

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.14816 of 2015

PC: (per the Hon'ble Sri Justice S.V.Bhatt)

The petitioner prays for Writ of Habeas Corpus to produce Ijaz Shareef @ Ajaz Shareef @ Aju S/o.Anwar Shareef by declaring detention order of 2nd respondent Rc.No.C2/1405/2015 dated 28.03.2015 of Ijaz Shareef passed under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'Act 1 of 1986'), as illegal and unconstitutional.

The petitioner is the wife of detenu. On 28.03.2015, the second respondent passed order of detention detaining the petitioner's husband on the ground that the alleged indulgent activities of detenu attract the definition of 'Goonda' under Section

2(g) of Act 1 of 1986. The detaining authority for forming subjective satisfaction referred to the following cases:

1. Piler PS, Cr.No.39/2014, under Sections 379, 353, 307 IPC read with 34 IPC, Section 20(1)(c)(ii)(iii)(iv) & (x) of A.P. Forest Act 1967, Rules 3 and 4 of A.P. Sandal Wood and Red Sandal Wood Transit Rules, 1969, Section 29 of Wild Life Protection Act, 1972 and Section 55 (2) of Biological Diversity Act, 2002;
2. Chittoor Taluk P.S. Cr.No.89/2014, under Sections 353, 307, 109, 379 read with 34 IPC, Section 20(1)(c)(ii)(iii)(iv) & (x) of A.P. Forest Act 1967, Rules 3 and 4 of A.P. Sandal Wood and Red Sandal Wood Transit Rules and Section 30 of Indian Arms Act 1959;
3. Palamaner P.S. Cr.No.196/2014, under Sections 353, 307, 379 IPC read with 34 IPC, Section 20(1)(c)(ii)(iii)(iv) & (x) of A.P. Forest Act, Section 25 of the A.P. Forest Act, Section 29 of Wild Life Protection Act 1972, Section 55 (ii) of Biological Diversity Act, Sections 24 (A), 24 (B) and 25(1-AAA) of the Arms Act, 1950;
4. Thavanampalle P.S. Cr.No.82/2014, under Sections 307, 353, 379, 411, 120-

B, 109 IPC, Sections 32 and 29 of A.P. Forest Act, 1967, Rule 3 of A.P. Sandal Wood and Red Sandal Wood Transit Rules, 1969, Section 29 of Wild Life (Protection) Act 1972, Section 55 (2) and Section 58 of Biological Diversity Act, Sections 3 and 5 of Prevention of Damages to the Public Property Act and Sections 24(A), 24(B) and 25 (1-AAA) of Arms Act, 1959.

5. N.R. Pet P.S. Cr.No.47/2014, under Sections 307, 109, 379, 120-B read with 34 IPC, Sections 29 and 32 of A.P. Forest Act 1961, Rules 3 of A.P. Sandal Wood and Red Sandal Wood Transit Rules, Section 58 of Biological Diversity Act and Section 24 (a), 24 (b) and 25 (1-AAA) of Arms Act, 1959;
6. G.D.Nellore PS, Cr.No.6/2015, under Sections 447, 379, 411, 307, 353, 109 and 120-B IPC, Sections 29 and 32 of A.P. Forest Act 1967, Rules 3 and 4 of A.P. Sandal Wood and Red Sandal Wood Transit Rules, 1969, Section 29 of Wild Life Protection Act, Sections 55 (2) and 58 of Biological Diversity Act, 2002;
7. Chittoor Taluk PS, Cr.No.10/2015, under Sections 307, 353, 109, 120-B, 379 IPC, Sections 29 and 32 of A.P. Forest Act 1967, Rules 3 and 4 of A.P. Sandal Wood and Red Sandal Wood Transit Rules, 1969, Section 29 of Wild Life Protection Act, Sections 55 (2) and 58 of Biological Diversity Act, 2002.;

The second respondent, after taking note of each one of the allegations in these crimes and the complicity of detenu, recorded the subjective satisfaction that the detenu is found indulging in smuggling activities of red sanders by cutting down the live red sander trees from Seshachalam Forest area and transporting to Bangalore, assaulting public servants, who are discharging

duties, and threatening general public who prevent the detenu from doing illegal and unauthorised activity. From the available record,

it is observed that the detenu is a habitual offender and has the history of committing same and series of offences under the Forest Act, Indian Penal Code, etc. Therefore, to prevent the detenu from indulging in illegal activities of felling red sander trees and smuggling them, it is recorded, the order of detention is passed. Along with the order of detention, the grounds of detention are made available to the detenu. The first respondent, through G.O.Rt.No.1369 General Administration (Law & Order) Department, dated 06.05.2015, has confirmed the order of detention. The confirmation of detention reads as follows:

“AND WHEREAS, the Government on careful examination of the entire record, it is observed that the detainee Sri Ijaz Shareef @ Ajaz Shareef @ Aju, S/o. Anwar Shareef, Aged 42 years, Katiganahalli, Jadaganahalli, Hoskote, Karnataka State was involved in as many as in 7 (Seven) cases. The above cases were registered against him under the provisions of Section 20 (1)(ii)(iii)(iv) and (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 Sections 307, 353, 378 and 379 IPC. The details show 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 trees and during transportation. The said activities are dangerous to forest wealth and prejudicial to maintenance of public order apart from disturbing the peace, tranquillity, 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 thereunder, 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 detainee 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 detainee 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 detainee 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 detainee. As such, the detainee deserves the maximum period of detention, as provided under Section 13 of the Act.

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 Ijaz Shareef @ Ajaz Shareef @ Aju, S/o. Anwar Shareef, Aged 42 years, Katiganahalli, Jadaganahalli, Hoskote, Karnataka State, be continued for a period of 12 (Twelve) months from the date of his detention i.e. 01.04.2015.”

Hence, the writ petition.

The second respondent filed counter-affidavit and by way of reply, the second respondent has re-stated the facts and circumstances under which the order of detention was passed.

For brevity, we do not propose to refer to all the details in the counter affidavit, except the substantial point on which arguments were addressed.

The petitioner challenges the order of detention by raising the following grounds - that the detaining authority failed to comply with the requirement of serving the order of detention, grounds appended to the order of detention and the material on which the detaining authority relied upon in the language known to the detenu. The detenu on 17.04.2015 submitted representation and the representation is not disposed of as on today and by not disposing of the representation, continuation of detention infringes the valuable right under Article 22 of the Constitution of India. According to the learned counsel for petitioner, the detaining authority either referred to incomplete details or did not take note of the cases where bails have been granted on conditions and the subjective satisfaction recorded is perverse and, therefore, the order of detention is liable to be set aside or the continued detention is declared as unconstitutional.

Learned counsel for petitioner places reliance upon a catena of decisions for the same proposition and for the view on the primary ground of challenge we propose to take, we are not adverting to all the citations relied upon by the learned counsel for the petitioner.

The second respondent, by way of reply, stated that the detention order, grounds and material are translated in Telugu and there is nothing on record to show that the detenu is not conversant with Telugu language. Therefore, according to second respondent, the material relied upon is served on the detenu. It is further replied that the representation made on 17.04.2015 was considered by the Advisory Board and on the recommendation of the Advisory Board, the order of detention was confirmed through G.O.Rt.No.1369 dated 06.05.2015. However, it is admitted that the representation made to the Government is not independently disposed of.

The short point for consideration, having regard to the admitted factual position viz., that till date the representation made to Government is not disposed of and the inaction in disposing of the representation vitiates detention of the detenu, arises for decision.

The legal effect on detention by the non-consideration of representation is no more *res integra*. The learned counsel appearing for parties draw our attention to the detailed and well considered common order dated 02.09.2010 in W.P.Nos.6510 of 2015 and batch. Point IX of the common order reads as follows:

**“INORDINATE AND UNEXPLAINED DELAY IN
CONSIDERATION OF THE REPRESENTATION:**

It is contended, on behalf of the petitioners, that there is an inordinate and unexplained delay in disposal of the representations submitted by the detenu; there is no explanation, much less one which is satisfactory, for the inordinate delay in considering the representations of the detenu; and such unexplained delay renders the continued detention of the detenu illegal. On the other hand, the Learned Advocate-General for the State of Andhra Pradesh would submit that the delay in disposal of the representations, even in cases where the detenu submitted his representation after the detention order was confirmed, is not fatal. Article 22(5) of the Constitution of India mandates that the detenu should be afforded the earliest possible

opportunity to make a representation against the order of detention. (Pebam Ningol Mikoi Devi v. State of Manipur. The Constitution has, by way of limitations upon the freedom of personal liberty, recognised the right of the State to legislate for preventive detention, subject to certain safeguards in favour of the detained person, as laid down in clauses (4) and (5) of Article 22. One of those safeguards is that the detained person has the right to be communicated the grounds on which the order of detention has been made against him, in order that he may be able to make his representation against the order of detention. (Rushikesh Tanaji Bhoite). The obligations imposed on the authority, making the order of detention, are to ensure that the right of the person detained to make a representation is a real right, and he is able to take steps for redressal of a wrong which he thinks has been committed. The detenu has the right, under Article 22(5), to be furnished with particulars of the grounds of his detention "sufficient to enable him to make a representation which, on being considered, may give relief to him. This constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained. If that is not done, the detention cannot be held to be in accordance with the procedure established by law within the meaning of Article 21. (Ram Krishan Bhardwaj).

The authority exercising the power, to detain without trial, must afford an opportunity to the detenu to convince the Government/detaining authority that the power was not justifiably exercised or no occasion arose for exercise of the power. In a punitive detention, which is the end product of a trial, the convict participates and has full opportunity to present his side of the case. Preventive detention does not afford any opportunity to the detenu to explain his side of the matter before he is deprived of his liberty and therefore, soon after the detenu is deprived of his personal liberty, the Statute makes it obligatory on the authorities concerned to afford him the earliest opportunity to represent his side of the case. (Vijay Kumar v. State of J&K). The right to make a representation against the detention order flows from the constitutional guarantee enshrined in Article 22(5) which casts an obligation on the authority to ensure that the detenu is afforded an earliest opportunity to exercise that right, if he so desires. (Amir Shad Khan v L. Hmingliana); Kundanbhai Dulabhai Shaikh). The word "earliest", which qualifies the opportunity, must equally qualify the corresponding obligation of the State to deal with the representation, if and when made, as expeditiously as possible, (Vijay Kumar), or else the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning. (Kundanbhai Dulabhai Shaikh). The question is not whether the detenu will be prejudicially affected in securing his release by his representation, but whether his constitutional safeguard has been infringed. (Ram Krishan Bhardwaj).

The representation relates to the liberty of the individual, the highly cherished right enshrined in

Article 21 of the Constitution. It is a constitutional mandate commanding the concerned authority, to whom the detenu submits his representation, to consider the representation and dispose it of as expeditiously as possible. The words “as soon as may be”, occurring in Article 22(5), reflects the concern of the framers of the Constitution that the representation should be expeditiously considered, and disposed of with a sense of urgency without avoidable delay. There is no period prescribed either under the Constitution, or under the concerned detention law, within which the representation should be dealt with. However, as a citizen's right raises a corresponding duty on the State, there should not be supine indifference, slackness or callousness in considering the representation. Unexplained delay, in the disposal of the representation, is in breach of the constitutional imperative, and would render the continued detention impermissible and illegal. (K.M. Abdulla Kunhi; Jayanarayan Sukul; Khairul Haque; Francies Coralie Mullin; Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police and Aslam Ahmed Zaire Ahmed Shaik v. Union of India.

It is the constitutional obligation of the Government to consider the representation forwarded by the detenu without delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words “as soon as may be” in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. The time imperative can never be absolute or obsessive. (Francies Coralie Mullin; Abdul Nasar Adam Ismail v. State of Maharashtra). The fundamental right of the detenu, to have his representation considered by the Government, would be rendered meaningless if the Government does not deal with the matter expeditiously, but at its own will and convenience. It is imperative that, when the liberty of a person is in peril, immediate action should be taken by the relevant authorities. (Jayanarayan Sukul).

The requirement of each day's delay, in dealing with the representation, being adequately explained is meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae. (L.M.S.Ummu Saleema; Abdul Nasar Adam Ismail. There can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the

concerned detention law, within which the representation should be dealt with. It is not necessary that every day's delay, in dealing with the representation of the detenu, should be explained. The explanation offered must be reasonable indicating that there was no slackness or indifference. Though delay itself is not fatal, the delay which remains unexplained becomes unreasonable.

The Court can consider whether the delay was occasioned due to permissible reasons or unavoidable causes. It is not enough to say that the delay was very short. Even longer delay can be explained. The test is not the duration or the range of delay, but how it is explained by the authority concerned. The authority, empowered to make an order of detention, should adopt a procedure calculated towards expeditious consideration of the representation. The representation must be taken up as soon as it is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. (Abdul Nasar Adam Ismail; Rajammal v. State of T.N. ; Kundanbhai Dulabhai Sheikh).

The requirement is the absence of supine indifference, slackness or callousness in considering the representation. Unexplained delay, in disposal of the representation, would breach the constitutional imperative, and would render the continued detention impermissible and illegal. (Rajammal; K.M. Abdulla Kunhi; L.M.S. Ummu Saleema; Kundanbhai Dulabhai Shaikh; Abdul Nasar Adam Ismail). Reasons for the delay must be indicated to the Court. Unexplained delay or unsatisfactory explanation in the disposal of the representation would fatally affect the order of detention. In that situation, the continued detention would be rendered illegal. (Kundanbhai Dulabhai Shaikh; Sk. Abdul Karim v.State of W.B.; Durga Show, In re:103]; Jayanarayan Sukul; Sk.Hanif; Raisuddin v. State of U.P.; Frances Coralie Mullin; Mohinuddin v. Distt. Magistrate; Rama Dhondu Borade; Aslam Ahmed Zahire Ahmed Shaik; Mahesh Kumar Chauhan; Gazi Khan v . State of Rajasthan; State of T.N. v. C. Subramani; K.M.Abdulla Kunhi and Julia Jose Mavely v. Union of India).

Unreasonable delay in considering the representation is fatal to the continued detention of the detenu. (Rashid Kapadia v. Medha Gadgil [109]; Mohinuddin¹⁰⁵ and Harshala Santosh Patil ⁷⁶). It is the constitutional right of the detenu to have his representation considered as expeditiously as possible for, otherwise, the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning. (Jayanarayan Sukul ⁸⁹; Khairul Haque⁹²).

Where there is considerable delay between receipt of the representation of the detenu, and its consideration and rejection by the

Government, and no attempt has been made in the counter-affidavit to explain the delay, such unexplained delay in considering the detenu's representation is fatal. A delay of 16 days is also a long delay where a person is being detained without trial under a special law relating to preventive detention. (Durga Show, In re, 103). Merely stating that the Minister was on tour, and he could pass orders only thereafter, is not a justifiable explanation when the liberty of a citizen, guaranteed under Article 21 of the Constitution, is involved. (Rajammal 101). On the other hand the time taken to obtain parawise comments from, and seeking the views of, the sponsoring authority cannot be said to be a futile exercise. (Kamarunnissa v. Union of India [110]; Abdul Nasar Adam Ismail 100). Likewise where the stages through which the file, containing the representation, was processed show that it was dealt with promptly, there was no indifference, lethargy or negligence in dealing with the same, the file was not unnecessarily held up at any level, but moved from one level to another promptly, it does not betray lack of urgency in dealing with the representation. (Rajammal 101; U. Vijayalakshmi v. State of T.N [111]).

There can be no hard and fast rule as to the measure of reasonable time. It is the duty of the Court to ensure that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not defeated by the delay caused by the mechanical routine in consideration of the representation, and the indifference of the authorities entrusted with their application. When the delay is caused because of indifference or avoidable reasons, the detention becomes vulnerable. (Pebam Ningol Mikoi Devi 95; Union of India v. Laishram Lincola Singh [112]). A consistent attitude of lethargy would result in the order of detention being quashed to restore the "liberty and freedom" of the person whose detention is allowed to become bad by the Government itself for its failure to dispose of the representation at the earliest. (Kundanbhai Dulabhai Shaikh 11).

In Mehdi Mohamed Joudi v. State of Maharashtra [113], the order of detention was passed on 4-10-1980 and served on the detenu on 1-11-1980 when the detenu was taken into custody; on 6-11-1980 and 18-11-1980 some documents were served on the detenu; the final instalment of the documents and materials was served on the detenu on 21-11-1980; a representation was made by the detenu on 27-11-1980 which was rejected by the State Govt on 30-12-1980. The Supreme Court held that the order of detention suffered from two infirmities, first, that the document and material were not supplied along with the grounds of detention and, secondly, there was a delay of more than a month in disposing of the representation which itself was fatal to the order of detention.

In Raj Kishore Prasad v. State of Bihar [114], the representation was received in the office of government on October 20, 1981; on the same

day, a copy thereof was sent to the detaining authority who returned the representation, with his comments, on October 31, 1981; it was received in the Department of Home (Special) on November 4, 1981; on November 5, 1981, it was examined by the Deputy Secretary, Home (Special) Department; and, on November 6, 1981, it was received by the Special Secretary, Home (Special) Department who endorsed it to the Chief Minister on November 10, 1981. The Supreme Court held that the detaining authority took more than nine days in examining the representation, and in forwarding his comments for which there was no explanation; barring giving out the dates, there was not the slightest explanation for the delay by the detaining authority as also the State Government; even rotation of the files from the Deputy Secretary to the Special Secretary, and then to the Chief Minister, had taken an unusually long time; and, on the whole, the delay of 28 days, in disposing of the representation, was inordinate and vitiated the order”.

In the case on hand, representations dated 13.04.2015 and 17.04.2015 are stated to have been submitted to first respondent. The challenge to continued detention is that the representations are not disposed of till the date of hearing. The reply of respondents is that the representations are placed before the Advisory Board, the Advisory Board has considered the representation and recommended for confirmation of detention order. From the reply, it is evident that the respondents have not considered the representation independently and disposed of the same. We are of the view that the non-disposal of representation renders the continued detention of the detenu illegal.

For the reasons aforementioned, the writ petition is allowed. The order of detention Rc.No.C2/1405/2015 dated 28.03.2015 of the 2nd respondent and G.O.Rt.No.1369 General Administration (Law & Order) Department dated 06.05.2015 of the 1st respondent are set aside. The detenu shall be set at liberty forthwith provided the detenu is not required to be kept in custody in any other case(s) registered against him. The respondents are directed to take note of the observations of this Court in W.P.Nos.26965 of 2005 which reads thus:

“Police stations must complete the investigation in cases of detenu

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/detenu 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.

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.

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.

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.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 23.12.2015

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