

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION NO.33118 OF 2017

ORDER: (per Hon'ble Sri Justice C.Praveen Kumar)

This writ petition is filed under Article 226 of the Constitution of India seeking issuance of a Writ of Habeas Corpus directing the respondents to produce Sunil Singh @ Sunil Dayal Singh, now detained at Central Prison, Chanchalguda, Hyderabad, before this Court and order his release by declaring his detention, as illegal and unconstitutional.

2. The circumstances which led to filing of the present writ petition are as follows:

By order dated 14.07.2017, the Collector and District Magistrate, Hyderabad District, the second respondent herein, passed an order in Proc.No.C2/PDAC/3/2017/Rev under Section 3(1) & (2) read with Section 2(a) and (f) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Forest Offers, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and While Collar or Financial Offenders Act, 1986 (for short, the Act) on the ground that clandestine drug peddling activities of the *detenu*, Sunil Singh @ Sunil Dayal Singh, are prejudicial to the maintenance of the public order and also are dangerous to the life of public health at large. The said order of

detention, which was passed on 14.07.2017, was approved by the Government on 20.07.2017. The petitioner herein, who is wife of the *detenu*, is said to have made a representation to the second respondent – detaining authority on 20.07.2017 setting out the circumstances as to how false cases have been registered against the *detenu* and that his continuation in the detention is violative of Article 22(5) of the Constitution of India. On 27.08.2017, the Advisory Board, constituted under Section 9 of the Act, having heard the *detenu* and his wife and after perusing the grounds of detention, opined that there is sufficient cause for the detention of the *detenu*. Thereafter, in exercise of powers under sub-section (1) of Section 12 read with Section 13 of the Act, the Government vide G.O.Rt.No.2007, General Administration (Spl. (Law & Order) Department, confirmed the order of detention for a period of 12 months. Assailing the same, the present writ petition is filed.

3. The grounds of detention which were served on the *detenu* refer to three crimes. The first incident is in respect of Crime No.891/2016, dated 27.09.2016, registered by the Prohibition & Excise Inspector, Dhoolpet, Hyderabad for the offence punishable under Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1984 (for short, NDPS Act). The second incident is Crime No.71/2017, dated 04.04.2017, registered in the same Police Station for the same offence. The third crime is dated 09.06.2017, which was also registered in the same Police Station for the same offence.

4. The *detenu* was given a right to make a representation against his detention, to the detaining authority, the Advisory Board and also to the Government of Telangana. Availing the same, the petitioner (wife of the *detenu*) is said to have submitted a representation to the detaining authority on 20.07.2017 seeking revocation of the order. However, on the very same day, the Government approved the order of detention.

5. Keeping in view these undisputed facts in mind, we intend to deal with the sole argument advanced by the learned counsel for the petitioner that the authorities failed to consider the representation made by the petitioner dated 20.07.2017, thereby violating Article 22(5) of the Constitution of India. Apart from the same, she argued that though the Government has approved the order of detention on 20.07.2017, the detaining authority ought to have forwarded the representation of the petitioner to the Government for placing the same before the Advisory Board, in view of Section 10 of the Act.

6. Referring to the judgments of the Constitutional Bench of the Apex Court in **Puranlal Lakhanpal v. Union of India**¹ and **K.M.Abdulla Kunhi v. Union of India**², the Division Bench judgment of the Madras High Court in **Ravinthiran @ John Ravinthiran v. State of Tamil Nadu**³, Division Bench judgment of the Allahabad High Court in **Yogendra Singh Chauhan v. State of**

¹ 1958 CRI L.J. 283

² (1991) 1 SCC 476

³ 2008 LawSuit (Mad) 1617

U.P⁴, the learned counsel for the petitioner would contend that as per the ratio laid down in the judgments referred to above, the detaining authority ought to have considered the representation of the petitioner dated 20.07.2017 and forwarded the same to the Government, to be placed before the Advisory Board.

7. On the other hand, the learned Advocate General (Telangana) would contend that since the Government has approved the order of detention, the detaining authority has become *functus officio* and, as such, the detaining authority could not have done anything on the representation made. He pleads that when the order of detention was approved by the Government on 20.07.2017, nothing prevented the petitioner in making a representation to the two other forums so as to ventilate her grievance. He placed reliance on the judgments of the Apex Court in **Subramanian v. State of Tamil Nadu**⁵ and **Anand Hanumathsa Katare v. Additional District Magistrate**⁶ and a Division Bench of this Court in **Chandsi Sah v. State of Telangana**⁷.

8. Before proceeding further, we deem it appropriate to refer to certain provisions of the Act. Section 3 of the Act provides power to make order detaining certain persons. Sub-section (1) of Section 3 provides that 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 prevent him from acting in any

⁴ 2011 LawSuit (All) 139

⁵ 2012 LawSuit (SC) 122

⁶ 2006

⁷ 2017 (6) ALT 62 (D.B.)

manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. This part of Section 3, provides power to the Government to pass an order of detention, if it feels that it is necessary to make an order so as to prevent the *detenu* from acting in any manner prejudicial to the maintenance of public order. Sub-section (2) of Section 3 deals with the jurisdiction of the District Magistrate or the Commissioner of Police in passing the order of detention. The said authorities may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section. Sub-section (3) of Section 3 provides that when any order is made under this Section, by an officer mentioned in sub-section (2), the District Magistrate or the Commissioner of Police, 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. As stated earlier, in the instant case, the order of detention came to be passed on 14.07.2017 by the second respondent which was approved by the Government within a period of 12 days, as required under sub-section (3) of Section 3 of the Act.

9. At this stage, it would be appropriate to refer Section 10 of the Act. It states that in every case where a detention order has been made under this Act, the Government shall within three weeks from the date of detention of a person under the order, place

before the Advisory Board constituted by them under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected 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. A plain reading of Section 10 makes it clear that within three weeks from the date of detention of a person under the order, the Government shall place the same before the Advisory Board under Section 9, the grounds on which the order has been made, the representation, if any, made by the person affected by the order and also the representation, if any, under sub-section (3) of Section 3 of the Act.

10. Having regard to the above, the learned counsel for the petitioner would contend that the action of the second respondent in not placing the representation of the petitioner before the Government, is violative of Section 10 of the Act, as it is mandatory in nature.

11. To the above contention, the learned Advocate General would contend that the question of forwarding the representation of the petitioner to the Government would not arise, as the same is not contemplated under Section 10 of the Act. Further, according to him, the second respondent would become *functus officio* once his order is approved by the Government. Therefore, the question of the second respondent forwarding the representation of the petitioner to the Government to be placed before the Advisory Board would not arise.

12. In order to appreciate the arguments advanced by both the learned counsel, it will be appropriate to refer to the decisions cited by the counsel on both sides.

13. In **K.M.Abdulla Kunhi's** case (2 supra), the Constitutional Bench of the Apex Court was dealing with the detention of an accused under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, COFEPOSA Act). In the said case, two separate detention orders were passed under Section 3(1)(iv) of the COFEPOSA Act on 24.02.1989. On 17.04.1989, the *detenus* made representations to the Government. The said representations could not be considered immediately, as they required translation, collection of information and comments from different authorities. In the meantime, the case was referred to the Advisory Board which in its meeting held on 20.04.1989, considered the case of the *detenus* and reported that there was sufficient cause for their detention. On 27.04.1989, the Government, after accepting the report confirmed the detention orders of both the persons and consequently rejected the representations of the *detenus* dated 6th and 7th of May, 1989. Similar representation made by one of the *detenus* before the Central Government was also rejected on 23.05.1989. The question for consideration in the above case was whether the confirmation of detention order upon accepting the report of the Advisory Board rendered the order invalid solely on the ground that the representation of the *detenu* was not considered and whether subsequent consideration of the representation would cure that

invalidity? Dealing with clause (5) of Article 22 and also the provisions of the COFEPOSA Act, the Apex Court held that the requirement is that there should not be supine indifference, slackness or callous attitude in considering the representation. It further held that any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. In the said judgment, the Apex Court referred its earlier judgments in **Jayanarayan Sukul v. State of W.B⁸**, **Frances Coralie Mullin⁹ v. W.C. Khambra**, **Rama Dhondur Borade v. V.K. Saraf, Commissioner of Police¹⁰**, and **Aslam Ahmed Zaire Ahmed Shaik v. Union of India¹¹**. The Court also observed that if the *detenu* does not exercise his right to make representation at that stage, but presents it to the Government after the Government has confirmed the order of detention, the Government still has to consider such representation and release the *detenu* if the detention is not within the power conferred under the statute. The confirmation of the order of detention is not conclusive as against the *detenu* and it can be revoked *suo motu* under Section 11 or upon a representation of the *detenu*.

14. Relying upon the judgment of the Allahabad High Court in **Yogendra Singh Chauhan**'s case (4 supra), the counsel pleads that non-sending of the representation given to the detaining authority, even after approval of detention order by the Government, to be

⁸ (1970) 1 SCC 219

⁹ (1980) 2 SCC 275

¹⁰ (1989) 3 SCC 173

¹¹ (1989) 3 SCC 277

placed before the Advisory Board, is violative of clause (5) of Article 22 of the Constitution of India. Similar is the view taken by Tamil Nadu High Court in **Ravinthiran**'s case (3 supra).

15. But, in **Anand Hanumathsa Katare**'s case (6 supra), referring to Section 11 of the Karnataka Prevention of Dangerous Activities of Boot-Leggings, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985 (for short, Karnataka Act) and the findings of the Apex Court in its earlier judgment in **Raziya Umar Bakshi (Smt) v. Union of India**¹², it was urged that it must be presumed that the *detenu* can make a representation to the detaining authority also independently and the said authority has to consider the same irrespective of the decision of the State Government or the Central Government on the representation. In other words, the question before the Court was whether the detaining authority namely the empowered officer of the Government, can act independently and revoke the detention as provided under the other Acts. Dealing with Section 3(3) of the Karnataka Act, which is in *pari materia* with Section 3 and Section 10 of the Act, the Apex Court held that the decision under Section 3 (3) of the Karnataka Act would be different, as it required approval of the State Government, whereas such a provision is not there in the COFEPOSA Act. The Court held that the approval of the State Government under the Act is necessary because of Section 3(2) of the Karnataka Act. Dealing with an identical case, the Apex Court, after referring to its earlier judgment in **Santosh**

¹² 1980 Supp SCC 195

Shankar Acharya¹³, held that the detaining authority becomes *functus officio*, the moment the State Government accords approval. It has been held that the order of detention can be revoked only on the basis of a representation to the appropriate authority. It has been further held that since an opportunity is given to the *detenu* to make representation to the Government, he could have submitted the same directly to the Government through the Superintendent of the Central Jail in which he is detained.

16. A similar situation came up for consideration in **Chandsi Sah's** case (7 supra), wherein a Division Bench of this Court, after referring to Article 22(5) of the Constitution of India and Section 8(1) of the Act, observed as under:

“10. Taking the first submission of the learned Counsel for the petitioners in the first instance, though neither the provisions of Article 22 (5) of the Constitution of India nor of the Act specifically provide the remedy of making representation to the detaining authority, by the evolution of law, it has been firmly established that till the detention order is approved by the Government, detaining authority has not only the power but also the obligation to consider the representation against their detention. (See *State of Maharashtra vs. Santosh Shankar Acharya* (1) (2000) 7 SCC 463 and *Harshala Santosh Patil vs. State of Maharashtra* (2) (2006) 12 SCC 211)

It has been held by a catena of decisions that failure of the detaining authority to inform the *detenu* of his right to make a representation to it vitiates the detention order. The learned Counsel for the *detenus* admitted that the impugned detention orders indeed informed the *detenus* about such a right. But her submission is that as the *detenus* were not supplied with the material relied upon by the detaining authority in the language known to them and as such a material was supplied to them only on the date on which the Government has approved the detention orders, they were denied the opportunity of making a meaningful representation to the detaining authority and that therefore, the detention orders get vitiated.

¹³ 2000 (7) CC 463

Admittedly, Section 8 (1) of the Act enjoins upon the detaining authority to communicate to the detenu the grounds on which the detention order has been made within five days from the date of detention so as to afford him the earliest opportunity of making the representation against the order of the Government. The translated copies of the material in the language known to the detenus were admittedly supplied to them within the above stipulated time. However, by a sheer co-incidence, on the date on which this material was supplied to the detenus, the Government has approved the detention orders thereby, rendering the detaining authority *functus officio* and disabling it from considering the representations, if any, of the detenus. While, ordinarily, the detenus had three remedies viz., representation before the detaining authority, representation before the advisory board and representation before the Government, by the turn of the events in the present case, the first mentioned remedy was not available to them. Whether this by itself vitiates the detention orders is the question. Our answer to this question is an emphatic No. We have observed hereinbefore that the detaining authority has supplied the material to the detenus within the time stipulated by the statute. As the act of the Government according approval of the detention orders passed by it is not within the control of the detaining authority, he cannot be found fault with, if the detenus have lost an opportunity of making representation to him. The situation would have been different had the detaining authority not supplied the material within the stipulated time. The detenus cannot, therefore, be allowed to take advantage of their losing an opportunity of making a representation to the detaining authority due to the circumstances beyond ones control. At any rate, no prejudice is caused to the detenus on losing of such opportunity as they have not availed even the other two available remedies viz., representation to the advisory board and representation to the Government. As noted herein before even before the meeting of the advisory board was scheduled to take place on 02-01-2017, these Writ Petitions have been filed on 30-12-2016 itself. Therefore, this plea raised by the detenus on the facts of the cases appears to be specious. In the absence of any violation of statutory provisions committed by the detaining authority, we cannot hold that the detention orders would get vitiated only because of the supervening circumstance of the Government approving the detention orders rendering the detaining authority *functus officio*."

17. In fact, identical argument came to be advanced before the Division Bench in the said case, but the same was negatived holding that the detention orders would not get vitiated because of the supervening circumstance of the Government approving the detention orders, rendering the detaining authority *functus officio*.

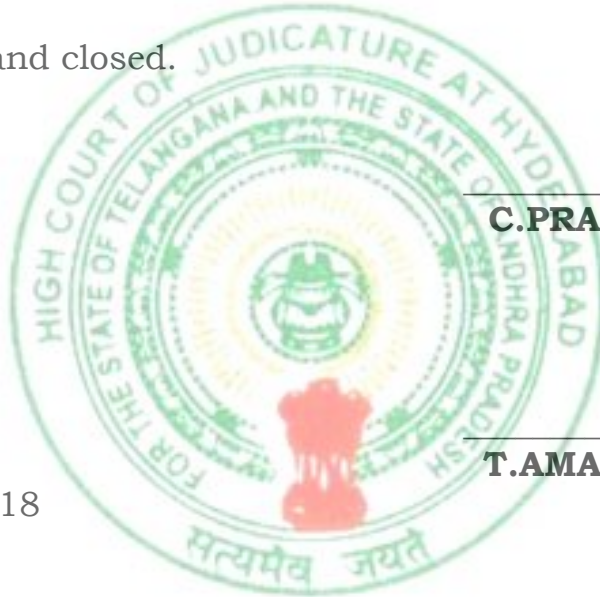
18. In the instant case, the detention order was passed on 14.07.2017 and the copies of the documents came to be furnished to the *detenu*, enabling him to make a representation within the time prescribed. It is stated that on the sixth day, a representation came to be made to the detaining authority, but on the very same day, the order of detention was approved by the Government. From the above, it is clear that by the time the detaining authority received the representation for consideration, the Government approved the order of detention, thereby making the detaining authority *functus officio*.

19. The next limb of the argument advanced by the learned counsel for the petitioner is that when the order of detention was approved by the Government, nothing prevented the detaining authority in sending the representation to the higher authorities. It is to be noted here that Section 10 of the Act never postulates such a contingency nor does it give power to the detaining authority to forward the representation to the higher authorities. If such a power was there, there was no need to give an option to the *detenu* to make representation either to the Government or to the Advisory Board. Providing an opportunity to the *detenu* to make a representation to the detaining authority himself would have served the purpose, which was earlier found fault with. Further, once the detaining authority becomes *functus officio*, he cannot also forward the representation received to the higher authorities. Therefore, the arguments of the learned counsel for the petitioner that non-forwarding of the representation of the petitioner to the higher

authorities violates Article 22(5) of the Constitution of India cannot be accepted in view of the ratio laid down by the Apex Court in **Puranlal Lakhanpal**'s case (1 supra) and **K.M.Abdulla Kunhi**'s (2 supra) and by this Court in **Chandsi Sah**'s case (7 supra).

20. Viewed from any angle, we feel that the arguments advanced by the counsel for the petitioner lacks merit and the same are unacceptable.

21. Hence, we see no merit in the writ petition and the same is accordingly dismissed. No costs. Miscellaneous petitions pending, if any, shall stand closed.



C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

Date: 04.04.2018
TJMR