

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (Cr) No. 282 of 2016

Prince Khan, Son of Nasir Khan, Resident of Nabi Nagar,
Kamarmakdumi, Wasepur, P.O. B. Polytechnic, P.S. Bank More,
District-Dhanbad

....**Petitioner**

Versus

1. The State of Jharkhand.
2. Secretary, Department of Home, Jharkhand Government, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, Distrit-Ranchi.
3. Under Secretary, Home, Jail and Disaster Management Department, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi.
4. The Deputy Commissioner cum District Magistrate, Dhanbad, P.O. Dhanbad, P.S. and District-Dhanbad.
5. The Superintendent of Police, Dhanbad, P.O. Dhanbad, P.S. and District-Dhanbad.

.....**Respondents**

With

W.P.(Cr) No. 286 of 2016

Gopi Khan, Son of Md. Nasir Khan, Resident of Kamarmakdumi, Niche
Muhalla, P.O. B. Polytechnic, P.S. Bank More, District-Dhanbad.

.....**Petitioner**

Versus

1. The State of Jharkhand.
2. The Home Secretary, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi.
3. Under Secretary, Home, Jail and Disaster Management Department, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi.
4. The Deputy Commissioner cum District Magistrate, Dhanbad, P.O. Dhanbad, P.S. and District-Dhanbad.
5. The Superintendent of Police, Dhanbad, P.O. Dhanbad, P.S. and District-Dhanbad.

.....**Respondents**

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

For the Petitioners

: Mr. Zaid Ahmad, Advocate
(in both cases)

For the Respondents

: Mr. Binod Singh, S.C. (L&C)
(In W.P.(Cr) No.282 of 2016)
: Mr. Rajiv Ranjan Mishra, G.P. II
(In W.P.(Cr) No. 286 of 2016)

08/23/02/2017 Since common questions of law and facts are involved in both the writ applications the same are being disposed of by this common order.

In W.P.(Cr) No. 282 of 2016, the petitioner is aggrieved by the order dated 29.6.2016 as contained in Memo No. CCA/01/40/2015-3210, passed by the respondent no. 3, by which the

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petitioner has been detained till 29.8.2016. A further challenge has been made to the Memo dated 29.8.2016, by which the period of preventive detention has been further extended till 28.11.2016.

By way of amendment, which has been allowed by this Court on 16.12.2016, the period of detention has further been extended till 27.2.2017 vide order dated 28.11.2016.

In W.P.(Cr) No. 286 of 2016, the petitioner is aggrieved by the order of preventive detention passed on 18.7.2016, by the respondent no. 3 as contained in Memo No. CCA/01/41/2016-3429, by which the petitioner has been detained till 29.8.2016. A further challenge has been made to the order dated 29.8.2016 as contained in Memo No. 5/CCA/01/41/2016-4108, by virtue of which the period of preventive detention of the petitioner has been extended up to 28.11.2016.

By virtue of amendment, as has been sought for in I.A. No. 8236 of 2016, which was allowed on 16.12.2016, the petitioner also seeks to challenge the order dated 28.11.2016 detaining the petitioner till 27.2.2017.

Heard Mr. Zaid Ahmed, learned counsel for the petitioners in both the cases and Mr. Binod Singh, learned Standing Counsel L&C in W.P.(Cr.) No. 282 of 2016 and Mr. R.R. Mishra, learned G.P. II in W.P. (Cr) No. 286 of 2016.

It has been submitted by the learned counsel for the petitioners that preventive detention of the petitioners is bad in law in view of the fact that the case of the petitioners after the first order of detention was never reviewed by the authority concerned. It has been stated that even the petitioners were not given any opportunity to represent before them for reviewing the order of detention and thus the basic right of the petitioners were curtailed. Learned counsel submits that period of detention of the petitioners have been extended for three months each merely by the order of the concerned authority without taking the opinion of the Advisory Board as to whether such further detention is necessitated or not. Learned counsel therefore submits that in absence of any confirmation of the order of the preventive detention made by the detaining authority, keeping the petitioners in custody would be against the provisions of law as enumerated in the Jharkhand Control of Crimes Act. (Herein after referred to as the Act).

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Learned State counsel on the other hand has opposed the prayer made by the learned counsel for the petitioners and has stated that an order was passed under section 12 of the Act, pursuant to which, it was confirmed by the State Government as well as by the Advisory Board. It has been stated that pursuant to the judgment passed by the Hon'ble Supreme Court in the case of **Cherukuri Mani Vs. Chief Secretary, Government of Andhra Pradesh and Others reported in (2015) 13 SCC 722**, the State Government is detaining a detenu for a maximum period of three months at a stretch, which is being extended by the authorities subsequently. Learned counsel further submits that since the procedure with respect to preventive detention of the petitioners had duly been followed and it was confirmed by the Advisory Board, no necessity arises with respect to further confirmation by the Advisory Board with respect to subsequent extension of the period of preventive detention of the petitioners. It has, therefore, been submitted that the writ applications being without any merit are liable to be dismissed

A pertinent question which arises in these writ applications is whether the detaining authority can without any basis and without getting further confirmation by the Advisory Board, extend the period of detention. In order to appreciate the rival contentions, it would be necessary to refer to the various provisions of the Act.

Section 12 of the Act envisages the power to make order detaining certain persons. The proviso to Sub Section (2) lays down that the period specified in the order made under Sub Section (2) shall not in the first instance exceed three months but if the State Government if satisfied 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.

Section 17 is with respect to the disclosure of the grounds in the order of detention to the person affected by such order. Constitution of Advisory Board is laid down in Section 18 and reference to Advisory Board appears in Section 19 of the Act.

Section 20 is the procedure to be followed by the Advisory Board and the same reads as under:-

"20.Procedure of Advisory Board.-(1)*The Advisory Board shall, after considering the materials placed before it and, after*

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calling for such further information as it may deem necessary from the Government or from any person called for the purpose through the Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the 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 sufficient cause for the detention of the person concerned.

(3) When there is 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) 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 and 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"

Upon report of the Advisory Board, action has to be taken by the Government which is revealed in Section 28 of the Act. The report of the Advisory Board as finds place in Sub Section (2) of Section 20 of the Act is with respect to an opinion of the Advisory Board as to whether or not there is sufficient cause for detention of the person concerned.

In the backdrop of the provisions of the Act specifically with respect to the report of the Advisory Board coupled with the judicial pronouncements of the Hon'ble Supreme Court in the case of **Cherukuri** (Supra), it is to be deduced as to whether without there being any further opinion of the Advisory Board taken by the competent authority, the period of detention of a detenu can be extended for three months at a time.

In the case of **Cherukuri** (Supra), the primary consideration was whether a person can be detained for a period at a stretch or he can be detained at the first instance for a period not exceeding three months. Considering the provisions of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 and Article 22(4)(a) of the Constitution of India, it was held as under:-

"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 appellants 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

It was, therefore concluded that the State Government cannot direct or extend the period of detention up to the maximum period of 12 months in one stroke ignoring the legislative intent that such extension must not exceed three months at any one time. In view of the judicial pronouncement above, the State Government after an order of preventive detention is passed pursuant to its confirmation by the Advisory Board is extending the period of detention of a detenu maximum for a period of three months at a stretch and subsequently extending it further.

In concluding portion of the judgement under reference, it was held as follows:-

"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.

16. Even though, the learned Senior Counsel appearing for the State sought for an adjournment beyond summer vacation, we are unable to accept his prayer for the simple reason that maximum part of the period of detention of the detenu is going to complete by the end of summer vacation. Undisputedly, the detenu was detained on 5-10-2013 which means that he remained under detention for about seven months at a stretch without any periodical review as envisaged by law. We are, therefore, of the considered opinion that the detention order passed by the Government of Andhra Pradesh in this case is in contravention to the provisions of law. On this ground alone, without going into other issues, we thought this appeal has to be allowed and the order of detention has to be quashed".

The legal issue having been settled by the Hon'ble Supreme Court as stated above leads this Court to consider the factual aspect of the case and thereupon to conclude as to whether the subsequent extension of preventive detention of the petitioners is in accordance with law or not.

In W.P.(Cr) No. 282 of 2016, a detention order was passed against the petitioner by order dated 30.5.2016 under the provisions of Section 12(2) of the Act. Subsequent steps having been followed, the petitioner was detained for a period of three months, which were extended for a further period of three months from time to time. Similarly in the case of the petitioner in W.P. (Cr.) No. 286 of 2016, after the initial order of preventive detention was passed against the

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petitioner, same has been extended for three months at a time.

None of the extension order indicates that the recommendation for extension made by the District Magistrate was ever placed before the Advisory Board. Neither the succeeding orders reveal such fact nor any statement has been made in the counter affidavit filed by the State controverting the same. It is, thus, an admitted fact that the subsequent extension of the order of preventive detention of the petitioners were at the State Government level without activating the mechanism of getting it confirmed by the Advisory Board.

Reverting back to the case of **Cherukuri** (Supra), it has clearly been held that passing a detention order for a period of 12 months at a stretch without proper review is deterrent to the rights of the detenu. It was further indicated therein that the legislature had specifically provided the mechanism "Advisory Board" to review the detention of a person. The act of the State Government in extending the period of detention of the petitioners without referring such recommendation before the Advisory Board virtually amounts to passing of a detention order for a continuous period of 12 months since no review is being made by the most important wing in the entire structural aspect of recommendation of preventive detention of a detenu till its confirmation by the Advisory Board. The safeguard, which has been provided in favour of a detenu by the legislature has been given a complete go by and such act on the part of the State definitely frustrates the very object and purpose of putting such mechanism of confirmation by a Advisory Board in the entire scheme of the Act with respect to preventive detention of a detenu.

In such view of the matter, therefore, continuous detention of the petitioners after the expiry of first three months of their detention is bad in the eyes of law and therefore the very orders passed separately in the case of the present petitioners are hereby quashed and set aside. These writ applications are allowed.

Let a copy of the order be sent to the Chief Secretary, Government of Jharkhand for onward communication to the District Magistrates as well as to the Home Department so that appropriate and effective steps be taken in accordance with law and in terms of what has been stated above with respect to passing of detention orders in terms of the provisions of the Jharkhand Control of Crimes Act.

(Rongon Mukhopadhyay, J)