

(2023) 07 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition Habeas Corpus No. 39 Of 2023

Shruthi T.K.

APPELLANT

Vs

Deputy Commissioner And District Magistrate Davanagere
District Davanagere 577004 By Shivanand Kapashi, I.A.S &
Others

RESPONDENT

Date of Decision : 18-07-2023

Acts Referred:

Karnataka Prevention Of Dangerous Activities Of Bootleggers, Drug Offenders,
Gamblers, Goondas, Immoral Traffic Offenders & Slum Grabbers Act, 1985 — Section
3(1), 3(3)
Constitution Of India, 1949 — Article 22(5)

Citation : (2023) 07 KAR CK 0024

Hon'ble Judges : Alok Aradhe, J; Anant Ramanath Hegde, J

Bench : Division Bench

Advocate : Chandrashekara K, Thejesh P

Final Decision : Allowed

Judgement

Alok Aradhe, J

1. This petition has been by the wife of the detainee viz., Santhosh Kumar K alias Kanuma, in which the order dated 11.04.2023 passed under Section 3(1) of The Karnataka Prevention Of Dangerous Activities Of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders & Slum Grabbers Act, 1985 (hereinafter referred to as 'the Act' for short) has been assailed. The petitioner has also assailed the validity of the order dated 19.04.2023 passed by the State Government under Section 3(3) of the Act.

2. Facts giving rise to filing of this petition briefly stated are that the detainee has studied up to VIIth Standard. An order of detention as passed against the detainee on 11.04.2003 and a copy of the aforesaid order was forwarded to the State Government for confirmation. The detainee submitted a representation on 15.04.2003 to the detaining authority. Thereafter, the detaining authority passed

an order under Section 3(3) of the Act on 19.04.2023.

3. Learned counsel for the petitioner has submitted that illegible documents were supplied to the detenu and therefore, he was deprived of the right to make an effective representation and therefore, the order of detention is vitiated in law. It is contended that failure to supply legible documents has violated the fundamental rights guaranteed to the detenu under Article 22(5) of the Constitution of India.

4. On the other hand, learned High Court Government Pleader has supported the order passed by the Commissioner of Police, which has been confirmed by the State Government.

5. We have considered the submissions made on both sides and have perused the record. The Hon'ble Supreme court in 'STATE OF MANIPUR AND OTHERS VS. BUYAMAYUM ABDUL HANAN ALAIAS ANAND AND ANOTHER', 2022 SCC ONLINE SC 1455 in para 17 and 18 has held as under:

17. It is well settled that right to make a representation implies that the detenu should have all the information that will enable him to make an effective representation. No doubt, this right is again subject to the right or privilege given by clause (6). At the same time, refusal to supply the documents requested by the detenu or supply of illegible or blurred copies of the documents relied upon by the detaining authority amounts to violation of Article 22(5) of the Constitution. Although it is true that whether an opportunity has been afforded to make an effective representation always depends on the facts and circumstances of each case.

18. What will be the effect when the detenu is deprived of effective representation or denial of supply of relied upon documents by the detaining authority has been considered by this Court in Ramchandra A. Kamat v. Union of India and Others as under:

"6. The right to make a representation is a fundamental right. The representation thus made should be considered expeditiously by the government. In order to make an effective representation, the detenu is entitled to obtain information relating to the grounds of detention. When the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request 5 (1980) 2 SCC 270 for such documents, they should be supplied to him expeditiously. The detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds of detention and would be ordinarily available with him — when copies of such documents are asked for by the detenu the detaining authority should be in a position to supply them with reasonable expedition. What is reasonable expedition will depend on the facts of each case."

6. In view of the aforesaid enunciation of law by Hon'ble Supreme Court, we may

advert to the facts of the case in hand. In the instant case, the documents which have been filed to the detinue have been produced before us. Learned High Court Government Pleader has also gone through the same and was unable to dispute the statement that the documents supplied to the detinue were not legible. Thus, it is evident that the detinue has been deprived of his right to make an effective representation. Therefore, the order passed under Section 3(1) and Section 3(3) of the Act cannot be sustained in the eye of law.

7. The orders dated 11.04.2023, 19.04.2023 as well s the order dated 29.05.2023 issued by the State Government are quashed. The respondents are directed to set the detinue at liberty in case, he is not required in connection with any other offence.

Accordingly, the petition is allowed.