

Rajan Vs. State of Karnataka by Its

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Court : Karnataka

Decided On : Jun-08-2018

Judge : Budihal R.B. and B.a.Patil

Appeal No. : WPHC 35/2018

Appellant : Rajan

Respondent : State of Karnataka by Its

Judgement :

- 1 - R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE8H DAY OF JUNE, 2018 PRESENT THE HONBLE MR.JUSTICE BUDIHALL R.B. AND THE HONBLE MR.JUSTICE B.A. PATIL W.P.H.C. NO.35/2018 BETWEEN: Rajan Aged about 48 years S/o Johny R/a No.21 C Block Gangman Quarters Murphy Town, Halasuru Bangalore-560 008. (By Sri Ranganath Reddy, R., Advocate) Petitioner AND:

1. State of Karnataka By its Under Secretary Law and Order Department Vidhana Soudha Bangalore-560 001.

2. The Commissioner of Police Bangalore City No.1, Infantry Road Bangalore-560 001.-. 2 - 3. The Superintendent Bangalore Central Prison Parapana Agrahara Bangalore. (By Sri A.M. Suresh Reddy, AGA for R1 to R3) This WPHC is Respondents filed under Article 226 of the Constitution of India Praying to issue a writ in the nature of habeas corpus and to declare the detention of the detenu Sri

Prakash @ Kasi S/o Rajan by order bearing No.02/CRM (4)/DTN/2018 (Annexure-A and B) passed by the respondent No.2 and approved by the respondent No.1 by order bearing No.HD140SST2018 and the dated 09.02.2018 and the order of confirmation passed by the respondent No.1 bearing No.HD140SST2018 dated 16.03.2018 as illegal and void ab initio This WPHC having been heard and reserved on 30.05.2018 coming on for pronouncement of judgment this day, B.A.PATIL J., made the following:

ORDER

This writ petition is filed by the father of the detainee questioning the validity of the detention of his son (detenue) Prakash @ Kashi @ Vandre, by the orders - 3 - dated 9.2.2018 at Annexures-A to D passed by respondent No.2, approval order bearing No.HD.140.SST.2018, dated 19.2.2018 passed by respondent No.1 and the order of confirmation bearing No.HD.140.SST.2018, dated 16.3.2018 passed by respondent No.1, as illegal and void and ab initio.

2. The learned counsel Sri Ranganatha Reddy, appearing on behalf of the petitioner submitted that petitioner is the father of the detainee, who has been detained under the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video or Audio Pirates Act, 1985 (for short Goonda Act) and now currently detainee is in the central prison. By virtue of the orders at Annexures-A and B passed by respondent No.2, the detainee had been detained in the jail and the same has been confirmed by respondent No.1 by the orders at Annexures-E and F. He further - 4 - submitted that the order of detention contains the fact that the detainee is 26 years old, he discontinued his studies and his date of birth is 16.11.1990. His mother tongue being Tamil, he learnt to speak Kannada and Tamil. But the order of the detention passed by respondents is without any effective communication to the detainee so as to make a representation against the order of detention as he does not know other language than Tamil. He further submitted that failure to provide the grounds in the language known to the detainee is in violation of the provisions of the Constitution of India and as such the same are liable to be set aside. In order to substantiate the said contention, he relied

upon the decision of the Honble Apex Court in the case of Surjeet Singh Vs. Union of India (UOI) and others reported in AIR 1981 SC1153 He further submitted that oral explanation of such order is not sufficient and non-supply of the translation in the language known to the detainee becomes illegal and it violates Article 22 of the - 5 - Constitution of India. In order to substantiate the said contention, he relied upon the decision of the Honble Apex Court in the case of Hadibandhu Das Vs. District Magistrate and another, reported in AIR 1969 SC43 He further submitted that the scope of enquiry of the preventive detention is subjective satisfaction and if the order is vague or extraneous, it vitiates the subjective satisfaction. In order to substantiate the said contention, he relied upon a decision of the Honble Apex Court Biram Chand Vs. State of Uttar Pradesh and others, reported in AIR 1974 SC1161 He further submitted that non-explanation of the grounds to the detainee in his language, amounts to nothing but not granting him an opportunity to make an effective representation and in that light the detention made is invalid. In order to substantiate his contention, he relied upon the decision of Rajasthan High Court in the case of Raheem Khan Vs. State of Rajasthan and others, reported in 1998 Crl.LJ1151 He further contended that there is an - 6 - unexplained delay in passing the order of detention which is going to prejudice the detainee and even the grounds and material brought on record for launching the prosecution for detention are vague and as such the same are not sustainable in law. He further submitted that there is a difference between public order and law & order, the grounds on which the detainee has been detained can be prevented by virtue of law & order and the criminal cases have already been registered against him and he has already been released on bail. But there is no material to show that there is a breach of public order and as such the impugned orders are not sustainable in law. In order to substantiate the said contention, he relied upon the decision of the Honble Apex Court in the case of K.K.Saravana Babu Vs. State of Tamil Nadu, in Criminal Appeal No.1332/2008. He further submitted that the detention order passed by the second respondent is arbitrary, illegal, mala fide and it is in violation of fundamental right enshrined under - 7 - Articles 21 and 22 of the Constitution of India. He further submitted that even if the criminal cases registered against the detainee are taken to be true even then the activities are not going to prejudice to the public order. In that light, he prayed that the petition may be allowed by

quashing the impugned orders at Annexures-A to F.

3. Per contra, Sri A.M.Suresh Reddy, the learned Additional Government Advocate appearing on behalf of respondents 1 to 3 submitted that the detenue is a rowdysheet and a rowdysheet has been opened against him. As many as nine cases have been registered against the detenue in which he has been involved. He further submitted that detenue is a habitual offender and has committed the offences punishable under Chapters 8, 16, 17 and 22 of the IPC and also he is considered to be a goonda as per the provisions of Section 2(g) of Goonda Act. He further submitted that the detenue has formed - 8 - his own gang and moves with dangerous weapons and has created fear in the minds of innocent people and public at large and thereby he has caused breach of public peace and order, which became very difficult to maintain the public peace and order. He further submitted that the detention order has been passed both in Kannada and English versions and Detaining Authority has also explained to detenue the grounds of detention in the language known to him and even the representation dated 26.2.2018 made by the detenue before the Advisory Board clearly indicates that he understood the grounds and the orders passed by the respondents and thereafter a detailed representation has been made before the Advisory Board and thereafter the Advisory Board has also passed an order confirming the detention order. He further submitted that the contention of the detenue that he knows only Tamil and has studied in Tamil medium and the grounds of detention have been served in the language which is not known to him and no - 9 - opportunity was given to him to make an effective representation cannot be accepted. On going through the records, it is clear that the detenue had made his representation before the Advisory Board and has also personally appeared before the Board and after hearing him, the Advisory Board has also confirmed the order of detention. Therefore, he cannot now contend that he does not know the grounds of detention and it indicates that he is aware of the nature of allegations made against him and the same is not liable to be accepted. In order to substantiate his contention, he relied upon the decision of the Honble Apex Court in the case of Jayanth Jadav Vs. State of West Bengal, reported in (1974)4 SCC503 He further submitted that the Court should apply its common sense and mind to know whether there is any ground and whether the grounds have been properly explained to the detenue and

he understood the same. There is every possibility of misuse of powers by the authorities and as such the - 10 - said provisions should be strictly construed. In order to substantiate the said contention, he relied upon the decision of the Honble Apex Court in the case of Prakash Chandra Mehtha Vs. Commissioner and Secretary, Government of Kerala and others reported in 1985 (Supp) SCC144 He further submitted that father of the detainee is aware of the facts and the language as such the said order is a speaking order and the detainee has properly represented even before the Advisory Board. If the authority after satisfaction passes the detention order by considering all the materials by giving opportunity of representation then under such circumstances, the said order cannot be considered to be in violation of Constitution of India. In order to substantiate his contention, he relied upon the decision of the Honble Apex Court in the case of The State of West Bengal and others Vs. Madanlal Agarwala, reported in (1975)3 SCC1198 He further submitted that the order of detention is valid and in - 11 - accordance with law. Detainee is an ante-socio element and in order to prevent the activities of the rowdysheeteer, it is very much necessary to pass the detention order. Hence, he submitted that the petitioner has not made out any good grounds to quash the impugned orders and the same are liable to be confirmed by dismissing the petition.

4. It is the contention of the petitioner that detainee has studied up to 5th Standard in Tamil medium and the same has been observed by the detaining authority. The order of detention is in English and Kannada languages and as the detainee does not know how to read and write English and Kannada, the ground supplied to the detainee is not an effective communication so as to afford real opportunity of making a representation against the order of detention. In order to substantiate the said contention, the learned counsel for the petitioner has relied upon the decisions quoted supra.-. 12 - 5. Before discussing the facts in issue, we want to place on record that we have gone through the decisions quoted by the learned counsel for the petitioner and the learned Additional Government Advocate meticulously and carefully. It is well established principle of law held by the Honble Apex Court that the Court should not place reliance on the decision of the court without discussing as to how factual situations fits in with the fact situation of the decision on which reliance is placed. This proposition of law has been laid down

by the Apex court in the case of Union of India and another Vs. Major Bahadur Singh, reported in (2006)¹ SCC368 For the purpose of brevity we extract paragraphs-9 and 11:- 9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclids theorems nor as provisions of the statute - 13 - and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton Lord MacDermott observed: (All ER p. 14 C-D) The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge. - 14 - 10. xxx xxx xxx.

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. 6. Keeping in view the aforesaid principle of law let us consider the facts of the case on hand. We have secured the original file with regard to the order of detention passed by the detaining authority. The detention order has been communicated to the detainee both in English and Kannada languages. The detainee has given a representation dated 26.2.2018 to the Advisory Board which is in Kannada language and it runs nearly about eight pages. The said representation has also been signed by the detainee. When the detainee has given a representation in Kannada, then under such circumstances, he cannot now contend that he does not know English and Kannada and he has been deprived of - 15 - an opportunity of making a proper representation against the order of detention.

7. Be that as it may, the writ petition is filed by the father of the detainee. It is not the case of the detainee that the petitioner herein does not know English and Kannada. The petitioner herein has also filed verifying affidavit in English, which is signed by him. It would also indicate the fact that the petitioner herein knows both English and Kannada and through him, the detainee has filed the present writ petition. A proper representation for the detainee is made so as to make a representation against the order of detention. Even if we peruse the proceedings of the Advisory Board which were held on 3.3.2018 in respect of the detention of the detainee Prakash, he has appeared before the Advisory Board. One Subramanya, Inspector presented the case on behalf of the detaining authority by narrating the circumstances under which the detainee has been detained. It was not - 16 - the contention of the detainee before the Advisory Board that he has not understood the grounds of detention as he does not know the language in which the grounds are supplied to him. He simply said that he has been falsely implicated. When that being the facts and circumstances of the case, the decisions quoted by the learned counsel for the petitioner are not applicable and they do not help to the petitioners case. At this juncture, we feel it just and proper to quote the decision of the Honble Apex Court in Jayanth Jadas Case (cited supra) wherein the Honble Constitutional Bench at paragraph-4, has observed as under:- 4. It is also contended that the petitioner is illiterate and since the order of detention was not explained to him orally in his own language he had no opportunity to make an effective representation. The affidavit of the Deputy Secretary shows that the vernacular translation of the detention order was supplied to the - 17 - petitioner on the very day that the order of detention was served on him. besides the petitioner had made his representation to the Government and had also appeared in person before the Advisory Board. It cannot therefore be said that the petitioner was not aware of the nature of allegations made against him. 8. On going through aforesaid observations, the facts of the present case aptly applicable. In the aforesaid decision, the grounds have been supplied in vernacular language and the petitioner has made his representation to the Government and also appeared before the Advisory Board. In that light, it has been observed by the Honble Apex Court that it cannot therefore be said that the petitioner was not aware of the nature of allegations made against him. Keeping in view the ratio laid down in the

aforesaid decision and the facts and circumstances of the case on hand, the contention - 18 - taken up by the petitioners counsel in this regard does not have any force and the same is rejected.

9. In so far as the contention of the petitioner that the scope of enquiry of the preventive detention is subjective satisfaction and if the order is vague or extraneous, it vitiates the subjective satisfaction and there is an unexplained delay in passing the detention order is concerned, as could be seen from the records and the grounds of detention alleged against the detenu, the said order runs up to six pages and each and every aspect has been elaborately discussed and thereafter the detaining authority has come to the conclusion that it is just and proper to detain the detenu, otherwise there would be breach of public order. Though the learned counsel for the petitioner would contend that there is a difference between a public order and law & order and every act would not affect the public order and the difference between the public order - 19 - and law and order has been elaborately discussed by the Honble Apex Court in K.K.Saravana Babus Case (quoted supra), wherein at paragraph-28 by referring to the case in Commissioner of Police & others Vs. C.Anitha, (Smt.) reported in (2004) 7 SCC467 it has been observed as under (para-7 of C.Anithas case:- 28. In Commissioner of Police & Others v. C. Anita (Smt.) (2004) 7 SCC467 this court again examined the issue of public order and law and order and observed thus: 7. .The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression law and order is wider in scope inasmuch as contravention of law always affects order, public order has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified - 20 - locality. The distinction between the areas of law and order and public order is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror waved unleashed by a particular eruption of

disorder that helps to distinguish it as an act affecting public order from that concerning law and order. The question to ask is: Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? - 21 - This question has to be faced in every case on its facts. 10. It has also been observed by the Honble Apex Court in the aforesaid decision that true distinction between the areas of public order and law and order lies not in the nature of quality of the act, but in the degree and extent of its reach upon society. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order, which amounts to breach of public order. Keeping the aforesaid ratio laid down and on perusal of the detention order, it is clear that as many as nine cases have been registered against the detainee and even the order of detention speaks that the detainee is a person who was involved in ante-social activities. He was having a tendency to destroy the peace and tranquility of the general public indulging in illegal activities and he has also created a situation of fear in the society by his ante-social activities. In that light, to - 22 - maintain the public peace and order after subjective satisfaction, the detaining authority has passed the impugned detention order. Even the grounds which have been mentioned in the detention order are neither vague nor extraneous so as to quash the same. Even on observing the impugned orders, there appears to be no delay in issuing the detention order. The detainee has been detained on 4.12.2007 and thereafter on 9.2.2018 the detention order came to be passed and the same was communicated to the detainee in English and Kannada languages. On going through the said order, no prejudice is caused to the detainee. Even the advisory Board has also taken immediate steps by virtue of the proceedings dated 3.3.2018. On meticulous and close scrutiny it appears that the detention order is based upon by virtue of subjective satisfaction and not by virtue of arbitrary or discretion. In that light, the contention raised by the petitioners counsel is liable to be rejected as it does not have any force and the same is rejected.-. 23 - 11. From the above discussion, it is clear that the detainee has been provided the grounds of detention. Thereafter, the detainee after observing and understanding the same has also made a representation before the Advisory Board. Hence, it cannot be said that the detainee did not have any

adequate opportunity to make an effective representation and even there is no delay in passing such order and the order is subjective satisfaction.

12. Before parting, we want to place it on record that in the decisions quoted by the learned counsel for the petitioner, one or two criminal cases have been registered against the respective detenues, but in the case on hand, nine cases have been registered against the detainee. Even the conduct of the detainee shows that he is threatening the normal life of the society and there is a breach of public order as observed above. In that - 24 - light, the said decisions quoted are not applicable to the facts of the present case. In view of the above, the petitioner has not made out any grounds to allow the writ petition by interfering with the impugned orders. Hence, being devoid of merits, the writ petition stands dismissed. Sd/- JUDGE Sd/- JUDGE *ck/-

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