

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE K.SOMASHEKAR

AND

THE HON'BLE MR JUSTICE RAJESH RAI K

WPHC NO.75 OF 2023

BETWEEN

SRI. MOHAMMAD SHAFIULLA

...PETITIONER

(BY SRI. NANJUNDA GOWDA M.R)

AND

- 1 . THE D. G. AND I.G.P. OF POLICE
BENGALURU-560 001.
- 2 . THE STATE OF KARNATAKA
BY SECRETARY,
HOME DEPARTMENT (LAW & ORDER)
VIDHANA SOUDHA,
BENGALURU-560 001.
- 3 . THE SENIOR SUPERINTENDENT
BENGALURU CENTRAL PRISON,
BENGALURU-560 100.
- 4 . DEPUTY COMMISSIONER
KOLAR,
KOLAR DISTRICT-563 101.

...RESPONDENTS

(BY SRI. ANOOP KUMAR, HCGP)

THIS WPHC IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO A) ISSUE A WRIT IN THE NATURE OF HABEAS CORPUS COMMANDING THE RESPONDENTS FOR THE PRODUCTION OF THE BODY OF THE SON OF THE PETITIONER MR. ROSHAN JAMEER S/O MOHAMMAD SHAFIULLA IN THE COURT AND SET HIM AT LIBERTY AND ETC.

THIS WPHC HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.12.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, **RAJESH RAI.K, J.**, MADE THE FOLLOWING:

ORDER

Petitioner being the father of the detenu namely, Sri. Roshan Jameer @ Jameer @ Jammu, has approached this Court praying for a Writ in the nature of Habeas Corpus, directing the respondents to produce the detenu before this Court and set him at liberty and also to quash the impugned detention order bearing No.MAG(2) CR/L&O (G)/02/2023-24 dated 27.04.2023.

2. Brief factual matrix of the case are as follows:-

One Sri. Roshan Jameer @ Jameer @ Jammu (hereinafter called as 'detenu') who is alleged to be an offender and also a threat to the society as he was involved in several crimes since, 2013, the respondent No.4 passed an order of detention in consonance with the provisions 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 (hereinafter referred as 'Goonda Act') vide order bearing No.MAG(2)CR/L&O (G)/02/2023-24 dated

27.04.2023. The same was communicated to the detenu along with the compilation of document explaining his detention on 27.04.2023. He was also detained in Central Prison, Parappana Agrahara, Bengaluru.

3. Subsequently, the detention order passed by the respondent No.4 also was confirmed by respondent No.2 vide order dated 06.05.2023. It is in this background, the file pertaining to the detenu was forwarded to the Advisory Board for consent on 08.05.2023. Posteriorly, Advisory Board was constituted on 01.06.2023 and the Advisory Board heard both detenu and also the respondent-Authorities who were present before the Advisory Board and vide order dated 02.06.2023 was pleased to uphold the order passed by the respondent No.4 and confirmation order passed by respondent No.2 *supra*.

4. Pursuant to confirmation order being passed by the Advisory Board, respondent No.2 vide order dated 06.06.2023, extended the detention period for one year starting from 27.04.2023 invoking section 13 of Goonda Act. Aggrieved by the orders *supra*, petitioner who is the father of the detenu herein is knocking the doors of this Court seeking for Writ of Habeas Corpus.

5. Leaned counsel for the petitioner submits that, the respondents are mandated to furnish the legible copies of the

documents to the detenu, explaining the causes for his detention along with the documents that are relied upon to come to such conclusion, thereby enabling him to submit the representation as provided by Section 8 of the Goonda Act. Learned counsel for the petitioner would submit that, the respondent-Authorities failed to comply with the provisions of Section 8 of the Act *supra*, which took away the earliest possible opportunity for the detenu to file a representation against the order of detention.

6. The learned counsel would further submit that, though the orders annexed with documents were supplied to the accused, they were not in consonance with the Act and also the law laid down by this Court and Hon'ble Apex Court, as the detenu was given the compilation of document which included the copies that were not legible. In support of his contention he persuades this Court to page 29, 35, 52, 150, 154, 155, 156, 157, 244, 246, 248 and 250 of the compilation of documents supplied to the detenu in pursuance to his arrest.

7. Further, learned counsel for the petitioner would also further contend that, the documents supplied to the detenu was in English and Kannada versions and the detenu being the student of Urdu medium school who has studied till 2nd Standard, is stranger to read both Kannada and English languages. Such being the scenario, supplying the documents for him in Kannada and English

languages is not only in violation of Article 22(5) of the Constitution but also in violation of Section 8 of the Goonda Act, thereby ceasing his right to file a representation against the order of Detention.

8. In addition to the above submission, learned counsel for the petitioner also files a tabulation of documents dated 04.12.2023, containing the details of the documents that does not find place in the list of documents furnished by the respondent No.4 on 27.04.2023 and it is the apprehension of the learned counsel for the petitioner that these documents are vital documents that was required to be looked into before passing the impugned order and also non-furnishing of these documents to the detenu has violated his right to give an effective representation under Section 8 of the Goonda Act.

9. Learned counsel for the petitioner in order to substantiate his contention has relied upon the following decisions:-

SI.No	List of Authorities	Citations
1.	Powanammal v. State of T.N	AIR 1999 SC 618
2.	Jayamma V Commissioner Of Police & Others	WPHC No. 102/2018
3.	Manjit Singh Grewal @ Gogi	1990 (Supp) SCC 59
4.	Smt.R Latha vs. T. Madiyal, Commissioner of Police, Bangalore City and Others	2000(5) Kar.L.J 304

5.	Shankara Gouda vs. State of Karnataka and Others	WPHC No.200007/2015
6.	Earanna @ Bonda Earanna vs. State of Karnataka and Others	WPHC No.200005/2016
7.	Smt. Shylamma vs. State of Karnataka, Department of Home and Others	ILR 2016 KAR 2725
8.	Ramlath vs. State of Karnataka	WPHC No.155/2016
9.	Sri Narayanappa vs. State of Karnataka	WPHC No.33/2014

10. Learned HCGP denying the contentions levelled by the petitioner, in *contra* submits that the impugned detention order is passed in the interest of general public as the offender was a thief and also a habitual offender who was involved in several crimes since 2013 and total number of 15 crimes have been reported against the said person and a rowdy sheet was also opened in his name on 12.05.2017 and even after opening rowdy sheet he is been charged and arrayed as accused in another 5 crimes. Hence, it is in this background, in order to curtail him and also preserve peace and harmony in the society the current action has been taken against the detenu herein and the same is in accordance with law.

11. Learned HCGP would further contend that, the respondents have obtained the certificate from the university in which he has completed his initial schooling and the said certificate finds place at page 24 of the compilation of documents supplied to

the detenu and the said certificate clearly emphasizes that though he has studied in Urdu School, he is well-versed with Arabic, Urdu, English and Kannada Languages. And he would also refer to material object at page 39 of the compendium to contend that he has studied till 7th standard and hence, HCGP would contend that the version of the petitioner that his son has only studied till 2nd standard and he has no knowledge of Kannada or English cannot be relied with. Learned HCGP would also further submit that the documents that are claimed to be illegible are not much of any relevance and their absence would not have harmed the detenu to submit any representation to competent authority in time. Learned HCGP also submits that, the tabulation now supplied to the Court detailing all the documents that does not find any place in the compilation are all the documents pertaining to the bail orders passed in all the cases that are registered against the detenu. Orders of bail cannot be considered conclusive and the same cannot be relied upon as the jurisprudence of granting bail stands on a different footing than the preventive detention. Though he was detailed about his rights during the execution of detention passed against him, he has failed to give any representation to the authority and even when he was produced before the advisory board he has not specifically pleaded what is now being pleaded before this Court and thereby he has accepted the detention order passed against him. Learned HCGP in support of his contentions

places the record before this Court, pertaining to the detenu, maintained by the respondent- authorities.

12. We have bestowed our anxious consideration to the submission made by both the counsels and having heard the learned counsel appearing for the petitioner Sri. Nanjunda Gowda M.R and learned HCGP Sri. Anoop kumar, perusing the pleadings and also the records made available to this Court by leaned HCGP, the point that would arise for our consideration is;

"Whether the order of detention dated 27.04.2023 passed by the 4th respondent, detaining the son of the petitioner Sri. Roshan Jameer @Jameer @Jammu is sustainable under law?"

13. The impugned orders supra are passed keeping in view Sections 3, 8, 10, 11 and 13 of Goonda Act. For the sake of convenience same are produced herewith -

"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 1 [Immoral Traffic Offender or Slum-Grabber or Video or Audio pirate] 1 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 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.

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 sub-section (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 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.*

(emphasis supplied by me)

14. On careful perusal of these statutory provisions, it depicts that any order made by the competent authority under section 3(2) of the Goonda Act shall be forwarded to the State Government along with grounds and particulars on which such orders has been passed and also all the relevant materials that are necessary for consideration by the State Government. The

provision also mandates that any order made under Section 3(2) of the Goonda Act, will only remain in force for a period of 12 days subject to approval of the State Government.

15. In the present case on hand, respondent No.4 being the authority empowered by the state to exercise powers conferred under Section 3(1) of the Goonda Act, has exercised powers under Section 3(2) of the Goonda Act and has passed the order of detention without specifying the period and directed the respondent No.3-Police to detain the detenu in the Central Prison, Parappana Agrahara, Bengaluru and has forwarded all the materials that are relied upon in order to pass the Detention order and the same came to be affirmed by the State Government vide order dated 06.05.2023. Further said detention order and confirmation order was forwarded to the Advisory Board on 08.05.2023 and was placed before the Advisory Board on 01.06.2023 and Advisory Board vide order dated 02.06.2023 has confirmed the detention order passed by the respondent No.4.

16. Further on careful perusal of Section 8 of the Act *supra*, we find that, the duty is bestowed upon the respondents to furnish the orders of detention made against the detenu along with the entire materials which are relied upon by the respondents, to pass such orders within five days so as to enable the detenu to submit

effective representation to the competent authority against the order of detention passed by the State Government.

It is the contention of the petitioner that the detenu was provided with the documents more specifically page Nos.29, 35, 52, 150, 154, 155, 156, 157, 244, 246, 248 and 250 of which were not legible enough so as to enable the detenu to give effective representation asserting his rights. The position of law in this regard is clear as per the law laid down by the Co-ordinate Bench of this Court in ***Smt. Parvathamma vs Commissioner of Police and others*** in ***W.P.(H.C) No.33/2022*** , wherein, the Co-ordinate Bench held that non-supply of the legible documents/copies to the detenu, withholds his rights to make proper and effective representations before the Advisory Board and the same is also in blatant violation of Article 22(5) of the Constitution of India. Further this position was also reiterated in the judgement passed by the co-ordinate bench of this Court in ***Writ Petition (HC) No.51/2022*** between ***Smt.R Ramya Vs. Commissioner of Police and others***.

17. Recently, another the co-ordinate Bench of this Court in ***WPHC No.39/2023*** between ***Smt.Shruthi T.K., Vs. Deputy Commissioner and District Magistrate and Others***, in paragraph No.6 of the order has held as under;

"In the instant case, the documents which have been filed to the detenu have been produced before us. Learned High Court

Government Pleader has also gone through the same and was unable to dispute the statement that the documents supplied to the detenu were not legible. Thus, it is evident that the detenu has been deprived of his right to make an effective representation. Therefore, the order passed under Section 3(1) and Section 3(3) of the Act cannot be sustained in the eye of law."

18. The above being the settled position, if, looked into the compilation of documents furnished to the detenu by the respondent No.4 as mandated under Section 8 of the Goonda Act, we find merit in the submission made by the learned counsel for the petitioner as certain pages in the compilation are not legible and we are afraid to say that these documents would have been proven vital in giving representation as these illegible copies pertain to the records of crime committed by the detenu maintained by the Police Authorities and also the evidences examined by the Police Authorities in pursuance of investigation into crimes. Hence, we hold the above contention in favour of the petitioner.

19. Further, learned counsel for the petitioner also contends that the detenu though lives in Kolar and is well-worsed in speaking Kannada but he cannot read and write either Kannada or English as he has studied till 2nd standard in Urdu Medium School and thereby he disputes the certificate provided by the School authorities which finds place in the compilation furnished by the respondents. We have carefully perused the said certificate and

on perusal, we find that the detenu has only studied in the institute from 01.05.1997 to 31.03.2000. He being born on 01.01.1992, is only at the age of 8 while he has quit schooling. Such being the scenario, we are unable to appreciate the contention put forth by the respondents. As the student of an Arabic school and who has studied the first language as Arabic or Urdu, cannot possibly be considered as well-educated in the languages other than 1st language as he has studied only for three years in the said school. Hence, we are constrained to state that, the authorities have failed to comply with the mandates of Article 22(5) of the Constitution of India in its letter and spirit. Nevertheless, the law also contemplates that the detaining authority is under a bounden duty to provide the details of detention along with translated copy (i.e., documents translated in the language known to the detenu), to the detenu within 21 days of detention order being passed as compliance to Section 3(3) of the Goonda Act to enable the detenu to submit representation as against the detention order supra. Failure by the detention authority to furnish the translated copies of such documents has not only resulted in violation contemplated under the Constitution but also under the Goonda Act, which mandates for the same (**See - Hajji T.P.Abdul Azeez Vs. The State of Karnataka and others** in **WPHC No.41/2017, Ibrahim Ahmad Batti Vs. State of Gujarat and others** reported in **AIR 1982 SC 1500, Smt. P. Vijayalakshmi Vs.**

Commissioner of Police, Bengaluru City WPHC No.97/2015, Smt. Doulat Unnisa Vs. Commissioner of Police, Bengaluru City and others in WPHC No.129/2006 and Narayan Laxmansa Shiralkar Vs. Government of Karnataka in WPHC No. 58/2005).

20. Further, the Co-ordinate Bench in ***Iranna Vs. Government of Karnataka and Others***, reported in **2006(4) Kar.L.J.200 (DB)**, by relying on the judgment passed by the Hon'ble Supreme Court in the case of ***Abdul Latif Abdul Wahab Sheikh Vs. B.K.Jha and Another***, reported in **AIR 1987 SC 725** and the case of ***S.M.D. Kiran Pasha Vs. Government of Andhra Pradesh and Others***, reported in **(1990) 1 SCC 328**, in paragraph No.6 has held as under;

"From the aforesaid judgments of the Supreme Court, it is clear that the procedural requirements, are the only safeguards available to a detenu since the Court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are therefore, to be strictly complied with, if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard. Section 10 makes it mandatory for the Government to place the ground on which the detention order has been made and the representation, if any made by the person affected by the order and in case where an order has been made by an officer, also the report by officer under sub-section (3) of Section 3 of the Act before the Advisory Board. This being a mandatory provision which has to be complied with under Article 22 of the Constitution of India, a person cannot be kept in detention beyond three months without referring his case to an Advisory Board. If the procedural requirements of law has not been complied with, the

order of detention ceases to be in existence after the expiry of three weeks from the date of detention and therefore, the said order of detention is liable to be quashed."

21. In the instant case, as noted supra though the respondents has complied the timeline in issuing the confirmation order to the detention order passed by the respondent No.4. But, we find lackings in compliance of Section 10 of the Goonda Act, as the same was not placed before the Advisory Board within three weeks of passing the detention order dated 27.04.2023. As can be seen from the records submitted by learned HCGP, as against the detention order dated 27.04.2023, the file was placed before the Advisory Board on 01.06.2023 at 5.00 pm. which is evidently after the lapse of 35 calendar days. **Though Section 11 of the act provides that the advisory board shall forward its decision within 7 weeks, but Section 10 mandates that the materials to be placed before it within 21 days. If both the section are read together carefully, it is evident that such timeline is provided in order to accord sufficient time for the Advisory Board to go through the entire materials furnished to the detenu and also relied upon by the respondents while passing the impugned detention order in order to examine the material aspects keeping in mind Article 22(5) of the Constitution of India. On examination of case on hand, if viewed with the anomalies in the materials provided, it is**

glaring on the face of records that the Advisory Board did not have sufficient time to examine the records and hence, thereby the order of detention cannot be considered as one that is passed by the mandates of Goonda Act.

22. In the third limb of the argument, the learned counsel for the petitioner submits by way of memo that, the order of the detention lacked consideration of the judicial orders passed in the cases wherein detenu is arrived as an accused. In this regard, we refer to the judgement of the Co-ordinate Bench in ***Shankara Gouda v. State of Karnataka***, reported in **2015 SCC OnLine Kar 8200**. Paragraph 15 of the order reads as under;

"15. Therein, reliance was also placed on three Judge Bench judgment of the Hon'ble Supreme Court in the case of Rekha v. State of Tamil Nadu Through Secretary to Government [(2011) 5 SCC 244.] , as well as on the judgment of the Hon'ble Supreme Court in the case of Vijay Narain Singh v. State of Bihar [(1984) 3 SCC 14.] . The Hon'ble Supreme Court therein have held that subjective satisfaction can be arrived at only if the detaining authority considers all the material that is placed before it. If the order of bail or of acquittal are not produced before the detaining authority, the detention order would be invalid. In so reasoning, the Hon'ble Supreme Court also held that it is not possible to attempt or to assess in what manner or to what extent, the consideration of order granting bail would have effected the satisfaction of the detaining authority. It is sufficient to hold that non-placing the relevant material before the detaining authority would render the detention order as invalid."

On consideration of the above settled legal position we are not inclined to appreciate the submission made by learned HCGP in

this regard and accordingly we hold this in favour of petitioner herein.

23. Furthermore, this Court while dealing with the case of Habeas Corpus seeking relief against preventive detention is estopped from dwelling into its legalities or otherwise of the offences committed by the detenu. But, is inclined, to only look into the aspects of Constitutional safeguards of the detenu as provide under Article 21 and 22(5) of the Constitution of India, as held by catena of judgements by the Hon'ble Apex Court and so also by this Court. Hence, viewed from the facet of the Goonda Act, so also the Constitutional mandates, the impugned orders deserves to be quashed. Accordingly, we hold the point raised above in favour of the petitioner and pass the following:-

ORDER

- a) Writ Petition is **Allowed**.
- b) Impugned detention order passed by respondent No.4 bearing No.MAG(2) CR/L&O(G)/02/2023-24 dated 27.04.2023 and consequent confirmation order bearing No.HhDi 236 EsEsTi 2023, Bengaluru dated 06.05.2023 and extension order passed by the respondent-State bearing No.HhDi 236 EsEsTi 2023 dated 06.06.2023 all stands quashed. Consequently, the respondents are

directed to set the detenu at liberty, forthwith.

- c) However, Registry is directed to communicate the order to the respondent Nos.1 and 4 as well as the jail authorities to release the detenu forthwith, in case, he is not needed in any other cases.

Accordingly, the Registry shall return the records submitted by the State Government to the learned HCGP who is on record after obtaining the necessary endorsement in that regard.

No order as to Costs.

This court places on record its deep appreciation for the able research and assistance rendered by Official Law Clerk/Research Assistant, MR.Shreedhar Ganapati Bidre.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

HKV