

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S. VISHWAJITH SHETTY

WRIT PETITION (HC) NO. 16 OF 2020

DATED: 12-05-2020

Mr. KENNETH JIDEOFOR, VS. UNION OF INDIA, JOINT
SECRETARY TO GOVT. OF INDIA MINISTRY OF FINANCE AND
REVENUE AND OTHERS

JUDGMENT

THE CHIEF JUSTICE

By this petition filed under Article 226 of the Constitution of India, the petitioner has taken an exception to the order dated 23rd January, 2020 passed in exercise of powers under sub-section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, "the said Act of 1988").

2. By the said order passed by Shri Ravi Pratap Singh, the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue (PITNDPS Unit), the petitioner was ordered to be preventively detained. The order was passed with a view to prevent the petitioner from engaging in illicit trafficking of narcotic drugs and psychotropic substances in

future. On 7th February, 2020, the said order dated 23rd January, 2020 (for short, “the impugned order”) was served upon the petitioner and the petitioner was detained. The present petition was filed on 24th February, 2020. Shri Ravi Pratap Singh, Joint Secretary to the Government of India, passed the impugned order in his capacity as the Specially Empowered Officer under the provisions of sub-Section (1) of Section 3 of the said Act of 1988.

3. The first respondent filed its statement of objections on 11th March, 2020. On 22nd April, 2020, the petitioner filed a memorandum raising additional grounds and a rejoinder. The petitioner also filed I.A. No.2 of 2020 setting out additional grounds of challenge. Additional statement of objections was filed by the first respondent dealing with the additional grounds.

4. The first submission of the learned counsel appearing for the petitioner in support of the petition is that though the representation dated 15th April, 2020 was made to the Specially Empowered Officer, the same was never placed before him till 29th April, 2020. It was placed before him on 29th April, 2020 which was hurriedly decided on the same day. He submitted that the order of confirmation under Section 9(f) of the said Act of 1988 was issued by the Government of India on 27th April,

2020. He urged that the said order does not refer to the consideration of any representation made by the petitioner. Even the memorandum dated 29th April, 2020 issued by the Deputy Secretary to the Government recording the rejection of the representation dated 15th April, 2020 does not record that the same was considered by Shri Ravi Pratap Singh, who was the Specially Empowered Officer. He submitted that there was no reason to keep the representation pending till the Government of India took a decision on the basis of the report of the Advisory Board. He submitted that consideration of the representation by the Specially Empowered Officer after the confirmation of the detention order by the Government cannot be said to be an effective consideration of the representation. He submitted that even the representation dated 17th April, 2020 submitted by the petitioner to the Central Government was belatedly decided on 30th April, 2020. He placed reliance on several decisions including a recent decision of the Apex Court in the case of **ANKIT ASHOK JALAN .v. UNION OF INDIA AND OTHERS¹**.

5. Secondly, the learned counsel appearing for the petitioner submitted that the grounds of detention were not served within a reasonable time from the date on which the order of detention was passed. He submitted that in fact, there is material on record to show that when the order of detention was served upon the petitioner on 7th February, 2020, even the grounds of detention were not ready. He submitted that a compilation consisting of more than 600 pages which were the documents relied upon in the grounds of detention was attempted to be served on the petitioner for the first time as late as on 2nd May, 2020,

which was eventually served on 4th May, 2020 to an advocate representing the petitioner who visited the prison. He pointed out that a translation of the Kannada documents at pages 367 and 375 was not furnished even on 4th May, 2020.

6. The learned counsel further submitted that the last prejudicial activity alleged against the petitioner is of 17th January, 2019 and in relation to the said activity, the petitioner was enlarged on bail on 13th June, 2019. He submitted that it is not alleged in the grounds of detention that after 13th June, 2019, the petitioner was involved in any prejudicial activity. He would, therefore, submit that considering the long delay in passing the order of detention, the live link between the alleged prejudicial activities committed by the petitioner and the necessity of passing the order of detention, has been snapped. He submitted that the subjective satisfaction of the detaining authority is vitiated by non-consideration of the relevant facts and also due to consideration of extraneous circumstances.

7. The learned Additional Solicitor General of India invited our attention to the allegations made against the petitioner in the grounds of detention. He submitted that considering the propensity of the petitioner, considering his past record and involvement in crimes, it cannot be said that the live link between the prejudicial activities of the petitioner and the

necessity of passing an order of preventive detention has been snapped. He relied on the observations made by the Apex Court in the case of **HARADHAN SAHA .v. STATE OF WEST BENGAL AND OTHERS** ² . He relied upon what is held by the Apex Court in paragraph 8 in the case of **KAMARUNNISA .v.UNION OF INDIA**³. He also relied upon the observations made by the Apex Court in paragraph 45 in the case of **UNION OF INDIA AND ANOTHER .v. DIMPLE HAPPY DHAKAD**⁴. He submitted that the alleged delay in passing the order of detention is not at all fatal.

8. He submitted that the representation dated 15th April, 2020 was forwarded for the first time on 29th April, 2020 to the detaining authority and was rejected on the very day by the Specially Empowered Officer. He submitted that the same representation was placed before the Advisory Board. In a meeting held on 18th April, 2020, the Advisory Board considered the said representation and submitted a report to the Central Government on the basis of which the impugned order of detention was confirmed. He submitted that the representation has been also considered by the Central Government and the same has been rejected by the memorandum dated 30th April, 2020.

9. He submitted that there is more than sufficient explanation for the small delay in disposing of the representation. He submitted that the Apex Court, in many cases, has confirmed the order of detention when there was a delay of a few months in considering the representation. He submitted that there is no delay in furnishing the grounds of detention. He urged that the grounds of detention and all the annexures thereto running into more than 600 pages along with translation of Kannada documents were served on the petitioner on 8th February, 2020 and his acknowledgement has been obtained on each page. He submitted that considering the seriousness of the allegations and the nature of the prejudicial activities carried out by the petitioner, this Court should not interfere. He submitted that there is no basis for the allegation that the grounds of detention were served for the first time in May, 2020. The learned Additional Solicitor General submitted that no interference is called for in writ jurisdiction under Article 226 of the Constitution of India.

10. We have carefully considered the submissions. Under Clause (5) of Article 22 of the Constitution of India, the Authority making an order of preventive detention is required to afford an opportunity to the detenu to make a representation against the

order of detention. As far as law relating to representation is concerned, it is fairly well settled. In paragraph 12 of the well known decision of a Constitution Bench of the Apex Court in the case of **K.M.ABDULLA KUNHI AND B.L. ABDUL KHADER .v. UNION OF INDIA AND OTHERS⁵**, the Apex Court reiterated the law laid down on the subject. Paragraph 12 of the said decision reads thus:

“12. The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of our Constitution. Clause (5) of Article 22 therefore, casts a legal obligation on the government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words “as soon as may be” occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the

Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. 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. This has been emphasised and re- emphasised by a series of decisions of this Court.”

(Emphasis added)

11. Before we go to the specific arguments on merits, we must also make a note of the law laid down by another Constitution Bench of the Apex Court in the case of **KAMLESHKUMAR ISHWARDAS PATEL .v. UNION OF INDIA AND OTHERS⁶** and in particular paragraph 49 which reads thus:

“**49.** At this stage it becomes necessary to deal with the submission of the learned Additional Solicitor General that some of the detenus have been indulging in illicit smuggling of narcotic drugs and psychotropic substances on a large scale and are involved in other anti-national activities which are very harmful to the national economy. He has urged that having regard to the

nature of the activities of the detenus the cases do not justify interference with the orders of detention made against them. **We are not unmindful of the harmful consequences of the activities in which the detenus are alleged to be involved. But while discharging our constitutional obligation to enforce the fundamental rights of the people, more especially the right to personal liberty, we** cannot allow ourselves to be influenced by these considerations. It has been said that history of liberty is the history of procedural safeguards. The Framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be “zealously watched and enforced by the Court”. Their rigour cannot be modulated on the basis of the nature of the activities of a particular person. We would, in this context, reiterate what was said earlier by this Court while rejecting a similar submission.

“Maybe that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. **But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus.**”

(Emphasis added)

12. Therefore, it is a duty of the Court to safeguard the protection granted under clauses 4 and 5 of Article 22 of the Constitution of India and to zealously enforce the same.

13. Firstly, we deal with the issue for non-consideration of the representation made by the petitioner against the order of detention. For that purpose, it is necessary to make a reference to paragraph 6 of the additional statement of objections filed by the first respondent. It is accepted that a representation dated 15th April 2020 (in Annexure R-8) was made by the petitioner through the Superintendent of the Prison which was addressed to the Specially Empowered Officer who had passed the impugned order. On 16th April, 2020, Copies of the representation were forwarded by the Superintendent of the Prison by e-mail to Zonal Office, Narcotics Control Bureau (NCB), Bengaluru and to Administrative Officer (Judicial), COFEPOSA/ PITNDPS of Delhi High Court, New Delhi. Strangely, the Prison Authorities did not forward the same to the Specially empowered Officer by e-mail. It is contended in the additional statement of objections that the representation dated 15th April 2020 was sent by speed post to the Joint Secretary, PITNDPS which was not received by the detaining Authority due to lockdown. It is further stated that when the detaining Authority became aware of the representation dated 15th April

2020, a copy of the same was obtained from NCB, Bengaluru on 29th April 2020 through e-mail. The representation dated 15th April 2020 was decided on 29th April 2020.

14. It is further stated that the same representation was also placed before the Advisory Board on 18th April 2020 in its meeting at New Delhi. According to the case made out by the first respondent, after hearing the petitioner via video conferencing, the Advisory Board submitted its opinion to the Central Government on 20th April 2020. The Central Government, after considering the report/opinion of the Advisory Board, has confirmed the order of preventive detention on 27th April 2020. Moreover, another representation made by the petitioner on 17th April 2020 was also considered and rejected by the Central Government vide memorandum dated 30th April 2020.

16. At this stage, useful reference can be made to the recent decision of the Apex Court in the case of **ANKITH ASHOK JALAN** (supra) particularly, paragraph 11, which reads thus:

“11. The learned counsel appearing for the parties placed for our consideration various decisions of this Court touching upon the aforesaid first two questions. We may broadly consider those decisions for answering the questions from two perspectives:—

First, on the issue whether a representation can independently be made to and must be considered by the Detaining Authority, who is a specially empowered officer of the concerned Government.

Secondly, whether, in certain circumstances, the Detaining Authority ought to defer consideration of such representation till the report is received from the Advisory Board.”

(Emphasis supplied)

17. After referring to the earlier decision in the case of *K.M. ABDULLA KUNHY*, the Apex Court in paragraph 42 held thus:

“42. Thus, if the law is now settled that a representation can be made to the specially empowered officer who had passed the order of detention in accordance with the power vested in him and the representation has to be independently considered by such Detaining Authority, the concerned principles adverted to in paragraph 16 of the decision in *K.M. Abdulla Kunhi* would not be the governing principles for such specially empowered officer. It must be stated that the discussion in *K.M. Abdulla Kunhi* was purely in the context where the order of detention was passed by the appropriate Government and not by the specially empowered officer. The principle laid down in said paragraph 16 has therefore to be understood

in the light of the subsequent decision rendered by another Constitution Bench of this Court in *Kamleshkumar.*”

(Emphasis added)

In paragraph 46 of the aforesaid decision, the Apex Court further held thus:

“46. Since there was complete inaction on part of the Detaining Authority in the present case, to whom a representation was addressed in dealing with the representation as stated above, we hold that the constitutional rights of the detenues were violated and the detenues are entitled to redressal on that count. We, therefore, allow this Writ Petition and hold the continued detention of the detenues in terms of the Detention Orders to be illegal, invalid and unconstitutional.”

(Emphasis added)

18. Going by the stand taken by the first respondent in its additional statement of objections, it is an admitted position that on 15th April 2020, a representation was made by the petitioner through the Chief Superintendent, Central Prison, Bengaluru. It is an admitted position that the representation was made to Shri Ravi Pratap Singh, Joint Secretary to the Government of India, Department of Revenue, and (PITNDPS UNIT) New Delhi, who

is the Specially Empowered Officer and who passed the impugned order. It was forwarded to Zonal Officer of the NCB, Bengaluru by e-mail on 16th April 2020. As stated in the grounds of detention, NCB, Bengaluru is the Sponsoring Authority. There is no explanation forthcoming from the Sponsoring Authority about its complete failure to forward it to the Specially Empowered Officer by e-mail. It is pertinent to note that the representation was placed before the Advisory Board in New Delhi on 18th April 2020. But it was never forwarded by the Sponsoring Authority to the office of the Specially Empowered Officer in New Delhi.

19. There is no explanation offered regarding the failure of the Sponsoring Authority to forward a copy of the representation to the Specially Empowered Officer. A copy of representation dated 15th April 2020 was sent by the Prison Authorities to the Joint Secretary (PITNDPS) by speed post. There is no explanation why the representation was not forwarded to the Specially Empowered Officer or to the Central Government by e-mail. It is alleged in the additional statement of objections that as and when Detaining Authority became aware of the representation dated 15th April 2020, the same was obtained by it from NCB, Bengaluru on 29th April 2020.

Then the representation was hurriedly disposed of on the same day itself i.e., on 29th April 2020. There is absolutely no explanation forthcoming for not forwarding the representation dated 15th April 2020 to the Specially Empowered Officer who had passed the impugned order. Even the representation dated 17th April 2020 made by the petitioner to the Central Government through the Superintendent of Central Prison was not forwarded to the Central Government immediately but the same was forwarded on 20th April, 2020 and it is specifically stated that the same was decided on 30th April 2020. The delay from 20th of April to 30th April 2020 has not been explained at all.

20. Thus, the only conclusion which can be drawn is that there is an inordinate delay in considering the representations made by the petitioner to the Specially Empowered Officer as well as to the Central Government. In fact, there are no efforts made to explain the reasons for such inordinate delay. Hence, there is a complete violation of rights of the petitioner under Article 22 of the Constitution of India and in particular Clause (5) thereof. On account of the inordinate delay in deciding the representations made by the petitioner, the continuation of impugned order of preventive detention is vitiated and therefore the impugned order of detention will have to be set aside.

21. Accordingly we pass the following:

ORDER

- (i) The impugned order dated 23rd January 2020 bearing F.No.U-11011/1/2019-PITNDPS passed by the first respondent is hereby quashed and set aside. Consequently, the order of confirmation of the said detention order dated 27th April 2020 passed by the Central Government also stands quashed;
- (ii) We direct that the petitioner/Mr. Kenneth Jideofor shall be set at liberty forthwith by the Bengaluru Central Prison, if he is not required in connection with any other case;
- (iii) The writ petition is allowed on the above terms.