

Neutral Citation No. - 2024:AHC:18870-DB

Reserved

A.F.R.

Court No. - 43

Case :- HABEAS CORPUS WRIT PETITION No. - 1002 of 2023

Petitioner :- Abbas Ansari

Respondent :- Adhichak Janpat Karagar And 3 Others

Counsel for Petitioner :- Chandrakesh Mishra, Abhishek Kumar
Mishra, Sr. Advocate

Counsel for Respondent :- G.A., A.S.G.I., Annapurna Singh

Hon'ble Siddhartha Varma, J.

Hon'ble Anish Kumar Gupta, J.

(Per: Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Dayashankar Mishra, learned Senior Counsel assisted by Sri Abhishek Mishra and Sri Chandrakesh Mishra for the petitioner, learned Additional Advocate General, Sri P.C. Srivastava, assisted by Sri J.K. Upadhyaya and Shri Vikas Sahai for the State and Ms. Annapurna Singh Chandel, learned counsel on behalf of the Union of India.

2. The instant writ petition has been filed seeking quashing of the impugned detention order dated 18.9.2023 passed by the respondent no. 2-District Magistrate, Chitrakoot under section 3(2) of the National Security Act, 1980 (hereinafter referred as '*the Act, 1980*'), which was subsequently confirmed by the State Government vide order dated 2.11.2023 for a period of three months from the date of the detention of the petitioner i.e. from 18.9.2023. Thereafter, the said detention order was again extended on 11.12.2023 by the State Government for a period of six months with effect from 18.9.2023.

3. The facts, in brief, are that the petitioner herein was detained vide order dated 18.9.2023 passed by the District Magistrate- Chitrakoot, under Section 3(2) of the Act, 1980 having been authorised under Section 3(3) of the Act, 1980. The said order was approved by the State Government under Section 3(4) of the Act, 1980 on 25.9.2023 and the

matter was referred to Advisory Board. After receiving the report from the Advisory Board, the said detention order was confirmed in terms of Section 12 (1) of the Act, 1980 by the State Government on 2.11.2023 whereby the petitioner was detained for a period of three months from the date of initial detention order i.e. 18.9.2023. The detention of the petitioner herein was again extended vide order dated 11.12.2023 for a period of six months from the date of initial detention.

4. Learned counsel for the petitioner contends that since the order dated 2.11.2023 passed under Section 12(1) of the Act, 1980 is a final order, the State has no right to review the said order in terms of provisions of Section 12 of the Act, 1980, therefore, the order extending detention of the petitioner is without any authority of law and could not be sustained. Therefore, the detention of the petitioner herein in terms of order dated 11.12.2023 after the expiry of three months from the date of initial detention is illegal and therefore, the petitioner is liable to be released forthwith. In support of his contentions, learned counsel for the petitioner relied upon the judgement of the Apex Court in *Pesala Nookaraju vs. The Government of Andhra Pradesh & others* reported in *2023 SCC OnLine SC 1003* and *Ameena Begum vs. The State of Telangana and others* reported in *(2023) 9 SCC 587*.

5. Per contra, learned A.G.A. submits that in view of the judgement of the Apex Court in *Cherukuri Mani v. State of A.P.*, reported in *(2015) 13 SCC 722*, the State Government could not have passed an order of detention at a time for more than a period of three months, therefore, initially the order dated 2.11.2023 was passed for detention of the petitioner herein for a period of three months and subsequently, the same was extended vide order dated 11.12.2023. Therefore, there is no illegality either in the initial detention order dated 18.9.2023 and the confirmatory order dated 2.11.2023 and the subsequent extension order dated 11.12.2023 by which the detention of the petitioner herein was again extended for a period of six months from the date of the initial detention i.e. 18.9.2023.

6. To appreciate the submissions made by learned counsel for the parties, it will be relevant to go through the scheme of the Act with regard to the detention of a person under the National Security Act, 1980. It will be relevant to note that as per the provisions of Section 3(2) of the Act, 1980 if the Central Government or the State Government, as the case may be, is satisfied in respect of any person with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and it records its satisfaction that it is necessary so to make an order, then,

it can pass an order directing that such a person be detained. As per Section 3(3) of the Act,1980 the State Government may delegate such powers of detention to the District Magistrate or the Commissioner of Police. In view of such delegation of the powers, the District Magistrate or the Commissioner of Police, as the case may be, is empowered to pass an order under Section 3(2) of the Act,1980. Such delegation of powers to the District Magistrate or the Commissioner of Police shall not be made at a given point of time for a period exceeding three months. As per Section 3(4) of the Act,1980 the officer who is delegated power of detention under Section 3(3) of the Act,1980 is directed to forthwith report the fact of such detention to the State Government concerned alongwith grounds of such detentions and no such order shall remain in force for more than 12 days, unless it is approved by the concerned State Government. When the order of approval by the State Government is passed within the aforesaid period of 12 days, the State Government shall report the fact of such detention within 7 days from the date of approval of detention to the Central Government together with the grounds of detention and other relevant particulars. As per Section 10 of the Act,1980 the concerned Government is mandated to place the matter within a period of three weeks before the Advisory Board constituted by it in terms of Section 9 of the Act, 1980 alongwith grounds of detention and other relevant documents. As per Section 11 of the Act, 1980 the Advisory Board, after considering the material placed before it and after calling for such other information as it may deem necessary and also after hearing the detenu, if he denies to be heard, shall submit its report to the concerned Government within 7 weeks from the date of detention of the person concerned. The Advisory Board shall also record its satisfaction whether there is or not any sufficient cause for the detention of the concerned person. After receipt of the report of the Advisory Board the concerned Government may pass an order confirming the detention order and may continue the detention of the persons concerned for such period as it thinks fit. In terms of Section 13 of the Act, 1980, maximum period of detention under the provisions of the Act, 1980 shall be 12 months from the date of detention.

7. In **Cherukuri Mani (supra)**, relied upon by the learned A.G.A. , the Apex Court relying upon the proviso to Section 3(3) had held that the State Government cannot pass the confirmatory order under section 12(1) beyond the period of three months at a time. The said judgement in **Cherukuri Mani (Supra)**, has been overruled by the Apex Court in a recent judgement of the Apex Court in **Pesala Nookaraju (supra)**, and has held as under :

"42. Hence, Article 22(4)(a) in substance deals with the order of detention and has nothing to do with the delegation of the power of detention by the State Government to an Officer as stipulated under Section 3(2) of the Act. In fact, under Section 9 of the Act, the State Government has to refer the matter to the Advisory Board within three weeks from the date of detention, irrespective of whether the detention order is passed under Section 3(1) or Section 3(2) of the Act and the Advisory Board has to give its opinion within seven weeks from the date of detention. That would totally make it ten weeks. As stipulated in Article 22(4)(a) of the Constitution, if in a given case, once the Advisory Board gives its opinion within the stipulated period of three months, then in our view, Article 22(4)(a) would no longer be applicable. Thus, Article 22(4)(a) applies at the initial stage of passing of the order of detention by the State Government or by an officer who has been delegated by the State Government and whose order has been approved by the State Government within a period of twelve days from the date of detention and not at the stage subsequent to the report of the Advisory Board. Depending upon the opinion of the Advisory Board, under Section 12 of the Act, the State Government can revoke the order of detention and release the detenu forthwith or may confirm the detention order and continue the detention of the person concerned for any period not exceeding the maximum period of twelve months, which is stipulated in Section 13 of the Act. **Therefore, when the State Government passes a confirmatory order under Section 12 of the Act after receipt of the report from the Advisory Board then, such a confirmatory order need not be restricted to a period of three months only. It can be beyond a period of three months from the date of initial order of detention, but up to a maximum period of twelve months from the date of detention.**

43. We reiterate that the period of three months stipulated in Article 22(4) (a) of the Constitution is relatable to the initial period of detention up to the stage of receipt of report of the Advisory Board and does not have any bearing on the period of detention, which is continued subsequent to the confirmatory order being passed by the State Government on receipt of the report of the Advisory Board. **The continuation of the detention pursuant to the confirmatory order passed by the State Government need not also specify the period of detention; neither is it restricted to a period of three months only. If any period is specified in the confirmatory order, then the period of detention would be upto such period, if no period is specified, then it would be for a maximum period of twelve months from the date of detention. The State Government, in our view, need not review the orders of detention every three months after it has passed the confirmatory order.**

44. Thus, in our view, the period of three months specified in Article 22(4) (a) of Constitution of India is relatable to the period of detention prior to the report of the Advisory Board and not to the period of detention subsequent thereto. Further, the period of detention in terms of Article 22(4)(a) cannot be in force for a period beyond three months, if by then, the Advisory Board has not given its opinion holding that there is sufficient cause for such detention. Therefore, under Article 22(4)(a), the Advisory Board would have to give its opinion within a period of three months from the date of detention and depending upon the opinion expressed by the

*Advisory Board, the State Government can under Section 12 of the Act, either confirm the order of detention or continue the detention of the person concerned for a maximum period of twelve months as specified in Section 13 of the Act or release the detenu forthwith, as the case may be. If the order of detention is confirmed, then the period of detention can be extended up to the maximum period of twelve months from the date of detention. **With respect, we observe that it is not necessary that before the expiration of three months, it is necessary for the State Government to review the order of detention as has been expressed by this Court in Cherukuri Mani (supra). The Act does not contemplate a review of the detention order once the Advisory Board has opined that there is sufficient cause for detention of the person concerned and on that basis, a confirmatory order is passed by the State Government to detain a person for the maximum period of twelve months from the date of detention. On the other hand, when under Section 3(3) of the Act, the State Government delegates its power to the District Magistrate or a Commissioner of Police to exercise its power and pass an order of detention, the delegation in the first instance cannot exceed three months and the extension of the period of delegation cannot also be for a period exceeding three months at any one time. [See: Abdul Razak v. State of Karnataka, ILR 2017 Kar 4608 (FB)]"***

(Emphasis Supplied)

8. Following the judgement in *Pesala Nookaraju (supra)*, in *Ameena Begum (supra)*, the Apex Court has held that the State Government need not review the orders of detention every three months after it has passed the confirmatory order.

12. This Court has also recently dealt with elaborately this issue in *Habeas Corpus Writ Petition No. 1046 of 2023 (Sunil chachuda Vs. State of U.P. and others)* and has following the judgement of the Supreme Court in *Pesala Nookaraju (supra) vide judgement dated 29.1.2024* held that once the confirmatory order of detention passed under Section 12 (1) of the Act is a final order, the State Government has no authority to review its order. If in the confirmatory order any particular period of detention is prescribed by the State Government such detention order is valid only for that period. If no period of detention is prescribed in an order passed under Section 12 (1) of the Act, then, such detention will be for a maximum period of 12 months as prescribed under Section 13 of the Act. However, once an order under Section 12 (1) is passed by the State Government prescribing a period of detention, the said order cannot be reviewed or extended by the State Government. Such detention will be over after the expiry of the period prescribed in the confirmatory order passed under Section 12(1) of the Act. The said order cannot be reviewed or extended any further. However, the Detaining authority i.e., the State Government or the District Magistrate, may pass a fresh order

in terms of Section 3(2) of the Act, if the circumstances so demand. Such detention order has to be confirmed again following the procedure prescribed under Sections 3, 10, 11 and 12 of the Act.

9. In the instant case, the confirmatory order has been passed on 2.11.2023, whereby the petitioner herein was directed to be detained for a period of three months from the initial detention order i.e., 18.9.2023. Therefore, after the expiry of three months the petitioner's detention becomes illegal and he is liable to be released forthwith. For the reasons stated above, the writ petition is **allowed**. It is declared that the detention of the petitioner herein subsequent to the expiry of three months from 18.9.2023 as per the confirmatory order passed under section 12(1) of the Act, 1980 is illegal and the subsequent orders extending the detention of the petitioner herein is also illegal and not in accordance with law. Therefore, the order dated 11.12.2023 extending the period of detention of the petitioner herein is hereby **set-aside**.

10. We, therefore, direct the petitioner, Abbas Ansari (the detenu) to be set at liberty forthwith unless he is required in any other case.

Order Date :- 2nd February, 2024.

Shubham Arya

(Anish Kumar Gupta, J.)

(Siddhartha Varma, J.)