

Sri. Shivakumar a vs the State of Karnataka

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Court : Karnataka

Decided On : Feb-01-2025

Judge : Anu Sivaraman,Vijaykumar a. Patil

Appeal No. : WPHC/111/2024

Appellant : Sri. Shivakumar a

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF FEBRUARY, 2025 PRESENT THE HON'BLE MRS. JUSTICE ANU SIVARAMAN AND THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL W.P.H.C NO.111/2024 BETWEEN: SRI. SHIVAKUMAR A @ R.X. SHIVA @ KALLA SHIVA S/O ANANDA AGED ABOUT 25 YEARS R/AT NO 220, 16TH CROSS BELAVADI MAIN ROAD Digitally signed by BELAVADI, MYSURU - 573113 ARSHIFA BAHAR KHANAM Location: HIGH PETITIONER COURT OF KARNATAKA (BY SRI. ROOPESHA B, ADV.,) AND:

1. THE STATE OF KARNATAKA UNDER SECRETARY TO GOVERNMENT HOME DEPARTMENT (LAW AND ORDER) VIDHANA SOUDHA DR.B.R. AMBEDKAR VEEDHI BENGALURU - 560001.

2. THE ADDITIONAL DISTRICT MAGISTRATE AND THE COMMISSIONER OF POLICE MYSURU CITY, MIRZA ROAD NAZARBAD, MYSURU - 570010. -2-

3. THE DEPUTY COMMISSIONER OF POLICE LAW AND ORDER MYSURU CITY MIRZA ROAD, NAZARBAD MYSURU - 570010.

4. THE ASSISTANT COMMISSIONER OF POLICE VIJAYANAGAR SUB DIVISION MYSURU CITY, MYSURU - 570017.

5. THE POLICE INSPECTOR VIJAYANAGAR POLICE STATION VIJAYANAGAR 2ND STAGE MYSURU CITY, MYSURU - 570017.

6. THE JAIL SUPERINTENDENT

CENTRAL JAIL, JAIL ROAD KODAILBAIL, MANGALORE - 575003.
RESPONDENTS (BY SRI. M.V. ANOOP KUMAR, HCGP) THIS W.P.H.C. IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF HABEAS CORPUS OR WRIT OR

ORDER OR DIRECTION OF APPROPRIATE NATURE AND

QUASH THE IMPUGNED DETENTION ORDER DATED ISSUED BY THE 2ND RESPONDENT, VIDE ANNEXURE-E AND THE IMPUGNED ORDER PASSED BY THE 1ST RESPONDENT IN NO. HD 141 SST 2024 DATED 2(g) OF THE KARNATAKA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DRUG OFFENDERS, GAMBLERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND SLUM GRABBERS, ACT 1985.

-3- THIS W.P.H.C. HAVING BEEN HEARD AND RESERVED ON 29.01.2025, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY VIJAYKUMAR A.

PATIL J., MADE THE FOLLOWING: CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN and

HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

(PER: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL) The petitioner No.1 is the detenu and the petitioner No.2 is the father of the detenu. They are seeking prayer to set free the petitioner No.1-detenu by issuing a writ in

the nature of Habeas Corpus and by quashing the order

dated 24.03.2024 passed by the respondent No.2 at Annexure-E and the order dated 28.03.2024 passed by the respondent No.1 at Annexure-F.

2. The detention order came to be passed by the

respondent No.2 by exercising the power conferred under sub-Section (2) of Section 3 of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas (Immoral Traffic Offenders, Slum- Grabbers and Video or Audio Pirates) Act, 1985 -4- (hereinafter referred to as 'the Goonda Act'). The said

order has been confirmed by the respondent No.1. The

grounds of detention have been served on the detenu. The detention order, grounds of detention and the file was placed before the Advisory Board and the Advisory Board forwarded its opinion to the respondent No.1. Thereafter, the respondent No.1 passed an order dated 22.04.2024 as required under the Goonda Act. Being aggrieved, the petitioners have filed the present petition.

3. Sri.B.Roopasha, learned counsel appearing for

the petitioners submits that the detention order dated 24.03.2024 passed by the respondent No.2 is contrary to the provisions of the Goonda Act. It is submitted

that the first two complaints filed against the detainee are by his uncle and cousin brother relating to civil disputes and other cases relied on by the Authority while passing the detention order are stale matters and in all the cases, the

detainee was on bail. These aspects have not been considered by the respondent No.2 while passing the -5- impugned order of detention. It is further submitted that there is no duration of detention mentioned in the impugned order and on this ground also, interference is called for. It is also submitted that no opportunity of hearing was provided to the detainee and hurriedly impugned orders were passed. Hence, he seeks to allow the petition by setting free the detainee.

4. Per contra, Sri.M.V.Anoop Kumar, learned High

Court Government Pleader for the respondents supports the impugned order of detention. It is submitted that the detainee is involved in 7 crimes from 2017 to 2023. The material on record indicates that the conduct of the detainee was detrimental to the public peace, tranquility and public order. The Detaining Authority has taken note of the fact that even after getting the bail, the detainee continued his illegal activities which has resulted in the passing of the detention order. The 7 crimes referred in the detention order are heinous in nature and the activities of the detainee has created panic in the locality and

-6- keeping in mind his likely activities further, the detention

order has been passed. It is contended that the impugned

order passed by the respondent No.2 has been confirmed

by the respondent No.1 and the Advisory Board is also of the opinion that there are grounds for detention. Hence, he seeks to dismiss the writ petition.

5. We have heard the learned counsel for the

petitioners, learned High Court Government Pleader for the respondents and perused the material available on record. We have bestowed our anxious consideration on the submissions advanced on both sides. The point that arises

for consideration in this petition is "Whether the order of detention dated 24.03.2024 and the order of *approval dated 28.03.2024 passed by the respondent Nos.2 and 1, respectively detaining the petitioner No.1-detenu is sustainable under the law?"

6. The impugned order of detention is passed by

the respondent No.2 by exercising the power conferred * Corrected vide Court Order dated 04.02.2025 -7- under Sections 3(2) of the Goonda Act. The relevant Sections are extracted hereinbelow:

3. Power to make orders detaining certain

persons.- (1) The State Government may, if satisfied with respect to any bootlegger or drug- offender or gambler or goonda or [Immoral Traffic Offender or Slum-Grabber or Video or Audio pirate] 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 persons 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, 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 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 -8- 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.

8. Grounds of order of detention to be disclosed to persons affected by the order.-

(1) When a person is detained in pursuance of a detention order, the authority making the

order shall, as soon as may be, but not later than

five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose. -9-

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 against the order, and in case where the order has been made by an officer, also the report by such officer under subsection (3) of section 3.

11. Procedure of Advisory Board.-

(1) The Advisory Board shall after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person

called for the purpose through the State Government or from the person concerned, and if, in any particular case, the Advisory Board considers it essential so to do or if the person concerned desire to be heard, after hearing him in person, submit its report to the State Government, within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall

specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is - 10 - sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) The proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

(5) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board.

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.

7. The aforesaid Sections confer the power on the State Government and the District Magistrate or the Commissioner of Police, as the case may be, to pass an

order of detention on being satisfied that the detention

order is necessary to prevent the detainee from acting in

any manner prejudicial to the maintenance of the public order. Section 3 contemplates various procedures to be

followed on passing of the detention order. Section 8 contemplates that the grounds of detention are required to be served on the detainee within 5 days from the date of the detention order by providing him an opportunity to submit the representation against the order of detention. Section 10 makes an obligation on the State Government to place before the Advisory Board the grounds on which the order of detention was made, representation if any made by the detainee, order of detention and the decision on such representation, if any, within three weeks. Section 10 provides the procedure of the Advisory Board. Section 13 mandates that the detention order conferred on Section 12 shall be 12 months from the date of detention.

8. It would be useful to refer to the recent decision of the Hon'ble Supreme Court in the case of AMEENA - 12 - BEGUM Vs. STATE OF TELANGANA¹ wherein the Hon'ble Supreme Court has laid down the guidelines. The relevant paragraph is extracted hereinbelow:

28. In the circumstances of a given case, a

constitutional court when called upon to test the legality of orders of preventive detention would be entitled to examine whether: 28.1. The order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied; 28.2. In reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute; 28.3. Power has been exercised for

achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

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28.4. The detaining authority has acted independently or under the dictation of another body; 28.5. The detaining authority, by reason of selfcreated rules of policy or in any other manner not authorised by the governing statute, has disabled itself from applying its mind to the facts of each individual case; 28.6. The satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due

regard to the matters as per the statutory mandate; 28.7. The satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale; 28.8. The ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached; 28.9. The grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention,

- 14 - giving him the opportunity to make a suitable representation; and 28.10. The timelines, as provided under the law, have been strictly adhered to.

9. The detention order is required to be tested keeping in mind the legal position and the enunciation of law laid down by the Hon'ble Supreme Court referred supra. We have also perused the original records made available by the learned High Court Government Pleader. The records indicate the following aspects:

a) Detention order was passed by the respondent No.2 on the grounds of detention on 24.03.2024. b) Detention order and the grounds of detention were served on the detenu on 25.03.2024. c) Detention order was forwarded to the

State Government on 26.03.2024. d) Detention order was approved by the respondent No.1 on 28.03.2024. e) Order of approval was communicated to the detinue on 31.03.2024. - 15 - f) The detention order along with approval order of the State Government as well as the records were placed before the Advisory Board on 01.04.2024. g) The meeting of the Advisory Board was held on 08.04.2024. h) The Advisory Board submitted its report and opinion on 18.04.2024. i) The report of the Advisory Board was forwarded to the State Government on 20.04.2024. j) The respondent No.1 confirmed the order of detention on 22.04.2024. k) The order of confirmation was served on the detinue on 23.04.2024.

10. On looking into the aforesaid dates and events, it indicates that the mandate of Sections 3, 8, 10, 11 and 13 are followed by the Authorities. The contrary contention

of the learned counsel for the petitioners that the procedure provided in the Goonda Act has not been properly followed has no merit and is accordingly rejected. - 16 - The detention order and the grounds of detention are duly served on the detinue which is evident from the original records. However, the detinue did not choose to submit

any representation. Hence, the contention that the order

of detention is passed hurriedly without providing an opportunity and is in violation of law, has no merit and is accordingly rejected.

11. Having held that the Authority has followed the

procedure provided under Section 3 and the other provisions of the Goonda Act in passing the detention order, if the detention order is tested on the touch stone of the provision of law and the enunciation of law laid down by the Hon'ble Supreme Court, we are of the considered view that the detention order dated 24.03.2024 requires interference for the following reasons:

(a) The respondent No.2 has passed the detention

order dated 24.03.2024 by considering the grounds of

detention. The Detaining Authority referred 7 cases registered against the detainee and has come to the - 17 -

conclusion that the activities of the detainee falls within the

definition of "Goonda" as defined under Section 2(g) of the Goonda Act and on being satisfied, has passed the detention order. b) The Detaining Authority has placed reliance on Crime No.309/2017 registered by Vijayanagar Police, Mysuru for the offences punishable under Sections 341, 324, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') on 09.11.2017. On bare perusal of the averments made in the grounds of detention, it is evident that there is a delay of 1 day in registering the complaint and the registration of complaint is emanated from the civil dispute between the detainee and his uncle and cousin brother. The said crime which is registered way back in the year 2017 cannot be termed as existence of a live and proximate link between the past conduct of the detainee and the need of detention. The material relied on by the Detaining Authority is stale and cannot have nexus to the order of detention. - 18 - c) The second crime relied on by the Detaining

Authority is Crime No.125/2021 registered by the same police station for the offences punishable under Sections 341, 324, 504 and 506 read with Section 34 of the IPC. The facts of the said case indicate that the said incident is also emanated between the family members with regard to the property dispute. The grounds of detention indicate that the detainee insisted to withdraw the earlier complaint filed against him and the said complaint is also registered after 1 day of the incident and is of the year 2021 and hence, there cannot be any proximity with the said case to the detention order.

d) In Crime No.401/2021 registered against the detainee by H.D.Kote police, Mysuru for the offences punishable under Section 307 read with Section 34 of the IPC, the detainee is arrayed as accused No.3. The allegation against the detainee is that he has conspired with the other accused to commit murder. The said complaint is also filed after a delay of 2 days from the date of incident. - 19 - e) In

Crime No.109/2022 registered by the

Vijayanagar police, Mysuru for the offences punishable under Sections 143, 147, 323, 324, 307, 504 and 506 read with Section 149 of the IPC, the detenue was arrayed as accused No.3. The jurisdictional police filed the charge sheet against the detenue and the other accused which is pending for trial and the detenue is on bail.

f) In Crime No.74/2023 registered by the Vijayanagar police, Mysuru for the offences punishable under Sections 143, 144, 341, 324, 504 and 506 read with Section 149 of the IPC, the detenue was arrayed as accused No.2. The jurisdictional police have filed the charge sheet against the detenue and the other accused and the detenue is on bail. g) In Crime No.116/2023 registered by the Vijayanagar police, Mysuru for the offences punishable under Sections 341, 354, 323, 504 and 506 read with Section 34 of the IPC, the detenue was arrayed as accused No.2. The overt act alleged against the detenue is that he abused the complainant's son in abusive language. The - 20 - said complaint is also registered after 2 days of the incident. h) In Crime No.120/2023 registered by the Vijayanagar police, Mysuru for the offence punishable under Section 392 of the IPC, the detenue was arrayed as accused No.1. The said case was registered on 12.07.2023 based on the complaint of one Prajwal that on 10.07.2023 accused Varadaraju and the detenue have beaten the complainant. The said case is under investigation and the detenue is on bail. There is a delay of 2 days in registration of the aforesaid complaint.

12. Considering the aforesaid cases registered

against the detenue, the Detaining Authority has come to the conclusion that to curb the activities of the detenue which are detrimental to the public order, the detention

order has been passed. The Hon'ble Supreme Court in the case of AMEENA BEGUM, referred supra has clearly held

that the satisfaction arrived by the Detaining Authority is required to bear in mind the existence of a live and - 21 -

proximate link between the past conduct of the person and the imperative need to detain him or is based on material, which is not stale. In other words, the Detaining Authority cannot rely on the stale material to arrive at a satisfaction on the act / conduct of the detainee with regard to disturbance of the public order. In the instant case, there is nearly 8 months gap between the last crime registered against the detainee and the impugned order. The order of detention and the grounds of detention are silent as to what has transpired between the last crime which was registered on 12.07.2023 and the detention order dated

24.03.2024 which is approximately 8 months. In the absence of any explanation for the 8 months duration with regard to the conduct of the detainee, we are of the considered view that the subjective satisfaction arrived by the Detaining Authority does not withstand the scrutiny of the law laid down by the Hon'ble Supreme Court.

13. The Detaining Authority has considered the cases registered against the associates of the detainee. - 22 - However, no material is placed with regard to the said crimes. It is not forthcoming from the aforesaid material as to whether the detainee was the accused in the crimes registered against the associates. If the Detaining Authority is placing reliance on the crimes registered

against the associates of the detainee and passing an order

of detention, then the order of detention is required to be interfered on the ground of consideration of irrelevant material by the Detaining Authority. Hence, on this count also the impugned detention order is required to be set aside.

14. There is another flaw noticed in the approval

order of the State Government dated 28.03.2024 wherein

the State Government has approved the detention order of the respondent No.2 by recording the reason that the name of the detainee was entered in the rowdy

register on 17.10.2023 by Vijayanagara police, Mysuru and thereafter also the detainee has continued his unlawful activities. The said finding or the observation of the respondent No.1 in

- 23 - the order dated 28.03.2024 is without any basis as the last crime registered against the detainee is on 12.07.2023. Hence, the * approval order of the State Government dated 28.03.2024 is without application of mind and contrary to the material on record which calls for interference in the present proceedings.

15. The Detaining Authority in its grounds has categorically stated that the detainee by misusing the bail granted by the Court has continued illegal activities and his

acts are detrimental to the public order. However, no specific instances are recorded in the grounds of detention and the order of detention. The grounds of detention are silent as to in which case the detainee has obtained the bail

and in violation of the bail conditions, h

Detaining Authority has passed an unreasoned order and the consequential satisfaction arrived is without any basis. Hence, the same calls for interference. *
Corrected vide Court

Order dated 04.02.2025

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16. On examining the original records, pleadings,

the impugned order of detention, grounds of detention, * approval order of the State Government and the opinion of the Advisory Board, we are of the considered view that the impugned order of detention and the * approval order of the State Government are not in consonance with the provisions of law and the enunciation of law laid down by the Hon'ble Supreme Court in the

aforesaid decision. Having held that the detention order

under challenge is contrary to law and requires interference, we are of the considered view that the impugned order of detention is passed in violation of the fundamental rights of the detainee guaranteed under Section 21 of the Constitution of India.

17. For the aforementioned reasons, we proceed to pass the following: * Corrected vide Court

Order dated 04.02.2025

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ORDER

i. The writ petition is allowed. ii. The impugned detention order dated 24.03.2024 passed by the respondent No.2 at

Annexure-E and the impugned * approval order

dated 28.03.2024 passed by the respondent No.1 at Annexure-F are quashed. iii. The respondents are directed to set the detainee at liberty forthwith. iv. Registry is directed to forthwith communicate the operative portion of the order to the Superintendent of Prison, Mangaluru Central Prison, Mangaluru for compliance. No order as to costs.

Sd/- (ANU SIVARAMAN) JUDGE Sd/- (VIJAYKUMAR A. PATIL) JUDGE RV List No.: 4 Sl No.: 1 * Corrected vide Court

Order dated 04.02.2025

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