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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION

CRIMINAL WRIT PETITION NO.1766 OF 2017

Sachin @ Bobby Sambhaji Shinde ...Petitioner
vs.
The Commissioner of Police
Solapur and others ...Respondents

Mr.Udaynath Tripathi for the petitioner
Mr.J.P.Yagnik, APP for State

ALONG WITH
CRIMINAL WRIT PETITION NO.2260 OF 2017

Shahbaz Siraj Qureshi ...Petitioner
vs.
The State of Maharashtra
and Anr. ...Respondents

Mr.Suresh Shetty a/w Mr.Ramesh Laxman Mangaonkar for
the petitioner
Mr.V.S.Mhaispurkar, APP for State

ALONG WITH
CRIMINAL WRIT PETITION NO.1613 OF 2017

Vilas Tanaji Choraghe ...Petitioner
vs.
The Commissioner of Police
Mumbai and others ...Respondents

Mr.Udaynath Tripathi for the petitioner
Ms M.H.Mhatre, APP for State

CORAM : A.S.OKA, & RIYAZ I. CHAGLA, JJ.
DATE ON WHICH JUDGMENT IS RESERVED:SEPTEMBER 29,2017
DATE ON WHICH JUDGMENT IS PRONOUNCED:OCTOBER 13,2017

JUDGMENT: (PER A.S.OKA,J.)

1 As a common question arises for consideration, these three petitions are taken up together for hearing.

2 In these petitions, the challenge is to the orders of preventive detention passed by the Detaining Authority under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers and Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and persons engaged in Black-marketing of Essential Commodities Act, 1981 (for short 'the said Act'). The learned counsel for the petitioners invited our attention to the provisions of section 3 of the said Act. He also invited our attention to the provisions of Sections 9 to 13 of the said Act. He submitted that in all three cases, in the impugned orders, the period of detention is not mentioned. He pointed out that the State Government has directed the detention of the petitioners in these three cases at a stroke for a period of one year. He submitted that the law laid down by the Apex Court in the case of Cherukuri Mani w/o Narendra Chowdari vs. Chief Secretary, Government of Andhara Pradesh and others¹ is crystal clear. He pointed that in the said decision, the Apex Court interpreted the provision of section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 which is *pari materia* with section 3 of the said Act. He relied upon paragraphs 12 to 15 of

1 (2015) 13 SCC 722

the said decision. He pointed out that the Apex Court has held that the Government cannot direct extension of period of detention upto maximum period of twelve months in one stroke. He relied upon another decision of the Apex Court in the case of Lahu Shrirang Gatkhal vs. State of Maharashtra through the Secretary and others². He submitted that in the said decision, the law laid down in the case of Cherukuri Mani w/o Narendra Chowdari (supra) has been followed by the Apex Court. He submitted that the Apex Court has interpreted section 3 of the said Act in the said decision. He placed reliance on the order of the Apex Court dated 17th July 2017 by which the application for review of the Judgment in the case of Lahu Shrirang Gatkhal (supra) was rejected. He submitted that in these three cases, the admitted position is that period of detention was extended at a stroke for a period exceeding six months and therefore, the impugned orders are vitiated.

3 The learned APP submitted that apart from the fact that the view taken by the Apex Court in the case of Cherukuri Mani w/o Narendra Chowdari (supra) and Lahu Shrirang Gatkhal (supra) is contrary to the decision of the larger Benches of the Apex Court, in any event, the decision of the Apex Court in the case of Lahu Shrirang Gatkhal cannot be treated as a binding precedent in the light of the law laid down by the co-ordinate Bench of the Apex Court in the case of Mrs. Harpreet Kaur Harvinder

Singh Bedi vs. State of Maharashtra and another³. The learned APP also relied upon various other decisions of the Apex Court. Reliance was also placed on the decision of the Constitution Bench of the Apex Court in the case of Makhan Singh Tarsikka vs. State of Punjab⁴. Reliance was also placed on the decisions of the Apex Court in the cases of E.Subbulakshmi vs. State of Tamilnadu⁵ and Smt.Kavitha w/o Sunder Shankardas Devidasani vs. State of Maharashtra⁶. Lastly, the learned APP invited our attention to the decision of the Apex Court in the case of Mrs. T.Devaki Vs. State of Tamilnadu⁷.

4 We have given careful consideration to the submissions. Firstly, it will be necessary to make a reference to sections 3,10,12 and 13 of the said Act. The said provisions read thus:

"3. Power to make orders detaining certain persons.

(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances

3 (1992)2 SCC 177

4 AIR (39) 1952 SC 27

5 (2017) 1 SCC 757

6 (1981) 3 SCC 558

7 (1990) 2 SCC 456

prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed [six months], but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding [six months' at any time].

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and so such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

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10 Reference to Advisory Board - In every case where a detention order has been made under this Act, the State Government shall within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under Section 9 the grounds on which the order has been made and the representation, if any, made by the person effected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of Section 3.

11...

12. Action upon report of Advisory Board -

(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period prescribed by Section 13, as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the State Government shall

revoke the detention order and cause the person to be released forthwith.

13. Maximum period of detention – The maximum period for which any person may be detained, in pursuance of any detention order made under this Act, which has been confirmed under Section 12, shall be [twelve months] from the date of detention.

5 The Apex Court had an occasion to interpret the provisions of section 3 of the said Act in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi (supra). In the said case, the challenge was to the order of preventive detention under section 3 of the said Act. The submissions made by the counsel for the detenu before the Apex Court are reproduced in paragraphs 8 and 9 which read thus:

“8. The thrust of the first argument is that the activities of the detenu could be said to be prejudicial only to the maintenance of “law and order” and not prejudicial to the maintenance of “public order”. Learned counsel stressed that the activities, which had been attributed to the detenu, however reprehensible they may be, had no impact on the general members of the community and therefore could not be said to disturb the even tempo of the society and as such his detention for acting in a manner prejudicial to ‘public order’ was unjustified.

9. The second argument of the learned counsel is based on the proviso to Section 3(2) of the Act, which according to the learned counsel, prohibited the State Government to make an order of detention, in the first instance exceeding three months and since the order of detention in the instant case was for a period exceeding three months, it was categorised as had in law and invalid. No other contention was pressed."

(emphasis added)

6 The second submission is dealt with in paragraphs 32 onwards, the relevant portion of which reads thus:

"32. Section 3 reads as follows:

"3. Power to make orders detaining certain persons.— (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person is detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

33. A plain reading of the section shows that the State Government under Section 3(1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of "public order", it is necessary so to do, make an order of detention against the person concerned. Sub-section (2) of Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by sub-section (1), then the State Government may, by an order in writing direct that during *such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in sub-section (1),*

exercise the powers of the State Government as conferred by sub-section (1). The proviso to sub-section (2), only lays down that the period of delegation of powers, specified in the order to be made by the State Government under sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under sub-section (1) shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. It is, therefore, futile to contend that the order of detention in the instant case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails."

(emphasis added)

7 After the aforesaid decision, proviso to sub-section (2) of section 3 was amended by Act No. 32 of 2007 by replacing the words "three months" by the words "six months". Thus, it was categorically held that the period mentioned in the proviso to sub-section (2) of section 3 has nothing to do with the period of detention. Hence, the argument that the period of detention cannot be fixed by the State Government at a time for a period exceeding three months was specifically rejected.

8 In the case of Cherukuri Mani w/o Narendra Chowdari (supra), it is true that the Apex Court was dealing with a similar enactment of the State of

Andhra Pradesh. Section 3 of the Andhra Pradesh Act is *pari materia* with section 3 of the said Act. In the paragraphs 9, 10, 12, 14 and 15 of the said decision, the Apex Court has held thus:

"9. Now the issue for consideration before us is whether the State Government has the power to pass a detention order to detain a person at a stretch for a period of 12 months under the provisions of the Act?

10. To answer the above issue, it is necessary to examine the relevant provisions of the Act. Section 3 of the Act empowers the detention of certain category of persons, as defined under the Act. Apart from conferring of power, the section regulates the manner of passing the orders of detention as well as their duration. It reads thus:

"3. Power to make orders detaining certain persons.—(1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first

instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under the section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government.""

11.

12 **Proviso to sub-section (2) of Section 3** **is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, exceeding three months, at a time. It means that, if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time" assumes significance in this regard.**

13.....

14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in

the same manner following the provisions of law, without deviating from the prescribed procedure. When the provisions of Section 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the government order in the present case, directing detention of the husband of the appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and contrary to the provisions of law. **The Government cannot direct or extend the period of detention up to the maximum period of twelve months in one stroke, ignoring the cautious legislative intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while passing orders of detention or extending the detention period from time to time.**

15. Normally, a person who is detained under the provisions of the Act is without facing trial which in other words amounts to curtailment of his liberties and denial of civil rights. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and reviewed from time to time. Taking into consideration these factors, the legislature has specifically provided the mechanism "Advisory Board" to review the detention of a person. **Passing a detention order for a period of twelve months at a stretch, without proper review, is deterrent to the rights of the detenu. Hence, the impugned government order directing detention for the maximum period of twelve months straightaway cannot be sustained in law."**

(emphasis added)

9 The decision in the case of Cherukuri Mani w/o Narendra Chowdari (supra) was followed by another

decision of the Apex Court in the case of Lahu Shrirang Gatkhal (supra). In the paragraphs 3 to 8 the Apex Court has held thus:

"3. Brief facts which are necessary for disposal of this case are that the appellant herein is a constable in the Maharashtra Police Department. He is alleged to have been involved in various criminal activities and at least seven complaints/FIRs are said to have been registered against him. On 10.10.2016, respondent no. 3 passed a detention order under Sub-section (1) of Section 3 of the Act on being satisfied that appellant was acting in a manner prejudicial to the maintenance of the public order and with a view to prevent him from acting in a pre-judicial manner. It is important to note that the detention order does not specify the period of detention.

4. Assailing the judgment of the High Court, the learned counsel for the appellant mainly challenges the order of detention of the appellant on the ground that the order of the detention as passed by the respondent no. 3 does not mention the period of detention. Further he places reliance on ratio of the judgment of this Court in *Cherukuri Mani v. Chief Secretary*, (2015) 13 SCC 722 [hereinafter '*Cherukari Mani Case*' for brevity]. Learned counsel for appellant submits that the Act as well as the Andhra Pradesh enactment, which was subject matter of *Cherukuri Mani Case* (supra), is similar except to the extent that the initial period of preventive detention is six months under

the Act while under Andhra Pradesh enactment it is for three months.

5. On the other hand the learned counsel for the respondent-State has fully supported the reasoning of the High Court in entirety.

6. Having heard the learned counsels for parties, it would be necessary to reproduce Section 3 of the Act-

Power to make orders detaining certain persons.

(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

...

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed six months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(emphasis added)

7. This Court has already construed a pari materia provision under Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, in *Cherukuri Mani Case* (supra), in the following manner-

14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. When the provisions of Section 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the government order in the present case,

directing detention of the husband of the appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and contrary to the provisions of law. The Government cannot direct or extend the period of detention up to the maximum period of twelve months in one stroke, ignoring the cautious legislative intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while passing orders of detention or extending the detention period from time to time.

15. Normally, a person who is detained under the provisions of the Act is without facing trial which in other words amounts to curtailment of his liberties and denial of civil rights. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and reviewed from time to time. Taking into consideration these factors, the legislature has specifically provided the mechanism "Advisory Board" to review the detention of a person. Passing a detention order for a period of twelve months at a stretch, without proper review, is deterrent to the rights of the detenu. Hence, the impugned government order directing detention for the maximum period of twelve months straightaway cannot be sustained in law.

8. It is well settled that a presumptive legislation such as the present Act needs to be given a strict interpretation. As noted above proviso to Sub-section (2) of Section 3 prescribes a thing to be done in a particular manner following a particular procedure. Therefore, the proviso to Sub-section (2) of Section 3 envisages a period to be specified in the order with a maximum cap of six months at the first instant. From the above analysis it is clear that respondent no. 3 could not have passed such a blanket order of detention without specifying the period of detention,

as has been done in this case."

(emphasis added)

10 Thus, in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi (supra), the Apex Court after considering section 3 of the said Act categorically held that the period of three (or six months) mentioned in the proviso to sub-section (2) of section 3 has nothing to do with the period of detention. Hence, the argument that the period of detention cannot be fixed at a stretch for twelve months was specifically rejected. We, however, find that in both the decision in the case of Cherukuri Mani w/o Narendra Chowdari (supra) and Lahu Shrirang Gatkhal (supra), the Apex Court has held exactly to the contrary. However, we find that while the cases of Cherukuri Mani w/o Narendra Chowdari (supra) and Lahu Shrirang Gatkhal (supra) were decided, the attention of the Apex Court was not invited to its earlier decision of a co-ordinate Bench in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi (supra). The view taken in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi (supra) is that it is futile to contend that the order of detention was vitiated because in one stroke, the period of detention was extended beyond the period specified in the proviso to sub-section 2 of section 3 of the said Act.

11 At this stage, it will be necessary to make a reference to a decision of the Constitution Bench of the Apex Court in the case of Makhan Singh Tarsikka (supra). In paragraph 4, the Apex Court while

dealing with the provisions of the Preventive Detention Act, 1950 held thus:

"Whatever might be the position under the Act before its amendment in February, 1951, it is clear that the Act as amended requires that every case of detention should be placed before an Advisory Board constituted under the Act (section 9) and provides that if the Board reports that there is sufficient cause for the detention "the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit" (section 11). **It is, therefore, plain that it is only after the Advisory Board, to which the case has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported.** The learned Advocate-General, however, urged that in view of the provision in section 11 (2) that if the Advisory Board reports that there is no sufficient cause for the detention, the person concerned would be released forth- with, the direction in the order dated 30th July, 1951, that the petitioner should be detained till 31st March, 1952, could be ignored as mere

surplusage. We cannot accept that view. It is obvious that such a direction would tend to prejudice a fair consideration of the petitioner's ease when it is placed before the Advisory Board. It cannot be too often emphasised that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected."

(emphasis added)

12 In the case of Mrs. T. Devaki (supra), a bench of three Hon'ble Judges of the Apex Court, in paragraph 15 dealt with the effect of the failure to mention the period of detention in the order of detention. In paragraphs 7 and 10 the Apex Court has held thus:

"7. The first contention is founded on the provisions of Section 3 of the Act which read as under:

"3. Power to make orders detaining certain persons.— (1) The State Government may, if satisfied with respect to any bootlegger or drug offender (or forest offender) or goonda or immoral traffic offender or slum grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of

Police, the State Government is satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time."

"10. Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered to, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention. **The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order" occurring in sub-section (2) of Section 3**

relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The legislature has taken care to entrust the power of detention to the State Government; as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. **The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification."**

(emphasis added)

13 Hence, the law is that the period of detention can be fixed only after the opinion of Advisory Board is received. Therefore, the failure to mention the period of detention in the first order does not attract any illegality. Hence, the view taken in the cases of Cherukuri Mani w/o Narendra Chowdari (supra) and Lahu Shrirang Gatkal (supra) by a Bench of two Hon'ble Judges is contrary to what is held earlier by a larger Bench in the case of T. Devaki.

14 Moreover, there is a clear divergence of views expressed by the co-ordinate Benches consisting of two Hon'ble Judges of the Apex Court in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi (supra) on one hand and the subsequent decisions in the cases of Cherukuri Mani w/o Narendra Chowdari (supra) and Lahu Shrirang Gatkal (supra) on the other hand. The question is now which decision will bind this Court. The said issue is no more *res integra*. In the case of Sandeep Kumar Bafna vs. State of Maharashtra⁸. In paragraph 19, the Apex Court has held thus:

"19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be *per incuriam* any provision in a statute, rule or

regulation, which was not brought to the notice of the court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its *ratio* with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the *per incuriam* rule is strictly and correctly applicable to the *ratio decidendi* and not to *obiter dicta*. **It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of *per incuriam*.**"

(emphasis added)

15 In a recent decision of a Division Bench of this Court in the case of Prakash Gobindram Ahuja vs. Ganesh Pandharinath Dhonde and others⁹, the Division Bench extensively considered the effect of conflict of decisions of the coordinate Benches. A specific issue was framed on that aspect. In paragraph 178, the Division Bench held thus:

"Question No.(V): Whether the observation in para (13) of the judgment in Vasant Tatoba Hargude v. Dikkaya Muttaya Pujari (AIR 1980 BOMBAY 341) that in the event of there being

conflict, the decision of later Bench would bind only lays down that judgment later in point of time as explaining the earlier judgment would bind?

Answer : In the light of the decisions of the Hon'ble Supreme Court in the case of *State of U.P. v. Ajay Kumar Sharma* (supra) and *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.* (supra), we answer this question to the effect that, in case of conflict between the decisions of Co-ordinate Benches, it is not the later but the earlier one in point of time, which should be followed and applied by the Subordinate Courts to the facts and circumstances of a case before it, unless, of-course, earlier decision is considered and explained in the later decision."

(emphasis added)

16 Therefore, what binds this Court is the decisions in the case of T. Devaki and Mrs. Harpreettt Kaur Harvinder Singh Bedi (supra). In the light of the decision of the Constitution Bench of the Apex Court in the case of Makhan Singh (supra), the outer limit of the detention can be fixed by the State Government only after opinion of the Advisory Board is received. That what section 12 of the said Act provides. Therefore, the even if the original order of detention under sub-sections (1) or (2) does not mention the period of detention, it will not vitiate the order of detention. In the cases in hand, the State Government has fixed the period of detention as per Section 12 of the said Act.

17 We may note here that this Bench in one of its earlier decisions has followed the decision of the Apex Court in the case of Lahu Shrirang Gatkhal (supra) as the binding decisions in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi (supra) and T. Devaki (supra) were not brought to its notice.

18 To conclude, there is no merit in the challenge to the impugned orders of preventive decision.

19 Hence, we pass the following order:

. Writ Petitions are rejected. Rule issued is discharged.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)