

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.24526 OF 2015

ORDER: (Per Hon'ble Sri Justice A. Shankar Narayana)

Shaik Tanveer Hussain Ali alias Chota alias Shulshul, son of Aziz Ali, belonging to Bidar District of Karnataka State, but presently resident of Parli Vijayanath Town, Beed District of Maharashtra State, is detenu in the instant case.

2. Smt. Sakena, wife of detenu, filed the instant writ petition under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus while quashing the detention order, dated 18.05.2015, passed by the Commissioner of Police, Cyberabad - respondent No.2 against the detenu and failure to consider her representation, dated 28.05.2015, by respondent No.1 as illegal, arbitrary and in violation of principles of natural justice and to release the detenu from preventive detention by setting him free. Thus, the petitioner originally sought to quash the detention order passed by respondent No.2. The instant writ petition was filed on 04.08.2015, by which date, the confirmation of detention order was not passed and it was passed only on the next

day i.e. 05.08.2015.

3. Initially, respondent No.2 passed the order of detention on 18.05.2015, under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act'), stating that the detenu has been engaging in property offences by diverting attention of the people and creating panic in the minds of general public in different localities which are prejudicial to the maintenance of public order and that he was involved in as many as twelve (12) criminal cases, in the limits of Hyderabad and the bordering police stations of Cyberabad since 2009 and referring to six (6) out of twelve (12) cases committed by him, has arrived at subjective satisfaction that the activities of the detenu are prejudicial to maintenance of public order. The twelve (12) crimes referred to by the detaining authority are thus:

- 1) Crime No.99 of 2009 for the offences under Sections 379 and 420 of the Indian Penal Code (IPC) of Miyapur Police Station.
- 2) Crime No.4 of 2010 for the offences under Sections 420 and 420 and 379 of IPC of Chanda Nagar Police Station.
- 3) Crime No.184 of 2010 for the offence under Section 379 of IPC of Kukatpally Police Station.

- 4) Crime No.151 of 2010 for the offences under Sections 420 and 379 of IPC of Sanath Nagar Police Station.
- 5) Crime No.266 of 2010 for the offence under Section 379 of IPC of Sulthan Bazar Police Station.
- 6) Crime No.34 of 2011 for the offences under Sections 419, 420 and 379 of IPC of Market Police Station.
- 7) Crime No.49 of 2013 for the offences under Sections 420 and 379 of IPC of Market Police Station.
- 8) Crime No.12 of 2014 for the offences under Sections 420 and 379 of IPC of Market Police Station.
- 9) Crime No.141 of 2013 for the offences under Sections 420 and 379 of IPC of Charminar Police Station.
- 10) Crime No.142 of 2013 for the offences under Sections 420 and 379 of IPC of Charminar Police Station.
- 11) Crime No.330 of 2013 for the offences under Sections 420 and 379 of IPC of Charminar Police Station.
- 12) Crime No.64 of 2015 for the offences under Sections 420 and 379 of IPC of Hussaini Alam Police Station.

4. The detaining authority further observed in the

order that out of twelve (12) crimes, in the first four (4) crimes, the detenu was arrested on 14.03.2010 and released on bail on 29.03.2010 with conditions and since he did not attend the Court, non-bailable warrant was issued against him in all the four (4) cases and the same were pending for execution. After the detenu was released from jail, he alleged to have committed the remaining eight (8) crimes mentioned above and opined that these would demonstrate that he is a habitual offender falling within the term of 'goonda' as defined under Section 2(g) of the Act. The order also shows that on the date when it was passed, he was in judicial custody having been arrested on 2.5.2015 in Crime No.12 of 2015 and expressing the belief that there is a genuine possibility of his release on bail and further on being released, he would further indulge in similar activities which are prejudicial to the maintenance of public order recorded subjective satisfaction.

5. Thereafter, the detention order was further confirmed by respondent No.1 agreeing with the opinion of the Advisory Board and directed detention of the detenu for a period of twelve (12) months by issuance of G.O. Rt. No.2179, dated 05.08.2015.

6. In her affidavit, the petitioner insists the following grounds;

(i) She represented her grievance before respondent No.1 on 28.05.2015, but the same was not considered by the Advisory Board and even by the date of filing writ petition, no orders were passed on her representation, and, thus, the delay occurred for passing the orders itself is contrary to law, and, therefore, the order of detention is liable to be quashed;

(ii) the second ground agitated by her is that the Commissioner of police, Hyderabad City, passed order detaining the detenu for twelve (12) months at a time in a single stroke, which is contrary to the decision rendered by the Hon'ble Supreme Court in **Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh**^[1];

(iii) she questioned subjective satisfaction recorded by the detaining authority in terming her husband as 'goonda' as defined under Clause 2(g) of the Act on the ground that it suffers from non-application of mind;

(iv) the detention order is invalid for the reason that the detenu was in custody for three (3) months, in the first instance as provided under Section 3(2) of the Act and as held by the Hon'ble Court in

A. Raja Reddy v. Collector, District Magistrate, Adilabad^[2];

(v) stating that herself and her children, Kum. Safir -

aged 16 years, Sukura - aged 14 years, Mohd. Sathik - aged eight (8) years, and the second wife of detenu Smt. Salma and their daughter Tamanna - aged three (3) years and the unmarried sisters of the detenu Kum. Fiza and Kum. Bhanu are dependants on him and their studies and lives will be spoiled in case the detenu is kept in detention further; requests for release of the detenu.

7. On 21.12.2015, petitioner filed W.P.M.P. No.53645 of 2015 under Order - VI Rule - 17 read with Section 151 of the Code of Civil Procedure (CPC), requesting to amend the prayer, as by then, respondent No.1 has made confirmation of the order of detention by issuance of proceedings in G.O. Rt. No.2179, General Administration (Law & Order) Department, dated 05.08.2015, and sought to amend the prayer by substituting the earlier prayer thus:

“It is therefore prayed that this Hon’ble Court may be pleased to issue a **WRIT OF HABEAS CORPUS** while quash the GORt. No.2179 General Administration (Law&Order) Department Dated, 05-08-2015 passed by the 1st respondent while confirming the orders of the 2nd respondent who passed the illegal detention orders vide SB(I).268/PD/S-1/2015, dated 18-05-2015, and non-consideration by the 1st respondent on my representation dt.28-05-2015 is illegal, arbitrary and violation of natural justice, against the detenu, by directing the respondents to release the detenu i.e. Tanveer Hussain Ali, forth with

by producing him before any Magistrate, by declaring the illegal detention of Tanveer Hussain Ali, vide orders No.SB(I).268/PD/S-1/2015, dated 18-05-2015 is as illegal, arbitrary, null and void and violating the natural justice, and pass such other order or orders may deem fit and proper in the circumstances of the case.”

In specific, confirmation of detention order of the detenu is questioned.

8. The petitioner also moved W.P.M.P. No.53646 of 2015 on 21.12.2015, seeking permission to raise additional grounds stating that non-supply of bail applications and bail orders of detenu as well as translation copies of detention orders and grounds, to the detenu in his known language i.e., Irani parsi or Hindi language to make an effective representation, vitiate the order of detention.

9. An elaborate counter was filed by respondent No.2 on 23rd September, 2015, controverting all allegations referring to the details of the crimes as contained in the grounds of detention, stating that having examined the material placed before him and having satisfied that the activities of the detenu are prejudicial to the public order adversely affecting the maintenance of public order,

passed the order of detention.

10. Concerning the allegation that the petitioner's representation dated 28.05.2015, was not considered, respondent No.2 states that soon after receipt of the same, he called for remarks besides forwarding the same to the Advisory Board for consideration at the time of review through Government Memo, dated 10.06.2015, and that the Advisory Board which met on 24.06.2015, upon hearing the detenu and the petitioner and also the mother of the detenu, and upon considering the representation and some other material, tendered its opinion and that there is sufficient cause for detention of the detenu.

11. Concerning the allegation of the petitioner that in a single stroke, respondent No.2 passed the detention orders, referred to the principle laid down by the Hon'ble Supreme Court in **Harpreet Kaur (Mrs) Harvinder Singh Bedi v. State of Maharashtra and another**^[3] stating that the proviso to sub-section (2) of Section 3 of the Act has nothing to do with the period of detention of a detenu and the maximum period of detention is prescribed under Section 15 of the Act.

12. It is further stated that basing on the suggestion of the Advisory Board and the material on record, respondent No.1 confirmed detention of the detenu for a

period of twelve (12) months by issue of G.O. Rt. No.2179, dated 05.08.2015, and representation of the petitioner was rejected through the Government Memo No.164/L&O/A2/2015-4, dated 11.08.2015.

13. It is stated that in a catena of decisions, the Hon'ble Courts held that chain snatching in public places, streets and roads, pick pocketing of hard earned money of any citizen etc., have to be viewed seriously as they have result of causing grave public disorder and panic resulting in serious threat to public tranquility and disturbance of even tempo of the life of the community as the offences are directed against the society.

14. In paragraph No.20 of the counter, respondent No.2 states that the detenu indulged in goonda activities by habitually engaging himself in unlawful activities of theft of gold jewellery and cash by diverting attention of the general public posing himself as police official in public places and created a sense of fear, panic and insecurity in the minds of public which are prejudicial to the maintenance of the public order and sought to dismiss the writ petition.

15. It is also stated that for the first time, the petitioner has come up with a plea that the bail order was not furnished to the detenu. Neither the petitioner nor the detenu ever made any such request/complaint to the detaining authority, Chief Secretary to Government or the

Advisory Board and, thus, the same is an after thought. It is also stated that the petitioner herself admitted in the affidavit that she has made a representation, dated 28.5.2015, to respondent No.1 for revoking the detention order passed against the detenu and the same was considered and disposed of by respondent No.1, and, therefore, no prejudice is caused to the detenu in making the representation as the petitioner has already made a representation to the respondent.

16. Additional counter is filed by respondent No.2 stating that apart from English version of the detention order and the grounds thereof, translated copies in Hindi language were also furnished to the detenu on 19.05.2015 and obtained his acknowledgment in the presence of the Jailor, Central Prison, Chanchalguda, Hyderabad.

17. Heard Sri G.L. Narasimha Rao, learned counsel for the petitioner, and the learned Additional Advocate General appearing for respondent No.1 as well as learned Government Pleader for Home appearing for respondent No.2.

18. Touching the first ground raised by the petitioner that though, she made representation on 28.05.2015, the Advisory Board has not considered it and it was kept pending without passing any orders even on

the date when the instant writ petition was filed and thus, vitiates the order of detention. We have referred to in the above that the detaining authority in its counter stated that the said representation was disposed of on 11.08.2015 rejecting the representation of the petitioner, dated 28.05.2015. The confirmation of detention order was made on 05.08.2015. Thus, representation of the petitioner was disposed of on 11.08.2015 indicating that there was delay of more than two (2) months. In support of his argument, learned counsel for the petitioner placed reliance on the decision of

a Division Bench of the Hon'ble Madras High Court in **Regina Begam v. Secretary to Government, Chennai**^[4], and the decisions of the Hon'ble Supreme Court in **Ummu Sabeena v. State of Kerala**^[5] and **Rajammal v. Tamilnadu**^[6].

19. In **Regina Begam's Case** (Supra 4), the Hon'ble Madras High Court placing reliance on the decisions in **Rajammal's Case** (Supra 6), **K.M. Abdulla Kunhi and another v. Union of India and others**^[7] and **Ummu Sabeena's Case** (Supra 5), opined that there was violation of mandatory provisions by the detaining authority in view of the delay caused in disposal of the representation and the said violation has vitiated the detention order.

20. In **Ummu Sabeena's Case** (Supra 5), the expression "as soon as may be" occurring in Article 22(5) of the Constitution of India has been explained observing that it should be considered very expeditiously and disposed of with a sense of urgency and without any avoidable delay and since there was delay of more than two (2) months, in disposal of the representation, the Hon'ble Apex Court held that procedural safeguards given for protection for personal liberty was violated and, therefore, quashed the orders of detention on the ground of delay on the part of the Central Government in disposing of representation of the detenu. Even **Rajammal's Case** (Supra 6) was referred by the Hon'ble Supreme Court. The Hon'ble Supreme Court while observing that a Constitution obligation was cast on the Government to consider the representation forwarded by the detenu without any delay, referring to the Constitutional safeguard engrafted under Article 22(5), having found that there was some explanation for the delay till 09.02.1998, but there was no justifiable explanation till 14.02.1998, held that such unexplained delay vitiated further detention of the detenu.

21. The learned Government Pleader for Home *inter alia* contends that the detaining authority has no constitutional duty to consider the representation made by the detenu before the order of confirmation of detention

order was made and placed reliance on the decision of the Hon'ble Supreme Court in **D.M. Nagaraja v. Government of Karnataka and others**^[8]. While contending that it was not as though that the earliest opportunity of making a representation was denied to the petitioner since the petitioner herself appeared before the Advisory Board on 24.06.2015 and herself and the detenu made representation and upon considering the representation, the Advisory Board tendered opinion that there is sufficient cause for detention of the detenu, he states that no prejudice has been occasioned to the detenu in disposing of the representation on 11.08.2015. The learned Government Pleader in support of his submission made in the above, drawn our attention as to what the Hon'ble Supreme Court has observed in **D.M. Nagaraja's Case** (Supra 8) in paragraph No.23 thus:

“23. This Court in *K.M. Abdulla Kunhi v. Union of India* [(1991) 1 SCC 476 : 1991 SCC (Cril 613 (Constitution Bench)] has clearly held that the authority has no constitutional duty to consider the representation made by the detenu before the order of confirmation of the detention order. There is no constitutional mandate under clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. In other words, the competent authority can consider the representation

only after the order of confirmation and as such, the contention raised by the appellant as if there was delay in consideration, is baseless and liable to be rejected.”

22. We have already made a mention in the above while narrating the averments made in the counter that the petitioner and the detenu both appeared before the Advisory Board on 24.06.2015 and on hearing them, the Advisory Board tendered its opinion expressing that there was sufficient cause for detention of the detenu. It is no doubt true, that the representation, dated 28.05.2015, was disposed of on 11.08.2015, but, in view of the decision of the Hon’ble Supreme Court in **K.M. Abdulla Kunhi’s Case** (Supra 7), we are of the considered view that disposal of representation subsequent to passing of confirmation order is no ground to hold that it vitiates the order of detention in the instant case. Thus, we find no merit in the submission of the learned counsel for the petitioner.

23. On the second ground that order of detention of the detenu for twelve (12) months passed by the Commissioner of Police, at a time in a single stroke is contrary to the decision rendered by the Hon’ble Supreme Court in **Cherukuri Mani’s Case** (Supra 1), the learned Government Pleader places reliance on the decision of the Hon’ble Supreme Court in **Harpreet Kaur’s Case** (Supra 3) contending that proviso to Section 3(2) of the Act relates to delegation of

powers, but does not relate to period of detention. He has also placed reliance on a decision rendered by another Hon'ble Division Bench of this Court in **Arif Khan v. State of Telangana** ^[9]; in the said context, the Hon'ble Division Bench following the decisions in **Harpreet Kaur's Case** (Supra 3) and in the case of **T. Devaki v. Government of Tamilnadu** ^[10], held in paragraph Nos.8, 9 and 10, thus:

“8. The learned Government Pleader contends that the decision reported in CHERKURI MANI's case was considered by this court in WP.No.40066 of 2014 and WP.No. 5168 of 2015 along with the principles of law laid down by the Apex Court in **HARPREET KAUR [MRS] HARVINDER SINGH BEDI V/s. STATE OF MAHARASHTRA AND ANR** ^[7], **T. DEVAKI V/s. GOVERNMENT OF TAMIL NADU AND ORS** ^[8]. and the power of detaining authority to pass the detention order beyond three months was considered and by following HARPREETH KAUR's case and T. DEVAKI's case the detention passed on CHERUKURI MANI was rejected. According to learned Government Pleader, earlier the three Judge Bench which was in T. Devaki's case and Harpreeth Kaur's case have not been brought to the notice of the Apex Court in Cherukuri Mani's case. Therefore, he contends that there is no illegality in the order of detention and prays for dismissing the writ petition.

9. We have heard the learned counsel for parties and perused the material available on record. The contention of learned

counsel for the petitioner is that the order of detention for twelve months at a time is liable to be set aside, having regard to the ratio laid down by the Apex Court in **Cherukuri Mani's** case. On the other hand, learned Government Pleader places reliance upon **Harpreet Kaur (MRS) Harvinder Singh Bedi's** case and **T. Devaki's** case together with two unreported decisions of this Court where similar point was considered and held against the detenu.

10. We have perused the principles laid down in **Harpreet Kaur (MRS) Harvinder Singh Bedi's** case and **T. Devaki's** case and also the view taken by this Court in W.P.No.40066 of 2014 and W.P. No.5168 of 2015. In our considered view, the first contention raised by the petitioner is without merit and is accordingly, rejected."

Therefore, in our view, there is absolutely no merit in the submission.

24. On the submission that non-mentioning of a definite period at all in the order of detention passed by respondent No.2, dated 18.05.2015, is wrong and contrary to the provisions of the Act, we would like to mention that Section 3(3) of the Act would impose an obligation on the authority to communicate passing of order of detention to the Government within twelve (12) days from the date of order and no other obligation was cast on the detaining authority such as mentioning any period of detention. Thus, we find no merit in the said submission.

25. One other ground urged by the learned counsel for the petitioner is that the offences alleged to have committed by the detenu do not fall within the term “public order” and the detaining authority misconceived it and passed the order of detention. In other words, according to him, provisions of the Act can be invoked if only the activities of detenu are prejudicial to the public order and, therefore, detention on the ground that activities of the detenu are prejudicial to the law and order is impermissible under the Act. Thus, the said submission touches subjective satisfaction recorded by the detaining authority. Learned counsel for the petitioner has placed reliance on a catena of decisions and so also the learned Government Pleader for Home to substantiate their respective contentions.

26. The decisions on which learned counsel for the petitioner placed reliance are **Ram Manohar Lohia v. The State of Bihar and another**^[11], **Madhu Limaye v. Sub-Divisional Magistrate, Monghyr**^[12], **Commissioner of Police v. C. Anita (SMT)**^[13], **Y. Gowtham Siddartha v. The Commissioner of Police and Additional District Magistrate, Vijayawada City**^[14], and the recent pronouncements of a Division Bench of this Court in **Nafeesa Begum v. State of A.P. and others**^[15]. The distinction between ‘public order’

and 'law and order' has been better explained by the Hon'ble Supreme Court in **Ram Manohar Lohia's Case** (Supra 11) in paragraph No.8 thus:

"8. It is common place that words in a statutory provision take their meaning from the context in which they are used. The context in the present case is the emergent situation created by external aggression. It would, therefore, be legitimate to hold that by maintenance of public order what was meant was prevention of disorder of a grave nature, a disorder which the authorities thought was necessary to prevent in view of the emergent situation. It is conceivable that the expression "maintenance of law and order" occurring in the detention order may not have been used in the sense of prevention of disorder of a grave nature. The expression may mean prevention of disorder of comparatively lesser gravity and of local significance only. To take an illustration, if people indulging in the Hindu religious festivity of Holi become rowdy, prevention of that disturbance may be called the maintenance of law and order. Such maintenance of law and order was obviously not in the contemplation of the Rules."

In the context of interference of Courts, the Hon'ble Supreme Court in paragraph Nos.9 and 10 held thus:

"9. What the Magistrate making the order exactly had in mind, by the use of the words law and order, we do not know. Indeed, we are not entitled to know that for it is well-settled that courts cannot enquire into the grounds on which the Government thought that it was satisfied that it was necessary to make an order of detention."

Courts are only entitled to look at the face of the order. This was stressed on us by learned counsel for the respondent State and the authorities fully justify that view, If, therefore, on its face an order of detention is in terms of the rule, a court is bound to stay its hands and uphold the order. I am leaving here out of consideration a contention that an order good on the face of it is bad (*Sic.* bad) for reasons de hors it, for example, because it had been made mala fide. Subject to this and other similar exceptions - to which I have earlier referred and as to which it, is unnecessary to say anything in the present context and also because the matter has already been examined by this Court in a number of cases - a court cannot go behind the face of the order of detention to determine its validity.

10. The satisfaction of the Government which justifies the order under the rule is a subjective satisfaction. A court cannot enquire whether grounds existed which would have created that satisfaction on which alone the order could have been made in the mind of a reasonable person. If that is so, - and that indeed is what the respondent State contends. - it seems to me that when an order is on the face of it not in terms of the rule, a court cannot equally enter into an investigation whether the order of detention was in fact, that is to say, irrespective of what is stated in it, in terms of the rule. In other words, in such a case the State cannot be heard to say or prove that the order was in fact made, for example, to prevent acts prejudicial to public order which would bring it within the rule though the order does not say so. To allow that to be done would be to uphold a

detention without a proper order. The rule does not envisage such a situation. The statements in the affidavit used in the present case by the respondent State are, therefore, of no avail for establishing that the order of detention is in terms of the rule. The detention was not under the affidavit but under the order. It is of some significance to point out that the affidavit sworn by the District Magistrate who made the order of detention does not say that by the use of the expression law and order he meant public order.”

27. In **Madhu Limaye’s Case** (Supra 12), the Hon’ble Supreme Court, in the context of the areas of two kinds of detention, one by Magistrate under the Code of Criminal Procedure and another, under Laws made for preventive detention under Article 22 of the Constitution, opined that the area of the two is entirely different. Concerning the expression “in the interest of public order”, stating that it is capable of taking within itself not only those acts which are danger to the security of the State and also acts which are comprehended by the expression “ordere publique” but not acts which disturb only the serenity of others.

28. In **C. Anita’s Case** (Supra 13), meaning of the expressions “public order” “security of State” and “law and order” has been restated by the Hon’ble Supreme Court and the distinction between the areas of “law and order” and “public order” have been explained in paragraph Nos.12 and 13 thus:

“12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon 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, touches 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.

13. The two concepts have well-defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" justice as "public order" comprehends disorders of less gravity than those affecting "security of State". (See *Kuso Sah v. State of Bihar* [1974] 1 SCC 185 : 1974 SCC (Cri) 84, *Harpreet Kaur v. State of Maharashtra*, [1992] 2 SCC 177 : 1992 SCC (Cri) 370, *T.K. Gopal v. State of Karnataka*, [2000] 6 SCC 168 : 2000 SCC (Cri) 1037 and *State of Maharashtra v. Mohd. Yakub*, [1980] 3 SCC 57 : 1980 SCC (Cri) 513

(1980) 2 SCR 1158.”

29. Learned counsel for the petitioner has placed reliance in **Gowtham Siddartha’s Case** (Supra 14) for the proposition that if

a person habitually commits or attempts to commit offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, he cannot be detained unless his activities affect adversely or likely to affect adversely the maintenance of public order.

30. On the other hand, the learned Government Pleader placed reliance on the decisions of the Hon’ble Supreme Court in **State of Bombay v. Atma Ram Shridhar Vaidya**^[16], **Rameshwar Shaw v. District Magistrate, Burdwan and another**^[17], **Tarapada De v. State of W.B.**^[18] and **Hardhan Saha v. The State of West Bengal and others**^[19], in the context of satisfaction recorded by the detaining authority on the basis of material that the detenu has been habitually engaging himself in unlawful acts and indulging in property offences by diverting attention of people, especially old aged women and also posing as a police officer in public places creating sense of fear, panic and insecurity in the minds of public which are prejudicial to the maintenance of the public order in the limits of Hyderabad City adversely affecting a public order.

31. When examined the offences alleged to have

committed by the detenu, the detenu along with his associates posing themselves as Bomb Squad Police of Vigilance Department, stopped the complainant in Crime No.49 of 2013 and under the pretext of checking his bag, committed theft of his gold ornaments weighing about 10 tolas and in other crimes, offences of similar nature said to have committed which details have been elaborately narrated in the grounds of detention and we feel it unnecessary to advert to.

32. Thus, twelve (12) crimes alleged to have committed by the detenu from 2009 to 2015 and despite obtaining bail, repeating commission of similar crimes, the satisfaction recorded by the detaining authority in passing the impugned order of detention, in our view, does not suffer from any legal infirmity and the impact of these offences and the manner in which they were alleged to have committed by the detenu, certainly, cannot be brought within the fold of 'law and order' and, therefore, we find no merit in the submission of the learned counsel for the petitioner. The decisions relied on by the learned counsel for the petitioner, afore referred to, would not render any assistance to advance his case to hold that the petitioner cannot be termed as 'goonda' as defined under Section 2(g) of the Act.

33. The other two (2) grounds raised by the petitioner were subsequent to filing of the writ petition by filing W.P.M.P. No.53646 of 2015 on 21.05.2015. They

are to the effect that non-supply of bail applications and bail orders of detenu and failure to serve translation copies of the detention order and the grounds to the detenu in his known language i.e., Irani Parsi or Hindi language, to make effective representation, we would like to state that the said pleas are belatedly raised, but not in the first instance. Had such a plea was raised in the representation, dated 28.05.2015, or at least in the grounds mentioned in the affidavit, certainly, there would have been some significance.

34. We have already stated in the above that the petitioner has raised a belated plea contending that bail applications and bail orders were not supplied to him, thereby disabled him from making an effective representation before the authorities which amounts to gross violation of principles of natural justice. The learned counsel sought to take aid of Constitutional mandate engrafted in Article 22(5).

In support thereof, she has also placed reliance on the decision of the Hon'ble Supreme Court in **Tahira Haris v. Government of Kerala**^[20], an unreported decision of a Division Bench of Delhi High Court in **Ribu Kurian Ninan v. Union of India**^[21] and a decision of a Division Bench of this Court in **Durgam Subramanyam v. Government of A.P.**^[22]. The relevant principles referred to in these decisions have been relied on by the learned counsel.

35. In **Tahira Haris's Case** (Supra 20), the Hon'ble Supreme Court dealing with detention order issued under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, 'COFEPOSA Act'), where the infraction was non-supply of copy of detention order issued under COFEPOSA Act relied upon by the authority, while referring to the decisions rendered by the Constitutional Bench of the Hon'ble Supreme Court in **Dr. Ram Krishan Bhardwaj v. State of Delhi**^[23], **Shalini Soni (Smt.) v. Union of India**^[24], and in **Ichhu Devi Choraria (Smt.) v. Union of India**^[25], **Khudiram Das v. State of West Bengal**^[26], **Vakil Singh v. State of J & K**^[27], **Gurdip Singh v. Union of India**^[28], **Golam alias Golam Mallick v. State of West Bengal**^[29] (a Four-Judge Bench), **Kirit Kumar Chaman Lal Kundaliya v. Union of India**^[30], **Ramchandra A. Kamat v. Union of India**^[31], **Tushar Thakker (Shri) v. Union of India**^[32], **Ram Baochan Dubey v. State of Maharashtra**^[33], **Sophia Gulam Mohd. Bham v. State of Maharashtra**^[34] and **District Collector, Ananthapur v.**

V. Laxmanna^[35], held that Clause (5) of Article 22 read with Section 3(3) of COFEPOSA Act, makes it imperative for valid continuance of detention, that the detenu must be supplied all documents, statements and other materials relied upon in the grounds of detention and withholding them amounts to preventing the detenu from making an effective representation amounting to a violation of his Constitutional right. Thus, the Hon'ble Supreme Court has quashed the orders of detention therein.

36. In **Ribu Kurian Ninan's Case** (Supra 21), Hon'ble Delhi High Court has also taken a similar view. Similar view was also taken by the Hon'ble Division Bench of this Court in **Durgam Subramanyam's Case** (Supra 22).

37. What emerges from the decisions rendered by the Hon'ble Supreme Court is that when the documents, which constitute basis for making orders of detention by the concerned authority, non-supply thereof infringes the constitutional safeguard engrafted in Article 22(5) as it deprives the detenu from making an effective representation and thereby vitiates the orders of detention.

38. On the other hand, learned Government Pleader contends that the detaining authority and the authority which made confirmation of detention order, never passes/ the order relying upon the bail applications and bail orders and in that view of the matter, it cannot be

said that fundamental right of the detenu has been infringed. In order to strengthen his submission, he places reliance on the decision of the Hon'ble Supreme Court in **Mst. L.M.S. Ummu Saleema v. B.B. Gujaral & another**^[36], **Vinod K. Chawla v. Union of India**^[37] and **State of Tamilnadu v. Abdullah Kadher Batcha**^[38].

39. In **Ummu Saleema's Case** (Supra 36), the Hon'ble Supreme Court made a distinction between the non-supply of copies of documents to which reference is made in the grounds of detention and copies of such documents as were relied upon by the detaining authority, and held that failure to furnish copy of the document to which reference is made in the grounds of detention is not an infringement of Article 22(5), fatal to the order of detention, whereas failure to furnish copies of such documents as were relied upon by the detaining authority making it difficult to the detenu to make an effective representation amounts to violation of fundamental rights guaranteed under Article 22(5).

40. In **Vinod K. Chawla's Case** (Supra 37), the Hon'ble Supreme Court clarified that the law does not require that every document or material in possession of sponsoring authority must necessarily be placed by him before the detaining authority and in every case where any such document or material is not placed by the sponsoring authority, the formation of opinion and the

subjective satisfaction of the detaining authority would get vitiated following the view taken by the Hon'ble Supreme Court in **Abdul Sathar Ibrahim Manik v. Union of India** ^[39].

41. In **Abdullah Kadher Batcha's Case** (Supra 38), the Hon'ble Supreme Court explained that while examining whether non-supply of a document would prejudice a detenu, the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document and, primarily, copies, which form the ground for detention have to be supplied and non-supply thereof would prejudice the detenu. But, the documents which are merely referred for the purpose of narration of facts in that sense, cannot be termed to be documents without the supply of which the detenu is prejudiced.

42. When examined in the light of what has been ruled by the Hon'ble Apex Court in the decisions relied on by the learned Government Pleader afore referred to, non-supply of bail applications and bail orders cannot account for infringing the right of the detenu, for the reason, these documents were not referred to in the order of detention when the material placed before it was examined in recording subjective satisfaction by the detaining authority.

This apart, as already observed by us in the above, the detenu has maintained silence right from the beginning

and only at

a belated stage has come up with a request to permit him to raise additional grounds by filing an interlocutory application, the details of which were adverted to by us in the above.

43. Thus, we are of the opinion that there is no merit in the said ground to invalidate the order of detention.

44. For the aforesaid reasons, we find that it is not a fit case to interfere with the order of detention, dated 18-05-2015, passed by respondent No.2 as confirmed by respondent No.1, by the order, dated 05-08-2015, since the same do not suffer from any illegality or legal infirmity and, therefore, the writ petition is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition, stand closed.

G. CHANDRAIAH, J

**A. SHANKAR NARAYANA,
J**

April 27, 2016.

PV

- [\[2\]](#) 1996 (4) ALT 305 (DB)
- [\[3\]](#) 1992 (2) SCC 177
- [\[4\]](#) H.C.P.(MD) No.999 of 2013, dated 06.01.2014
- [\[5\]](#) (2011) 10 SCC 781
- [\[6\]](#) AIR 1999 SC 684
- [\[7\]](#) AIR 1991 SC 574
- [\[8\]](#) (2011) 10 SCC 215
- [\[9\]](#) (W.P. No.22672 of 2015, dated 28.10.2015)
- [\[10\]](#) (1990) 2 SCC 456
- [\[11\]](#) AIR 1966 SC 740
- [\[12\]](#) 1970 (3) SCC 746
- [\[13\]](#) (2004) 7 SCC 467
- [\[14\]](#) 1995 (2) ALT (Cri.) (A.P.) 68 (DB)
- [\[15\]](#) W.P. No.28191 of 2015, dated 10-12-2015
- [\[16\]](#) AIR 1951 SC 157
- [\[17\]](#) AIR 1964 SC 334(1)
- [\[18\]](#) AIR 1951 SC 174
- [\[19\]](#) (1975) 3 SCC 198
- [\[20\]](#) 2009 (3) SCC (Cri) 1432
- [\[21\]](#) W.P. (Cri) No.1628 & 1629 of 2010, dated 20.12.2010
- [\[22\]](#) LAWS(APH)-2012-12-23 = ALT-2013-4-243
- [\[23\]](#) 1953 SCR 708
- [\[24\]](#) (1980) 4 SCC 544
- [\[25\]](#) (1980) 4 SCC 531
- [\[26\]](#) (1975) 2 SCC 81
- [\[27\]](#) (1975) 3 SCC 545
- [\[28\]](#) (1981) 1 SCC 419
- [\[29\]](#) (1975) 2 SCC 4
- [\[30\]](#) (1981) 2 SCC 436
- [\[31\]](#) (1980) 2 SCC 270
- [\[32\]](#) (1980) 4 SCC 499
- [\[33\]](#) (1982) 3 SCC 383
- [\[34\]](#) (1999) 6 SCC 593
- [\[35\]](#) (2005) 3 SCC 663
- [\[36\]](#) 1981 (3) SCC 317 – 1981 AIR 1191 – 1981 SCR (3) 647
- [\[37\]](#) (2006) 7 SCC 337
- [\[38\]](#) 2009 (1) SCC 333 [Cri.A. No.231 of 2001, dated 12-11-2008.]
- [\[39\]](#) (1992) 1 SCC 1 : 1992 SCC (Cri) 1 : AIR 1991 SC 2261

