner All the cases were registered from 1991 to 2016 i.e. within a period of 25 years, and out of all these cases, F.I.R. No.

257/2008 was registered for the offence of suicide under Section 309, 189 of I.P.C., in which the petitioner was punished with two months' simple imprisonment.

23. It is very important to observe that earlier the same Advisory Board considered the case of the petitioner for granting approval for the detention order dated 14.9.2015 and while deciding the matter of approval for detention, the Advisory Board opined that detention in respect of detenue, Dhanraj Vaishnav, has been passed without application of mind as after knowing the fact that detenue was already in judicial custody in some other case. However, no compelling reasons were mentioned for detaining the detenue as stated above in the judgment of the Hon'ble Supreme Court in the case of Huidrom Konungjao Singh v. State of Manipur, (2012) 7 SCC 181 while giving the aforesaid opinion the Advisory Board disapproved the order of detention.

24. It is very strange that after releasing the petitioner on 3.11.2015 again detention order was passed on 8.3.2016 and the case was sent for approval to the Advisory Board by the State Government. The Advisory Board while deciding the matter for approval of detention, completely ignored the fact that earlier the Advisory Board observed that detenue was in judicial custody and decided the matter on other grounds altogether.

25. Although there was no serious offences having been committed by the petitioner so as to hold him a "dangerous person" after disapproval of the detention order by the Advisory Board, the Advisory Board gave different opinion and approved the detention order ignoring their earlier view, which in our opinion, is not justified. In our view, judicial discipline is required to be maintained but in this case while considering the fact that 29 cases were registered against the petitioner, which were not serious in nature, the Advisory Board completely ignored the fact that earlier the same Board has disapproved the detention order, which was passed on the basis of registration of 29 cases against the petitioner. Thus, it is required to be observed that all the cases which were registered the petitioner right from the year 1991 to February, 2016, in between the aforesaid period, the petitioner tried to commit suicide for which an F.I.R. No. 257/2008 was registered, in which he was convicted and sentenced for two months.

26. Out of 32 cases, 16 (sixteen) cases have already been decided by the competent Court and in other cases, the petitioner which are pending investigation or pending adjudication before the Court, the petitioner is regularly attending the proceedings of the same.

27. Upon consideration of entire cases registered against the petitioner, we are of the opinion that the finding arrived at by the Police Commissioner, Jodhpur that the petitioner is dangerous person, as defined under the Act of 2006, which has subsequently been approved by the Advisory Board, is not sustainable in the eye of law because the Advisory Board itself observed that earlier detention order

was passed knowingly well that the petitioner was in judicial custody.

28. As per Article 21 of the Constitution of India, every citizen of India has a right to live, of course, he/she cannot be allowed to disturb the peace. But, herein in this case, in number of cases, the petitioner is facing trial from last more than six years, and earlier order was passed when he was in judicial custody, therefore, we are of the opinion that detention order passed by the Police Commissioner, Jodhpur, is not sustainable in law, so also, the material which is placed before us, which has been into consideration for passing the detention order, was not of so serious nature to declare the petitioner a dangerous person as defined under the Act of 2006 so as to exercise powers under Section 3 (2) of the Act of 2006 to detain the petitioner for one year.

In view of above discussion, the instant habeas corpus petition is allowed. The orders dated 8.3.2016 (Annex.2) and dated 28.4.2016 (Annex.3) passed by the Police Commissioner, Jodhpur and State Government respectively, are hereby quashed and set aside and it is ordered that the petitioner shall be released forthwith.