

THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.26965 OF 2015

JUDGMENT: (per Hon'ble The Acting Chief Justice Dilip B.Bhosale)

This *Habeas Corpus* petition under Article 226 of the Constitution of India seeks production of one Carpan Goundar Mani (for short “the detenu”), who, according to the petitioner, has been illegally detained by an order of detention, dated 04.07.2015, passed by the 2nd respondent, as confirmed vide G.O.Rt.No.2433, General Administration (Law & Order) Department, dated 10.08.2015, issued by the 1st respondent, after receiving report of the Advisory Board, dated 29.07.2015. The detention order is under Section 3 (1) & (2) read with Section 2 (a) & (g) of The Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1/1986) (for short, ‘1986 Act’).

2. The 2nd respondent ordered detention of the detenu on the grounds that he is involved in six criminal cases registered against him within a span of six months causing gross loss of National wealth, that he is habituated to willful destruction of pristine Red Sanders Forests, and he is a source of potential danger to the public wellbeing, and that his activities are prejudicial to the maintenance of “public order”. It is stated in the order that general public is not coming forward with a complaint or to adduce evidence during investigation against the detenu as they are terrorized by muscle power of the goonda elements associated with the detenu and maintenance of public order is impossible, if he remains at large (in the open).

2.1 Thus, the 2nd respondent, in exercise of powers conferred on him under

sub-section (2) of Section 3 of 1986 Act and as per the orders issued vide G.O.Rt.No.1812, General Administration (Law & Order) Department, dated 16.06.2015, directed under sub-section (1) of Section 3 of the said Act that the detenu shall be detained in Central Prison, Kadapa, until further orders. Grounds of detention in English, Telugu and Tamil, and the material in support thereof were served on the detenu making it clear to him that he can make representation to the detaining authority, Advisory Board and Government against his detention and he has a right to be heard personally before the Advisory Board, if he so desires under Section 10 of 1986 Act. The Superintendent, District Jail, Chittoor, was accordingly directed to release the detenu to detain him in Central Prison, Kadapa, Kadapa District, who, at the relevant time was in judicial custody in connection with Crime No.17 of 2015 registered at Kallur Police Station, Chittoor District. He was also directed to serve the detention order on the detenu and to his kith and kin and submit served copies to the detaining authority. He was directed to be detained until further orders.

2.2 This order of detention was confirmed by the

1st respondent vide G.O.Rt.No.2433, dated 10.08.2015. The order of the 1st respondent reads thus:

“WHEREAS, the Collector & District Magistrate, Chittoor District, Chittoor has made an order of detention, vide reference first read above under Section 3 (1) & (2) r/w. Section 2(a) & (g) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No.1 of 1986), against **Sri Karpan Goundar Mani, S/o Sri Karpan Goundar, aged 50 years, Parmathi Vellore Village Namakkal District, Tamilnadu State**, for illicit cutting, storing and transportation of Red sanders trees from the forest areas and smuggling to various destinations, with a view to prevent him from further indulging in a manner prejudicial to the maintenance of public order;

2. AND WHEREAS, the Government have accorded approval of the said detention order under sub-section (3) of Section 3 of the Act, vide Government Orders second read above;

3. AND WHEREAS, under Section 10 of the Act, Government within three weeks from the date of detention of a person under the order shall place the case before the Advisory Board on Preventive Detentions, constituted under Section 9 of the said Act, comprising of Justice Sri T.L.N. Reddy (Retired), Chairman and two other Members and the Advisory Board shall submit its report to Govt., within seven weeks from the date of detention under Section 11(1) of the said Act. The above said case was placed before the Advisory Board for its consideration and to submit its report to Government, under Section 11 (1) of the said Act, vide reference 3rd read above The

case was reviewed by the Advisory Board on 29.07.2015 and after having heard the detenu and the Investigating Officers and also upon perusing the grounds of detention and the connected records, has reported that in its opinion, "there is sufficient cause for the detention of the detenu, **Sri Karpan Goundar Mani, S/o Sri Karpan Goundar, aged 50 years, Parmathi Vellore Village Namakkal District, Tamilnadu State**";

4. AND WHEREAS, the Government on careful examination of the entire record, it is observed that the detenu **Sri Karpan Goundar Mani, S/o Sri Karpan Goundar, aged 50 years, Parmathi Vellore Village Namakkal District, Tamilnadu State**, was involved in as many as in 6 (Six) cases. The above cases were registered against him, under the provisions of Section 20(1) (ii) (iii) (iv) & (X) of A.P. Forest Act, and also under Section 29 of Wild Life Protection Act, 1972 and 55(2) of Biological Diversity Act, 2002 and Section 307, 353, 378 & 379 IPC. The details shows that he is a habitual offender. He is committed a series of forest offences by entering Government Reserve Forests without proper authorisation, serving standing red sanders trees heart wood to secret destinations in Bangalore/ Chennai and other unknown places. He has not stopped the same type of offences, even after cases and charge sheets were filed against him. It is also evident from the case records that he is engaging huge number of persons in the clandestine business and they were arrested along with the red sander stock at the time cutting of tress and during transportation. The said activities are dangerous to forest wealth and prejudicial to maintenance of public order apart from disturbing the peace, tranquility, social harmony / order in the society and he became a source of potential danger to the public. The said offences are punishable under Forest Act, 1967 and the rules made there under, as well as Chapter XVI or XVII or XXII of IPC. As such the activities of the individual falls under and within the meaning of 'Goonda' as defined under section 2(g) of Act 1 of 1986. All the incidents mentioned in the grounds of detention clearly substantiate as to how the acts of the detenu are prejudicial to the maintenance of public order. In catena of decisions, the Hon'ble Courts held that 'any acts of attempt or illegal cutting of the red sander trees and smuggling the timber, would certainly have its impact on the public order. The detaining authority having taken into account and consideration of indulgence of the detenu in the above said activities repeatedly at regular intervals and having satisfied that the penal laws have failed to curb his illegal activities, has passed the detention order against the detenu by invoking the provisions under the Act 1 of 1986, in order to prevent him from indulging further in such activities, which are prejudicial to maintenance of public order and dangerous to forest wealth. The Advisory Board after review of the case, has opined that there is sufficient cause for the detention of the Detenu. As such, the detenu deserves the maximum period of detention, as provided under Section 13 of the Act;

5. Now, therefore, after due consideration of the report of the Advisory Board and the material available on record, Government, in exercise of the powers conferred under sub-section (1) of Section 12 read with Section 13 of the said Act, hereby confirm the Order of Detention made by the Collector & District Magistrate, Chittoor District, Chittoor in the reference 1st read above, as approved in the G.O. 2nd read above and direct that the detention of **Sri Karpan Goundar Mani, S/o Sri Karpan Goundar, aged 50 years, Parmathi Vellore Village Namakkal District, Tamilnadu State**, be continued for a period of **12 (Twelve) months from the date of his detention, i.e. 06.07.2015.**"

(emphasis supplied)

3. The six criminal cases on the basis of which the detention order was passed

are as follows:

(a) Yerravaripalem PS Cr.No.108/2014 u/s.20 (1)(c), (iii), (iv) & (x) of A.P. Forest Act, 1967, r/w Rule 3 of A.P. Red Sandal Wood and Red Sanders Wood Transit Rules; Section 29 of The Wild Life Protection Act, 1972; Sections 55(2) & 58 of The Biological Diversity Act, 2002; Sections 307, 353, 379 r/w.34 IPC & Section 120-B IPC; and Section 30 of The Arms Act, 1959. The incident occurred on 14.11.2014 at about 4.00 p.m. at Mareppacheruvu, Kaalarivandlapalle Village. The detenu along with 11 others allegedly entered into Seshachalam forest area, which is prohibited reserved forest, with deadly weapons and cut 8 Red sander logs and committed theft thereof and when the police party tried to intercept their vehicle, they attacked the police party with deadly weapons, in which attempt, the police escaped unhurt.

(b) Yerravaripalem PS Cr.No.113/2014 u/s.20 (1)(c), (iii), (iv) & (x) of A.P. Forest Act, 1967, r/w Rule 3 of A.P. Red Sandal Wood and Red Sanders Wood Transit Rules; Section 29 of The Wild Life Protection Act, 1972; Sections 55(2) & 58 of The Biological Diversity Act, 2002; Sections 307, 353, 379 r/w 34 IPC & Section 120-B IPC; and Section 30 of The Arms Act, 1959. The incident occurred on 18.12.2014 at about at about 6.00 a.m. at Pakiruvanicheruvu, near Naginenivaripalle. The detenu along with six others committed similar offence as stated in the first crime.

(c) Nagari PS Cr.No.55/2015 u/s. 353, 307, 379 or 411, 120-B IPC; Section 20 (1)(c), (iii), (iv) & (x) of A.P. Forest Act, 1967, r/w Rule 3 of A.P. Red Sandal Wood and Red Sanders Wood Transit Rules; Section 29 of The Wild Life Protection Act, 1972; Sections 55(2) & 58 of The Biological Diversity Act, 2002; and Section 27 of The Arms Act, 1959. The incident occurred on 29.03.2015 at about 5.00 p.m. at Kavetipuram tank, Nagari-Punimangadu road, Nagari Mandal. The detenu along with 26 others committed the similar offence.

(d) Bhakarapet PS Cr.No.32/2015 u/s. 353, 307, 379, 120-B r/w 34 IPC; Section

20 (1)(c), (ii), (iii), (iv) & (x) of A.P. Forest Act, 1967; Section 29 of The Wild Life Protection Act, 1972; Sections 55(2), 58 of The Biological Diversity Act, 2002 and Section 30 of The Arms Act, 1959. The incident occurred on 30.03.2015 at about 5.00 a.m. The detenu along with 12 others committed similar offence.

(e) SR Puram PS Cr.No.15/2015 u/s. 353, 307, 379 r/w 34 IPC & 120-B IPC; Sections 32 & 29 of A.P. Forest Act r/w Rule 3 of A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969; Section 29 of The Wild Life Protection Act, 1972; and Sections 55(2) & 58 of The Biological Diversity Act, 2002. The incident occurred on 05.04.2015 at about 4.15 p.m. near Z.P. High School, Chillamakulapalle situated on Udamalakurthy-Pillarikuppam Road, S.R. Puram Mandal. The detenu along with 22 others committed similar offence.

(f) Kallur PS Cr.No.17/2015 u/s. 307, 353, 379, 120-B, 109 r/w 34 IPC; Sections 29 & 32 of A.P. Forest Act, 1967 and Rule 3 of A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969; Section 29 of The Wild Life Protection Act, 1972; Sections 55(2) & 58 of The Biological Diversity Act, 2002; and Section 25(1B) of Arms Act, 1959. The incident occurred on 7.4.2015 at about 10.00 a.m. near Anjaneyaswamy temple, on KK-Peta-Bheemavaram road, K.K. Peeta Village, Pulicherla Mandal. The detenu along with other accused once again committed similar offence.

3.1 Thus, the detenu during 14.11.2014 and 7.4.2015 committed the aforementioned six crimes, including an offence under Section 307 of IPC. It is also clear that the detenu is a repeat offender and that he commits similar offences after his release on bail either on merits or under Section 167 of the Code of Criminal Procedure.

4. The order of detention passed by the 2nd respondent, as confirmed by the 1st respondent has been challenged in the instant writ petition on three grounds viz., one, though the detenu does not know English and Telugu languages and

that he studied upto 6th class in Tamil medium of instructions, he was served with all materials either referred to or relied on by the detaining authority for arriving at subjective satisfaction in English and Telugu languages, and thereby deprived him of making effective representation under Article 22 (2) of the Constitution of India; two, the detaining authority came to the conclusion that he was satisfied from the material placed before him that the detenu deserves to be detained under Section 3 (1) read with Section 3 (2) of 1986 Act since his activities were injurious to maintenance of "*Public Peace, Law and Order*". According to the petitioner, an order of detention cannot be passed if activities of the detenu are injurious to maintenance of "*Public Peace, Law and Order*". The detaining authority can invoke the provisions of 1986 Act only if the activities of detenu are prejudicial to the maintenance of "public order"; and three, the documents served on the detenu were illegible, and therefore, he could not make effective and purposeful representation to the authorities.

4.1 These were the only grounds argued by Mr.C.V.Mohan Reddy, the learned Senior Counsel before the Court challenging the order of detention. He invited our attention to the judgments of the Supreme Court and of this Court, in support of his contentions to which we will make reference when we consider each of the grounds raised in the petition.

5. The 2nd respondent – detaining authority filed counter-affidavit and in reply to the grounds argued before this Court stated as follows:

" I submit that grounds of detention and the order of detention were served on the detenu in three languages i.e., English, Telugu and Tamil. The material relied on by the detenu for arriving at the subjective satisfaction was the subject matter of crimes, was known to him, as he being a party to the said proceedings and moved bail applications before the competent Courts and bails were granted in 2 crimes and in the remaining crimes, bail applications were rejected. Apart from that in his confession made in Cr.No.17/2015 of Kallur P.S., Chittoor District, it is categorically stated that his confession was explained to him in Tamil and having understood the same, he signed the confessional statement. In his confessional statement he admitted to have committed other crimes mentioned in the grounds of detention. As such, it cannot be said that he is not capable of understanding the contents of the material served on to him and as such, right to make to representation is violated. ...
...

... it is submitted that as admitted by the petitioner the detaining authority can invoke the provisions of Act 1 of 1986 if the activities of the detenu invoke the provisions of Act 1 of 1986 if the activities of the detenu are prejudicial to the maintenance of public order. I submit that felling of trees in the Reserve Forest and transport of red sander logs from the Reserve Forest would affect the public order. I submit that I placed reliance on 6 (six) crimes registered against the detenu and his activities are prejudicial to the maintenance of public order. I submit that though the penal laws are invoked against the detenu to curb his illegal activities, he did not mend himself. Hence it necessitated me to pass the order of detention against the detenu, basing on the crimes registered against him. I submit that the subjective satisfaction of the detaining authority is the criteria to invoke the laws of preventive detention. It is further submitted that if the activities of the detenu are not curbed at this juncture, it would become difficult to protect the red sander wood which is endemic species. It is also submitted that this red sander wood is an endangered species and it requires immediate check to prevent its theft. Registration of the crimes and grant of bails did not yield any result in the activities of the detenu. Hence I passed the order of detention against the detenu invoking the provisions of Act 1/1986 on justified grounds and after arriving at subjective satisfaction that there is disturbance of public order.”

5.1 Insofar as third ground is concerned, it is specifically stated in the reply that the copies of documents were served on the detenu were legible.

6. We would now like to deal with all three grounds raised by the petitioner challenging the order of detention passed by the 2nd respondent and confirmation order issued by the 1st respondent.

6.1 Mr.C.V.Mohan Reddy submitted that the detaining authority had recorded its satisfaction, based on six crimes registered against the detenu, that his activities were injurious to “*maintenance of public peace, law and order*” and that violation of “law and order” or “maintenance of public peace” cannot be a ground for detention under 1986 Act. In support, he invited our attention to the grounds of appeal. He further submitted, the order holding that the activities of the detenu are injurious to the maintenance of public peace and law simply show not only non-application of mind but clearly demonstrates confused state of mind of the detaining authority.

6.2 Mr. Surya Praksh, the learned Government Pleader, on the other hand, submitted that the order of detention passed by the 2nd respondent and the confirmation order passed by the 1st respondent do not speak of 'maintenance of public peace, law and order' and it is clear from the order itself that it was passed since the activities of the detenu were prejudicial to 'public order'. Merely because in the grounds of appeal, the expression "*maintenance of public peace, law and order*" is used does not mean that the order is passed on that ground and not on the ground of public order.

7. The Supreme Court in several judgments considered the words/expressions "maintenance of public peace", "law and order", "public order" in the context of detention order. In ***Madhu Limaye v. Sub-Divisional Magistrate***⁽¹⁾ the Supreme Court while dealing with the expression "*maintenance of public order*" in the context of special laws entailing detention of persons without a trial on the pure subjective determination of the Executive observed that it is confined to graver episodes not involving cases of "*law and order*" which are not disturbances of public tranquility but of order public. In ***Ram Manohar Lohia v. State of Bihar***⁽²⁾ the Supreme Court observed that "Public order" is synonymous with public safety and tranquility. Public order, if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. Disorder is, no doubt, prevented by the maintenance of law and order also, but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Public order is something more than ordinary maintenance of law and order. The test to be adopted, in determining whether an act affects "law and order" or "public order", is: does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed. (See: ***Kanu Biswas v. State of West Bengal***⁽³⁾ and ***the Commissioner of Police v. C. Anita***⁽⁴⁾.)

7.1 The very same question fell for consideration of a Division Bench of this

Court recently in W.P.No.6510 of 2015 and batch, decided on 29th September, 2015. The Division Bench considered several judgments of the Supreme Court, including the judgments referred to above, and observed as follows:

“The expression “*law and order*” is wider in scope, as contravention of the law always affects order. “*Public order*” has a narrower ambit, and public order would be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of “*law and order*” and “*public order*” is one of degree, and the extent of the reach of the act in question on society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only and, therefore, touch the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is in its impact on society, it may be very different. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention, in its effect, is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problems of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting “public order” from that concerning “law and order”. “

7.2 The observations are based on the judgment of Supreme Court in **C.Anita** (supra). Thus, in concluding paragraph, the Division Bench observed thus:

“The detaining authority cannot wish away the fact that, in the grounds of detention, he has recorded his satisfaction of the need to detain the detenus as he apprehended their activities to be injurious to “*public peace*” and “*law and order*” neither of which are grounds for detaining a citizen, in preventive custody, under A.P. Act 1 of 1986. Even if the order and the grounds of detention are read together, the fact that the detaining authority has recorded his satisfaction in the Orders of detention on grounds of “*public order*”, and in the grounds of detention, as affecting “*public peace*” and “*law and order*”, reflect his confused state of mind, and lack of clarity of thought in satisfying himself whether the detention should be on grounds of “*public order*” or “*public peace and law and order*”. As noted hereinabove, “*public order*” has acquired a meaning distinct from “*law and order*” and, as the detaining authority is not empowered to detain citizens on grounds that their activities are injurious to “*public peace and law and order*”, his subjective satisfaction is based on extraneous and irrelevant considerations invalidating the orders of detention.”

7.3 For the self-same reason, in our opinion, order of detention in the present case deserves to be set aside. It is true that the expression “maintenance of public peace, law and order” in the impugned order does not find place, but it is clearly appearing at two or three places in the grounds of detention and if the order and the grounds of detention are read together, the fact that the detaining authority has recorded its satisfaction that the orders of detention on the ground of ‘public order’ and in the grounds of detention affecting ‘public peace and law and order’, reflected confused state of mind of the detaining authority, and the lack of clarity of thought in satisfying himself whether the detention should be on the ground of ‘public order’ or ‘public peace and law and order’.

8. The second ground of challenge is, though the order of detention and the grounds of detention were served on the detenu in English, Telugu and Tamil languages, the material relied upon by the detaining authority was not served on the detenu in Tamil language. It was contended on behalf of the detenu that since the material relied upon by the detaining authority was not served on the detenu in Tamil, he could not and did not make effective and purposeful representation to the detaining authority, Government and Advisory Board and that caused grave prejudice to his right to make representation. It is not in dispute that except the order of detention and grounds of detention, all other material served on the detenu was only in English and Telugu. In other words, translation of the “material relied upon” by the detaining authority was not Tamil, only language known to the detenu. The Supreme Court had several occasions to consider similar question. In ***Lallubhai Jogibhai Patel v. Union of India***⁽¹⁾, the Supreme Court held that supplying the documents relied upon by the detaining authority in the language not known to the detenu is not sufficient compliance with the mandate of Article 22 (5) of the Constitution, which required that the grounds of detention must be communicated to the detenu. ‘Communication’ mean that sufficient knowledge of the basic facts constituting grounds, should be imparted effectively, and fully to the detenu in writing, in a language which he understood; the whole purpose of communicating the grounds to the detenu was to enable him to make a purposeful and effective representation; and if the grounds were only verbally explained to the detenu

and nothing in writing was left with him in a language which he understood, then that purpose was not served, and the constitutional mandate in Article 22 (5) was infringed.

9. For the detenu, to effectively make a representation against the order of detention, he should have knowledge of the grounds of detention, which are in the nature of a charge setting out the kinds of prejudicial acts which the authorities have attributed to him. In cases where the grounds are several, any oral translation or explanation given by the police officer, serving those on the detenu, would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the order of detention is based. (See: *Harikisan v. State of Maharashtra AIR 1962 SC 911*)

10. The Division Bench in the batch of writ petitions (W.P.No.6510 of 2015 and batch) considered very same question and in the concluding paragraph, after considering several judgments of the Supreme Court, observed thus:

“The distinction between a document which has been relied upon by the detaining authority in the grounds of detention, and a document which finds a mere reference in the grounds of detention, should be maintained. Non-supply of a copy of the document relied upon in the grounds of detention is fatal to the continued detention, and the detenu need not show that prejudice was caused to him as non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. It would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu’s complaint of non-supply of the document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language. (***Powanammal v. State of Tamil Nadu (1999) 2 SCC 413***). As noted hereinabove, the documents furnished to the detenu in Telugu included copies of the confessional statements of the co-accused. These statements were relied upon by the detaining authority in making the order of detention. Failure to supply these documents, in a language known to him, resulted in the detenu being denied the opportunity of making an effective representation, and would render his continued detention illegal.”

11. We find ourselves in agreement with the view taken by the Division Bench in the aforementioned batch of writ petitions and, therefore, on this ground also the order of detention deserves to be set aside.

12. The last ground raised by the detenu is that the documents served on him were illegible. This ground should not detain us long. We have perused the documents served on the detenu and in our opinion though some pages are faint, they are legible. We could read them, and therefore, it cannot be stated that the detenu did not get an opportunity to make an effective and purposeful representation on this ground.

13. In the result, Writ Petition is allowed. The detenu is directed to be released since the order of detention is vitiated unless his detention is required in connection with any other crime. It is also made clear that if the detenu is not released on bail in any of the crimes registered against him, the concerned Court shall consider his bail application in the light of the observations made by this Bench in **G.Archana v. State of Andhra Pradesh** [decided on 14.10.2015 in W.P.No.14680 of 2015] and **B.Hima Bindu v. Chief Secretary** [W.P.No.14706 of 2015 disposed on 14-10-2015]. If copies of said judgments are not available with the learned Judge dealing with the bail application of the accused/detenu, we hope and trust that without procuring the same he shall not proceed to consider the application for enlargement of bail on merits. We are informed that copies of the judgments have already been circulated to all the Principal District Judges, who, in turn have circulated it to all Judges dealing with bail applications in both the States.

14. Before we part, it would not be out of place to make certain observations based on our experience during last few months. We have come across several detention orders during last few months. In most of the petitions we have set aside detention orders on technical grounds, as is happening in the present case. We have been observing that the detaining authorities are not following the procedure contemplated under the provisions of 1986 Act or

Article 22 of the Constitution of India or the procedure recognized/laid down through the pronouncement of judgments by the Supreme Court and this Court, and as a result thereof most of the detention orders are set aside by this Court. We have also been observing that the concerned police stations, which register offences against the persons such as detenue, do not complete investigation for variety of reasons and file charge sheets within the time stipulated under Section 167 of Cr.P.C. One of the reasons, which we can refer, as contended by learned Government Pleader in the present case, is that all accused were not arrested and hence they did not complete the investigation within the stipulated time and as a result thereof the detenu has been enlarged on bail under

Section 167 Cr.P.C.. We failed to understand why the investigating agencies do not complete the investigation and file charge sheet within the stipulated time. We have also been observing that once detention order is passed, the investigating agencies, investigating the crimes registered against accused/detenue, get relaxed and do not complete the investigation and file charge sheet within the stipulated time. In other words, the moment detention order is passed against the accused, an intensity or force to carry on further investigation and to file charge sheet within the stipulated time diminishes. The Investigating Officers should be more careful and particular in completing the investigation in every case, in particular where a detention order has been passed against the accused, and file charge sheet within the stipulated time.

14.1 Police stations must complete the investigation in cases of detenue within the stipulated time and to file charge sheet and that whenever applications for bail are filed by such accused, they should bring it to the notice of the concerned Court that the accused/detenue is a repeat offender and also oppose the prayer for bail citing the judgments of this Court in **G.Archana** and **B.Hima Bindu** and then leave it to the Court to pass order on merits in accordance with law. This is not happening and we find approach of the investigating agencies absolutely callous and casual. The very purpose of passing detention orders against such repeat offenders thereby gets defeated/frustrated.

14.2 It is also necessary for the respondents to study the judgments of this Court and find out where they go wrong and why detention orders are set aside by this Court and take all care to see the order of detention is not set aside on similar ground. We would like to make a special reference to one of the judgments of the Division Bench of this Court dated

29-09-2015 passed in W.P.No.6510 of 2015 and batch in which the Division Bench has taken pains in writing the said judgment referring to about 129 judgments of the Supreme Court dealing with all situations. If this judgment, we are sure and confident, is carefully studied by the concerned authorities, their orders of detention, at least in future, shall not be set aside by this Court on similar grounds.

14.3 We direct the Registrar (Judicial) to forward a copy of this Judgment, inviting attention to paragraphs 13 onwards in particular, and a copy of the judgment dated 29-09-2015 passed in W.P.No.6510 of 2015 and batch to the respondents and also to the Director General of Police for their perusal and to take appropriate steps in the light of the observations made herein.

14.4 We have also been observing that the Courts below unknowingly or without looking into the law laid down by the Supreme Court in case of repeat offenders grant orders of bail on merits. We observe that the Courts below while dealing with the applications for bail on merits of such offenders should look into the law laid down by the Supreme Court and also the judgments of this Court in **G.Archana** and **B.Hima Bindu** (referred supra). We further direct the Registrar (Judicial) to forward copies of this judgment along with the judgments in **G.Archana** and **B.Hima Bindu** to all Principal District Judges with direction to circulate it to all judges in their District dealing with Bail applications.

15. Miscellaneous petitions pending in this case, if any, also stand disposed of.

Dilip B. Bhosale, ACJ

S.V. Bhatt, J

Dt.22.12.2015

TSNR / gbs