

(1957) 11 KAR CK 0011

In the Karnataka High Court

Case No : Criminal Petition No"s. 408 to 417, 464 to 466, 473 to 476 and 489 to 491 of 1957

Sangappa Mallappa Kodli and Others

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

Date of Decision : 13-11-1957

Acts Referred:

Preventive Detention Act, 1950 — Section 10, 11, 11 (1)

Citation : AIR 1959 Kar 7 : (1959) CriLJ 63 : (1958) 36 MysLJ 424

Hon'ble Judges : S.R. Das Gupta, C.J.;S.S. Malimath, J

Bench : Division Bench

Advocate : S.C. Javali, for the Appellant; A.G., for the Respondent

Judgement

S.R. Das Gupta, C.J.—There are two sets of Petitioners before us. They have been ordered to be detained under the Preventive Detention Act. It is not disputed before us that with regard to the first set of Petitioners, the order of confirmation which is required to be made u/s 11 of the Preventive Detention Act was not made immediately after the receipt of the report of the Advisory Board made u/s 10 of the said Act, nor was it made within three months from the date of detention. With regard to the second group of Petitioners, it is admitted by both sides that the order of confirmation was made within three months from the date of detention.

2. With regard to the first set of Petitioners, several grounds were taken in support of their petitions. The first ground is that the order of confirmation made by the Government under Sub-section (1) of Section 11 of the Preventive Detention Act should have been made within a period, of three months from the date of detention. It should be mentioned that the said order of detention was made on 22-12-1956 and the grounds thereof were furnished to the Petitioners on 26-12-1956. The detention took place on 24th and 25th December 1956.

The reference to the Advisory Board was made on 22-1-1957. The Advisory Board made its report on 11-2-1957. The Government confirmed the detention

order on 16-4-1957. It appears from these dates that the order of confirmation was made after the report was communicated to Government by Advisory Board but more than three months after the date of detention. It is, therefore, urged before us that the detention was illegal, inasmuch as the provisions of the Preventive Detention Act were not followed.

In support of this contention reliance was placed by the learned Advocate appearing for these Petitioners on Article 22 Clause (4) of the Constitution wherein it is stated that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an Advisory Board has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention. Reliance was also placed on *Umedsingh Narubha v. State*, AIR 1953 Sau 51 (A), *Dhadhal Kanthad Valeg v. Saurashtra State*, AIR 1953 Sau 138 (B) and *Kaur Singh v. State* AIR 1952 Pepsu 134 (G). wherein it has been held that the order of confirmation should be made within three months from the date of detention.

3. The second ground urged by the first set of petitioners is that the grounds supplied were vague and could not form the basis of an order under the Preventive Detention Act.

4. The third ground urged on behalf of this set of petitioners is that, in any event, the grounds furnished have no reasonable relationship with the object of the Act. In other words, if was contended that the grounds supplied do not make out any case under any of the sub-clauses of Clause (a) of Sub-section (1) of Section 3 of the Preventive Detention Act. These are broadly the three grounds which have been taken by the first group of petitioners.

5. The second group of petitioners urge only two grounds in support of their petitions. As I mentioned before, in their case the order of confirmation was made within three months from the date of detention and therefore the first ground urged by the first group of petitioners was not available to them. The grounds which they urged in support of their petitions are the remaining grounds which were urged by the first group of petitioners; namely: (a) the grounds supplied were vague; and (b) that these grounds do not come within any of the sub-clauses mentioned in Clause (a) of Sub-section (1) of Section 3 of the Preventive Detention Act.

6. This being in short the position in this matter, the first question which we have to decide and which relates to the case of the first group of petitioners is, whether or not the order of detention passed in this case was in conformity with the provisions of the Preventive Detention Act, that is to say, whether or not the order of the Government confirming the detention and continuing the same should have been made within 3 months from the date of detention. In order to decide this question it would be necessary to refer to some of the provisions of the Preventive Detention Act.

7. Section 3(1) of the said Act inter alia provides that the Central Government or

the State Government may:

"(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community

it is necessary so to do, make an order directing that such person be detained."

Sub-section (2) of the said section gives power to pass an order of detention to the District Magistrate, the Additional District Magistrates specially empowered in this behalf, the Commissioner of Police for Bombay, Calcutta, Madras or Hyderabad and Collectors in the State of Hyderabad. Sub-section (3) provides as follows :

"When any order is made under this section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the State Government to which he is subordinate 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 made after the commencement of the Preventive Detention (2nd Amendment) Act 1952, 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."

It is not necessary to refer to the remaining portions of Section 3 of the said Act.

8. Section 9 of the Preventive Detention Act provides that in every case where a detention order has been made under this Act, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it u/s 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report by such officer under Sub-section (3) of Section 3. I should have mentioned that u/s 8 of the Act the Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of (his Act.

Section 10 inter alia provides that the Advisory Board shall, after considering the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if any particular case it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within ten weeks from the date of detention.

9. Section 11 which is the most important section for the present purpose reads as follows :

"Action upon the report of Advisory Board:--

(1) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith." The only other provision which I need refer to is Section 11-A. The material part thereof reads as follows :

"Maximum period of detention :-- (1) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed u/s 11 shall be twelve months from the date of detention"

I have already referred to Clause (4) of Article 22 of the Constitution of India.

10. It was urged before us by the learned Advocate appearing for the first group of petitioners that the Government was bound to confirm the detention order after it has received the report from the Advisory Board within three months from the date of detention. It was argued that Clause (4) of Article 22 of the Constitution makes it clear that there can be no detention beyond a period of three months and the Government, therefore, cannot without making a final order of confirmation detain a person, for more than three months.

In support of this argument reliance was placed on AIR 1953 Sau. 51 (A) : AIR 1953 Sau. 138 (B) and AIR 1952 Pepsu 134 (C). In all these cases it was held that the Government is bound to make an order of confirmation within three months from the date of detention.

11-12. On behalf of the State, the learned Advocate-General contended before us that the confirmation mentioned in Schedule II of the Preventive Detention Act became redundant in view of the fact that the Government had already approved of the order of detention under Sub-section (3) of Section 3 of the Act. It was, according to him, a mere formality which the Government has to observe and the said section when it says "Government may confirm the detention order and continue the detention" has no mandatory force.

It was further argued before us by the learned Advocate-General that there was nothing illegal in confirming the order of detention beyond the period of three months from the date of detention either under the Constitution or under the Act itself. the learned Advocate-General contended that what the Constitution lays down is that unless the Advisory Board has made a report to the effect that there is sufficient cause for such detention within three months from the date of

detention, there can be no detention of a person under any law for a longer period than three months and nothing more. It does not say that the order of confirmation has to be within three months from the date of detention.

The learned Advocate-General further contended that Section II also does not mention the period within which confirmation order has to be made. He drew our attention to the fact that in other parts of the Act periods are mentioned but not in Section II thereof. For example, he pointed out that in Sub-section (3) of Section 3 it is provided that the order of detention made by an officer of the State empowered to do so shall not remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government.

Under Section 10 of the Act also, the Advisory Board has to make its report within ten weeks from the date of detention. His argument, therefore, was that the confirmation may be made at any time. He further drew our attention to the fact that although in Sub-section (2) of Section 11 it is mentioned that where the report of the Advisory Board is that there is no sufficient cause for the detention of the person, then the appropriate Government shall revoke the detention order and cause the person to be released forthwith. Sub-section (1) of section 11 does not say that the order of confirmation shall have to be made forthwith. These in short, are the arguments of the learned Advocate-General appearing on behalf of the State.

13. I have given careful consideration to the contentions of the learned Advocate-General but I am unable to accept the same as sound. In my opinion, having regard to the different provisions of the Preventive Detention Act, the order of confirmation which the Government is required to make u/s 11 of the Act has to be made within a period of three months from the date of detention. In my opinion the contention of the petitioners on this part of their case finds support from the very sections of the Preventive Detention Act and particularly from the wording of Sub-section (1) of Section 11 itself.

That Sub-section, to my mind, makes it clear that the confirmation order in question has to be made if the Government after receipt of the report from the Advisory Board decides to continue the detention and in view of the provisions of Clause (4) of Article 22 of the Constitution such confirmation has to be made within three months from the date of detention.

14. In Sub-section (1) of Section 11 of the Preventive Detention Act it is provided that in any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person. It appears from the wordings of the said Sub-section that the Government has to confirm the detention order, and it is only when the Government so confirms that it can continue the detention of the person. As pointed out in the, case reported in AIR 1952 Pepsu 134 (C) the word "may"

used in the said sub-section only indicate that it is not obligatory on the Government to confirm the detention order (and thus to continue the detention) even though the Advisory Board has reported in its favour.

I am unable to accept the contention of the learned Advocate-General that the order of confirmation is really redundant. In my opinion, it is necessary in order to enable the Government to continue the detention of the person for the period mentioned in the Act. The use of the expression "may confirm the detention order and continue the detention of the person" in my opinion indicates quite clearly that before the Government, after it has received the report from the Advisory Board, can continue the detention, it has to confirm the order of detention and unless it does so, the Government has no authority to continue the detention.

In this connection, I should refer to Sub-section (1) of Section 11-A of the Act, wherein it is stated that the maximum period for which any person may be detained in pursuance of any detention order which has been confirmed u/s 11 shall be twelve months from the date of detention. The provisions of this sub-section also to my mind indicate that an order of detention has to be confirmed u/s 11 in order to enable the Government to detain a person for the period mentioned therein. Having regard to the provisions of the different sections to which I have referred, the scheme of the Act with regard to this matter appears to me to be as follows -- The officer concerned can no doubt make an order of detention, but that order will remain in force only for a period of 12 days. Within that period the State Government, has to approve that order if it is to remain in force beyond the said period of 12 days. If the State Government chose to approve the said order of detention then it has to place the matter before an Advisory Board constituted u/s 8 of the Act, within 30 days from the date of detention. The Advisory Board will thereupon take into consideration the materials placed before it and will have to make its report within ten weeks from the date of detention. Up to this point the order of detention which has been approved by the Government will continue in force. After the Advisory Board has made its report to the Government, the Government has to confirm the order of detention before it can further continue the detention. The periods during which the order of detention will continue by virtue of the earlier section would all come to an end "after the Advisory Board has sent its report to the Government. The Government has then to decide finally, if the report states that there is sufficient cause for the detention, whether it would continue the detention or release the person. If the Government wants to continue the detention then it has to confirm the detention order, and it is then and then alone the Government can continue the detention of the persons "concerned UD to the maximum period mentioned in the Act, This to my mind is clear not only from the different provisions of the Act, to which I have referred, but also from the wordings of Section 11 itself which says the Government may confirm the detention order and continue the detention of the person and also from the provisions of Sub-section (1) of Section 11-A of the Preventive Detention Act.

15. It follows from what I have said so far that such an order of confirmation has to be made forthwith after receipt of the report, because, without such order the detention cannot be continued. But it may be contended, and it has been contended before us that in view of the fact that Clause (4) of Article 22 of the Constitution authorises the Government to detain a person for the maximum period of 3 months, the confirmation has to be made within the said period of 3 months. That clause in Article 22 of the Constitution reads as follows :

"No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an Advisory Board,has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention....."

In the case reported in AIR 1953 Sau 51 (A), it was held that the person concerned cannot be detained longer than three months unless upon the report of the Advisory Board, which means unless upon action taken on such a report and that action must necessarily be taken before the expiration of the said period of three months. In this case the confirmation of the Order of detention not having been made even within the said period the detention is illegal. In my opinion, therefore, this contention of the first group of petitioners must succeed.

Further, in my opinion, the order of Government detaining the persons concerned is illegal and in contravention of the provisions of the Preventive Detention Act and Clause (4) of Article 22 of the Constitution. The said petitioners, therefore, on this ground alone should be released. In view of the fact that a decision on this ground is sufficient to dispose of the petitions of the first group of petitioners it is not necessary for us to go into the other questions which have been urged by them in support of their petitions.

16. I now come to the case of the next group of petitioners. The first submission made before us, on their behalf, is that the grounds furnished are too vague. There were originally 16 persons under this group who had been ordered to be detained. Six of them were left off by the Government on the advice of the Advisory Board. The remaining 10 persons have filed the present petitions. One of such persons died during the pendency of his petition. Each of these petitioners was separately served with the grounds on which he was detained.

The introductory part of the grounds in each case was the same and it would be necessary to set out the same. After stating that in Hosur village a criminal gang is formed consisting of the said 16 persons, it states as follows :

"Originally the members of the gang were on inimical terms with the members of "Dott" family and later on the gang members extended their criminal activities to round about areas. The Police had therefore to start proceedings u/s 110, Cr. P.C. against certain members of the gang. The Sub-Divisional Magistrate, First Class, Belgaum passed orders on 18-10-46 requiring Section Nos. 1 and 6 of the gang and several others to execute a bond for Rs. 300/- with one surety for keeping good behaviour for a period of two years.

The common object of the gang now is to commit murders on payment of money by persona who want their opponents to be killed. The gang is in possession of unclaimed fire arms and the members of the gang depute some of their members for the actual commission of the offences along with some hirelings. The members of the gang are dangerous and desperate, with the result that the aggrieved villagers are afraid to lodge complaints against them. In a few cases where complaints are filed the members of the gang threaten the complainants and the witnesses. the gang is responsible for several reported and unreported offences in this area and therefore the person and property of innocent villagers has become unsafe.

For convenience, this gang is described as Hosur Gang No. 2 and the rival gang as Hosur Gang No. 1. GROUNDS

You are an active member of the gang and some of the activities of the gang in which you actually participated arc as under."

Then followed the grounds which I have said varied in each case and were separately served upon each of the petitioners. There cannot be any question that some of these grounds furnished were lacking in particulars and were vague. What however the learned Advocate-General contended before us was that, as stated in para 2 of each of these grounds, it was not in public interest to disclose further facts. This contention of the learned Advocate-General is amply met by the fact that there is no affidavit filed in this case either of any Magistrate or of any other person to prove that the person making the order of detention thought or was satisfied that public interest demanded that further facts should not be disclosed. It may be a question of a man's state: nevertheless it has to be proved.

17. The main point urged before us on behalf of this group of petitioners was that all the grounds on which the order of detention purports to have been passed were not set out. This, it was contended, was clear from the fact that in the document in question under the heading "Grounds" only some of the activities of the gang, in which the person concerned is alleged to have participated, are set out. In other words, it was contended that all the activities of the gang which form the grounds for the detention should have been set out.

In this case, it was pointed out, the Government only mentioned some of the activities of the gang although it appears from the document itself that there are various matters which also formed the grounds of detention but which had not been furnished to the persons concerned. In support of the contention that the Government should have given all the grounds on which the order of detention purports to have been passed, reliance was placed on clauses (5) and (6) or Article 22 of the Constitution.

In Clause (5) of the said Article it is provided that when any person is detained in pursuance of an order made tinder any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such

per-son the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Clause (8) provides as follows :

"Nothing in Clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose."

It was urged before us by the learned Advocate for the petitioners that the Government was bound to communicate all the grounds on which the order was made, although it might withhold facts which it considers to be against the public interest to disclose. It was contended that the Government did not disclose all the grounds on which the order has been made, as was clear from the statements made in the document itself and that only some of the grounds on which the order of detention purports to have been made were furnished to the petitioners.

18. As against this contention, the learned Advocate-General relied on the provisions of clause (6) of Article 22 wherein it is stated that nothing in clause (5) shall require the authority making any such order to disclose facts which such authority considers to be against the public interest to disclose. It was pointed out to us that in the very grounds supplied to the petitioners signed by the District Magistrate it was mentioned that it was not in the public interest to disclose further facts.

Therefore, it was contended by the learned Advocate-General, the Government could refrain from disclosing all the activities of the gang, which it has purported to do.

19. In my opinion, this contention of the learned Advocate-General cannot be accepted as sound. As I have already mentioned, the fact that the authority concerned thought or was satisfied that it was not in the public interest has to be proved and there was no such proof available in this case. Apart from this, Clauses (5) and (6), if read together, make it obligatory on the Government to disclose all the grounds on which the order has been made though not all the facts constituting such grounds.

In other words, although the Government may not in the public interest disclose the full particulars of the grounds supplied, the Government is bound to disclose all the grounds on which the order of detention is based. This in my opinion, seems to follow from the provisions of the said clauses. In this case, from the document itself some of the grounds on which the order in question was made were furnished although there appear to have been other grounds which the Government did not disclose. This being my view, the contention of the second group of petitioners on this point succeeds.

20. In view of the fact that our decision on the last mentioned point is sufficient to dispose of those petitions, it is not necessary for us to enter into other

question which has been urged before us, that the grounds furnished, even if they be there, do not make out any case u/s 8 of the Preventive Detention Act. It was contended before us that the said grounds only show that the petitioners are habitual criminals and as laid down by the Patna High Court in *Lalu Gope Vs. The King*, the Preventive Detention Act was not meant for the purpose of detaining habitual criminals, as in that case it would really take the place of the Criminal Procedure Code.

Whether or not this contention is sound, it is not necessary for us to determine in this case. It would be sufficient to say that there is considerable force in this contention of the learned Advocate for the petitioners mid no case could be cited before wherein it has been held that a person can be detained under the Preventive Detention Act merely on the ground that he is a habitual criminal. In this connection it should also be mentioned that what is stated in the grounds is that is a result of the activities of the gang the safety of the villagers has been impaired.

Whether or not the disturbance of the safety of the villagers of a particular village amounts to a disturbance of public order is a matter which requires consideration. In my event, on the other grounds, to which I have already referred, I hold that the application of the second group of petitioners should also succeed and they should be ordered to be released.

21. In the result, therefore, both the sets of petitioners are ordered to be released forthwith. The petitioners will get costs of those petitions from the Government.

S.S. Malimath, J.

22. I agree with My Lord the Chief Justice in the conclusions that have been reached. But I wish to add a few more lines for the reason that I come to the same conclusion by approaching the matter from a different point of view.

23. The several provisions of the Preventive Detention Act have already been detailed by My Lord the Chief Justice and I do not wish to repeat them. In the matter of interpretation of the question of limitation in respect of the confirmation order by the Government, two points arise for consideration. Firstly, whether a specific order of confirmation is necessary to be made by the Government: and secondly, if it is necessary, whether it has to be done within any specified period. As to the first question, the matter has been fully dealt with by My Lord the Chief Justice and there is nothing more that I have to add on that point. I do agree that an order of confirmation is necessary. The only other question to be considered is, whether the law places a limitation of time on the making of that order.

24. Looking to the provisions of sub-sections (1) and (2) of Section 11 of the Preventive Detention Act, it is found that in Sub-section (2) there is the wording requiring the person detained to be released forthwith in case the opinion of the

Advisory Board is that there are no sufficient grounds for detaining him. In Sub-section (1) which deals with the question of the action to be taken upon the report of the Advisory Board that there are sufficient grounds for detaining the person, there is no mention that the order of confirmation has to be made forthwith or within a fixed time. This, to my mind, is significant. It shows that the Lawmakers did not want to place any particular period of limitation on the Government for the making of the order in the case where the opinion of the Advisory Board was that there were grounds for continuing the detention.

25. All the same, it cannot reasonably be said that (the Government could without passing any such order of confirmation continue the detention of the person for an indefinite period. An order has to be made and there must be a period within which the order should be made. But unfortunately the Law-makers have not focussed their attention on this point and the law is silent.

26. It is for the purpose of seeking some clarification that we have to turn our attention to Clause (4) of Article 22 of the Constitution. That Article does not specifically lay down any period of limitation for detention. All that it states is that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months. This means that the Parliament in making any law of preventive detention has to keep this in view. But unfortunately, as stated above, the matter has not been specifically considered.

27. Section 11 of the Preventive Detention Act has to be given a reasonable construction. While we interpret this section we have to interpret on the assumption that it is not intended to go counter to Clause (4) of the Article 22 of the Constitution, meaning thereby that it does not authorise the detention of any person for more than three months without an order of confirmation passed. It is with reference to this section ultimately and so as not to transgress the provisions of the Constitution that we have to interpret Sub-section (1) of Section 11 of the Preventive Detention Act. In that view it appears that the limitation of three months has got to be inferred in respect of the passing of the order by the Government. I, therefore, reach the same conclusion, viz., that the order of confirmation contemplated under Sub-section (1) of Section 11 of the Preventive Detention Act has to be passed within three months from the date of detention.

28. I agree with the final order as above.

29. Petitions allowed.