

(2015) 04 KAR CK 0344

In the Karnataka High Court

Case No : Writ Petition H.C. No. 200005 of 2015

Shaikh Feroz

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 —
Section 3, 3(1), 8

Citation : (2015) 3 AKR 790 : (2015) CriLJ 4441 : (2015) 3 KarLJ 607 : (2015) 4 KCCR 3980

Hon'ble Judges : Ravi V. Malimath, J;Budiha R.B., J

Bench : Division Bench

Advocate : Avinash A. Uploankar, for the Appellant; P. Vilaskumar, Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ravi V. Malimath, J.—The petitioner is the brother of the detenu. The detenu is a petty businessman. The respondent having formed an opinion that the detenu having involved himself in various criminal cases lodged against him and is habitually indulging in matka etc., which is also the gambling, the order of detention was passed against him. While passing the order of detention, the various criminal cases were also taken into consideration by the Detaining Authority. The said Detaining Authority has passed the order under Sections 3(1) and 8 of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1985 (for short, "Act"). Hence, the present petition is filed. We have considered the grounds urged in support of the contention.

2. Learned Counsel for the petitioner primarily contends that even though the detenu was involved in various criminal cases, which have been lodged against him and some cases were pending, the Detaining Authority has not applied its

mind, while passing the detention order. That the detenu was on bail in those cases, which have been lodged against him. The detention order does not even make reference of the orders that the detenu was on bail. Therefore, there is non-application of mind. Hence, the impugned order of detention requires to be quashed. He relies on the decision of Hon''ble Supreme Court in the case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, AIR 2012 SC 890 : (2012) CriLJ 1334 : (2012) 1 JT 1 : (2012) 1 RCR(Civil) 863 : (2012) 1 SCALE 53 : (2012) 2 SCC 72 : (2013) AIRSCW 209 : (2012) AIRSCW 677 : (2012) 1 Supreme 30 .

3. On the other hand, learned Counsel for the respondents defends the order of detention. The contention is that in terms of Section 3 of the Act that it is the power of the State Government to pass the order regarding detention. That on satisfaction the order of detention has been passed, since, the petitioner was involved in eight cases. There is satisfaction of the Government in passing the order of detention.

4. Heard learned Counsels.

5. The question of the Government''s satisfaction in terms of Section 3 of the Act is undisputed. What is to be considered here is subjective satisfaction of the Government while passing the order of detention. In passing the order of detention there should be application of mind by the Government. Therefore, the Government has to apply their mind while passing the order of detention. The mere submission that in terms of Section 3 of the Act satisfaction has been arrived at based on the pending cases, is not sufficient. Subjective satisfaction also includes the consideration of the relevant material pertaining to the detenu. Such relevant materials includes the fact as to whether the detenu has been released on bail under one or the other cases or not. The Detaining Authority therefore, should take into account the factum of the release of detenu on bail. The Detaining Authority would have to narrate that even though the detenu is on bail, the detention order requires to be passed. Therefore, the satisfaction of the Government is in terms of Section 3 of the Act is not sufficient. The Hon''ble Supreme Court in the aforesaid case has considered the very issue with regard to non-consideration of the relevant material before passing the detention order wherein, it has held as follows:

"10. In the present case, since the order of bail dated August 15, 2010 was neither placed before the Detaining Authority at the time of passing the order of detention nor the Detaining Authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the Detaining Authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the Detaining Authority".

6. Following the said decision, since the subjective satisfaction has not been

arrived at, in the absence of considering the vital orders with regard to the bail or otherwise, the order of detention requires to be quashed. Hence, the petition is allowed. The order of detention vide Annexure-A, dated 9-9-2014 passed by the District Magistrate, Bidar in No. RRB/MAG/CR-41/2014-15, Annexure-B, dated 10-11-2014 passed by the State Advisory Committee in No. HD 486 SST 2014 and Annexure-C, dated 26-12-2014 passed by the State Advisory Committee in No. HD 486 SST 2014 are quashed. The detenu shall be released from custody forthwith if he is not required in any other cases.

The registry to transmit the operative portion of the order to the Bengaluru Jail Authority forthwith.