

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

(Sl.No.-3019)

Neutral Citation No.-2024:AHC:21911-DB

Court No. - 43

Case :- HABEAS CORPUS WRIT PETITION No. - 657 of 2023

Petitioner :- Mohd. Asim @ Pappu Smart And Another

Respondent :- Union Of India And 7 Others

Counsel for Petitioner :- Ramesh Chandra Agrahari

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

Hon'ble Siddhartha Varma,J.

Hon'ble Anish Kumar Gupta,J.

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

1. Rejoinder affidavit filed today is taken on record.
2. Heard Sri Anoop Trivedi, learned senior counsel assisted by Shri Ramesh Chandra Agrahari, learned counsel for the petitioner, Shri Arvind Singh, learned counsel for the Union of India and Ms. Archana Singh, the learned A.G.A. for the State.
3. The instant writ petition has been filed seeking quashing of the impugned detention order dated 20.4.2023 passed by the respondent no. 3 -District Magistrate, Kanpur Nagar, the order dated 27.4.2023 passed by the respondent no. 2, order dated 9.5.2023 passed by the respondent no. 3 order dated 16.5.2023, the order dated 25.5.2023 passed by the respondent no. 1 and the order dated 5.6.2023 passed by the respondent no. 2.
4. The facts, in brief, are that the petitioner no. 1 herein was detained vide order dated 20.4.2023 passed by the District Magistrate- Kanpur Naghar under section 3(2) of the National Security Act, 1980 (hereinafter referred as '*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 27.4.2023 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 9.5.2023 whereby the petitioner was detained for a period of three months from the date of initial detention order i.e. 20.4.2023. The detention of the petitioner no. 1 herein was again extended vide order dated 13.7.2023 for a period of six months from the date of initial detention. Thereafter again the petitioner's detention has been extended vide order dated 12.10.2023 for nine months from the date of initial detention. Again vide order dated 5.1.2024 the detention of the petitioner no. 1 has been extended for a period of 12 months from the date of his initial detention i.e. 20.4.2023.

5. Learned counsel for the petitioner contends that since the order dated 9.5.2023 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 orders extending detention of the petitioner are without any authority of law and could not be sustained. Therefore, the detention of the petitioner (detenue) herein in terms of orders dated 13.7.2023, 12.10.2023 and 5.1.2024 after the expiry of three months from the date of initial detention are 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***.

6. 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 confirmatory order dated 9.5.2023 was passed for detention of the petitioner herein for a period of three months and subsequently, the same was extended vide orders dated 13.7.2023, 12.10.2023 and 5.1.2024. Therefore, there is no illegality either in the initial detention order dated 20.4.2023 and the confirmatory order dated 9.5.2023 and the subsequent extension orders dated 13.7.2023, 12.10.2023 and 5.1.2024.

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 that 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. The Apex Court has further held that 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. It is further held that 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.

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.

9. This Court has also recently dealt with elaborately this issue in *Habeas Corpus Writ Petition No. 622 of 2023 (Niyaz Ansari Vs. State of U.P. and others)* and *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)* 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.

10. In the instant case, the confirmatory order has been passed on 9.5.2023 whereby the petitioner herein was directed to be detained for a period of three months from the initial detention order i.e. 20.4.2023. 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*.

11. We, therefore, direct the petitioner no. 1 Mohd. Asim @ Pappu Smart (the detenu) to be set at liberty forthwith unless he is required in any other case.

12. Since the petitioner no. 2 is not the detenu, therefore, no order is required to be passed in respect of petitioner no. 2.

Order Date :- 7.2.2024.

Shubham Arya

(Anish Kumar Gupta, J.)

(Siddhartha Varma, J.)