

D.M.Nagaraja vs Govt.Of Karnataka & Ors on 19 September, 2011

Equivalent citations: AIR 2012 SUPREME COURT 295, 2011 (10) SCC 215, 2011 AIR SCW 5608, AIR 2011 SC(CRI) 2236, 2011 (4) AIR KANT HCR 730, (2011) 4 RECCRIR 264, (2011) 10 SCALE 592, (2012) 1 MH LJ (CRI) 333, (2012) 1 KANT LJ 1, (2012) 1 MAD LJ(CRI) 345, (2012) 1 ALLCRIR 179, (2012) 4 KCCR 2829, (2011) 4 CURCRIR 108, 2012 (1) SCC (CRI) 249, 2011 (4) KLT SN 47 (SC), 2011 (4) AIR KAR R 730, AIR 2011 SC (CRIMINAL) 2236, 2011 CRI LJ (SUPP) 353 (SC)

Author: P.Sathasivam

Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1814 OF 2011

(Arising out of Special Leave Petition (Crl.) No. 3913 of 2011)

D.M. Nagaraja

.... Appellant(s)

Versus

The Government of Karnataka & Ors.

.... Respondent(s)

J U D G M E N T

P.Sathasivam,J.

1) Leave granted.

2) The appellant has filed this appeal against the final

judgment and order dated 28.03.2011 passed by the High Court of Karnataka at Bangalore in a writ of Habeas Corpus being Writ Petition No. 220 of 2010 whereby the High Court dismissed the writ petition filed against the order of detention dated 22.09.2010 passed by the Commissioner of Police, Bangalore City, vide CRM(4)/DTN/10/2010.

3) Brief facts:

(a) According to the Detaining Authority, the appellant-

detenue, when he was 30 years old, started his career in criminal field by committing offences like murder, attempt to murder, dacoity, rioting, assault, damaging the public property, provoking the public, attempt to grab the property of the public, extortion while settling land disputes and possessing of illegal weapons etc.

(b) By the date of the detention order, i.e. on 22.09.2010, eleven cases had been filed against the detenue and out of them, four cases were pending trial before the respective Courts and records have been destroyed as time barred in four cases. In two cases, he has been acquitted. In pending cases, he was granted bail from the courts and in one case he has been convicted and sentenced to undergo rigorous imprisonment for a term of nine years by the Sessions Court, Bangalore. The detention order further shows that because of his habituality in committing crimes, violating public order by threatening the public, causing injuries to them and damaging their properties and he was not amenable and controllable by the normal procedure, detained him as 'goonda' under Section 2(g) of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (hereinafter referred to as "the Karnataka Act") (Act No. 12 of 1985) for a period of 12 months.

(c) The appellant himself challenged the detention order before the High Court of Karnataka by filing a writ of Habeas Corpus. Before the High Court, the only contention put-forth by the appellant was that there was enormous delay in considering his representation made on 06.10.2010 to the

Advisory Board for withdrawal of the detention order. While negating the said contention, the Division Bench of the High Court has gone into the validity or otherwise of the detention order and after finding that the Detaining Authority was fully justified in clamping the detention order, dismissed the writ petition filed by the appellant-detenu vide order dated 28.03.2011. The said order is under challenge before us by way of special leave petition.

4) Heard Mr. C.B. Gururaj, learned counsel for the appellant-detenu and Ms. Anitha Shenoy, learned counsel for the State of Karnataka.

5) The point for consideration in this appeal is whether the Detaining Authority is justified in passing the detention order dated 22.09.2010 and the High Court is right in confirming the same and dismissing the writ petition filed by the appellant?

6) The Statement of Objects and Reasons of the Karnataka Act No. 12 of 1985 shows that the activities of certain anti-

social elements like bootleggers, drug-offenders, gamblers, goondas, immoral traffic offenders and slum grabbers have from time to time caused a feeling of insecurity and alarm among the public and tempo of life especially in urban areas has frequently been disrupted because of such persons. In order to ensure that the maintenance of public order in the State of Karnataka is not adversely affected by the activities of these known anti-social elements, it is considered necessary to enact a special legislation. The following provisions of Karnataka Act 12 of 1985 are relevant :

"2. Definitions : - In this Act, unless the context otherwise requires, -

(a) "acting in any manner prejudicial to the maintenance of public order" means, -

(i)

(ii)

(iii)

(iv) In the case of a goonda when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely or are likely to affect adversely the maintenance of public order;

(v)

(vi)

Explanation - For the purpose of this clause, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any of the persons referred to in this clause directly or indirectly, is causing or is calculated to cause any

harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health.

(b)

(c) "detention order" means an order made under Section 3;

(d) "detenue" means a person detained under a detention order;

(e)

(f)

(g) "goonda" means a person who either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter VIII, Chapter XV, Chapter XVI, Chapter XVII or chapter XXII of the Indian Penal Code (Central Act XLV of 1860)"

Section 3 empowers the State Government to detain certain persons with a view to prevent them from acting in any manner prejudicial to the maintenance of public order. If the Government/Detaining Authority is able to satisfy that a person either by himself or in association with other members habitually commits or attempts or abets such commission of offence punishable under the Indian Penal Code, 1860 (in short 'IPC') and subject to satisfying Section 3 of the Karnataka Act No. 12 of 1985, he can be detained in terms of the said Act.

7) The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. Even, as early as in 1975, the Constitution Bench of this Court considered the procedures to be followed in view of Articles 19 and 21 of the Constitution. In Haradhan Saha vs. State of West Bengal & Ors. (1975) 3 SCC 198, the Constitution Bench of this Court, on going through the order of preventive detention under Maintenance of Internal Security Act, 1971 laid down various principles which are as follows:-

".....First; merely because a detenue is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second; the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third; where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend

that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or the public order.

Fourth; the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate (sic) the order.

Fifth; the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

In the light of the above principles, let us test the validity of the detention order issued under Act No. 12 of 1985 and as affirmed by the High Court.

8) Mr. C.B. Gururaj, learned counsel for the appellant raised the only contention that inasmuch as action can be taken against the detainee under the ordinary laws, there is no need to detain him under Act No. 12 of 1985. In support of his contention, he very much relied on the recent decision of this Court in *Rekha vs. State of Tamil Nadu* (2011) 5 SCC

244. On the other hand, Ms. Anitha Shenoy, learned counsel for the State, after taking us through the entire materials, various continuous activities of the detainee and several orders, submitted that the Detaining Authority is fully justified in clamping the order of detention and she also pointed out that the decision of the High Court is perfectly in order and prayed for dismissal of the appeal.

9) We have carefully considered the rival contentions and perused the grounds of detention order and all the materials relied on by the Detaining Authority.

10) The detention order refers the activities and involvement of the appellant-detainee in as many as 11 cases. The details of which are mentioned hereunder:

"1. Srirampura PS Cr. No. 55/81 under Sections 143, 147, 148, 149, 348, 307 IPC : The file in this case has been destroyed as time barred.

2. Rajajinagar PS Cr. No. 81/81 under Section 324 r/w Section 34 IPC : The file of this case too has been destroyed as time barred.

3. Srirampura PS Cr. No. 484/83 under Section 302 read with Section 149 IPC : In this case, the detainee is the prime accused. He along with his brother Kittu and other associates committed the offence punishable under Section 302 IPC. After trial the detainee was found guilty and was convicted to undergo rigorous imprisonment for 9 years. However, the records of this case have been destroyed as time barred and are not produced.

4. Srirampuram PS Cr. No. 624/83 under Section 307 IPC - This record also has been destroyed as time barred.

5. Victoria Hospital PS Cr. No. 75/87 under Sections 350, 352 and 506(B) IPC : After the detainee's conviction in Cr. No. 484/83, he was admitted in Prisoner's ward, Victoria Hospital, Bangalore, for treatment. On 19.12.1987 at about 11.30 a.m., the detainee tried to escape from the prisoner's ward but, he was restricted by the official deputed for his escort. The detainee got violent and threatened the escort saying that he would kill him in 3 days. Thereafter, after investigation, charge sheet was filed in CC No. 869/88. As the detainee was absconding, he was taken in judicial custody in UTP No. 2896. The case is under trial. 6 & 7. Srirampura PS Cr. Nos. 215/87 under Section 302 read with Sections 149 IPC, under Sections 220/89, 143, 144, 148, 324, 302 read with 109 IPC : Both these case files are destroyed as time barred. However, according to rowdy sheet a charge sheet has been filed in the 3rd ACMM Court, Bangalore City on 10.06.1987 and the same was taken on file in CC No. 3738/87 for trial in Cr. No. 215/87.

8. Sriramapura PS Cr. No. 198/03 under Section 384 IPC: On 05.08.2003, at about 6.00 a.m. the detainee and his associate Ravi extorted Rs.200/- from one Venkatesh threatening him with dire consequences and boasting that they were rowdies of Rajajinagar and Srirampuram. They were arrested on 06.08.2003 and remanded to judicial custody. However, this case ended in acquittal as the witnesses out of fear did not depose properly in Court against them.

9. High Grounds PS Cr. No. 341/04 under Section 302 IPC : In this case due to prior rivalry with rowdy Rajendra @ Bekkina Kannu Rajendra, and also thinking that Rajendra was responsible for the death of his younger brother Krishna @ Kittu, chased him in public view and assaulted him with long, dagger and other weapons and murdered him. He was arrested on 09.11.2004 and remanded to judicial custody. This case ended in acquittal since the witnesses did not depose properly against him out of fear.

10. Yelahanka New Town PS Cr. No. 186/09 under Sections 143, 147, 148, 120(B), 307, 302 read with Section 149 IPC : In this case also, enmity between Ravi @ Bullet Ravi, Seena, Vasu and the detainee is the cause. Nursing a grudge over past incidents, the detainee has done away with the life of Ravi Raj @ Bullet Raj, Seena and Vasu by assaulting them with sickles. Seena died at the spot, whereas Ravi and Vasu died in the hospital. The detainee was arrested on 28.08.2009 and remanded to judicial custody. He was released on bail on 18.11.2009. A case in S.C. No. 120/10 in this regard is pending trial.

11. Subramanyanagar PS Cr. No. 32/10 under Sections 307, 353, 399, 402 IPC & 3 & 25 of the Arms Act : On 06.02.2020 at 6.15 p.m., the detainee and his associates conspired to murder their rival rowdy Break Jagga and were waiting in a case armed

with weapons. On receipt of this information Shri M.R. Mudvi, PI, CCB Bangalore City along with police Inspectors and staff conducted raid and tried to arrest them. However, some of them were able to escape. The detainee remained absconding and evaded arrest. Later he obtained bail on 24.03.2010 in the Court of 14th FTC, Bangalore. A charge sheet was filed against him on 17.04.2010 which was taken on file in CC No. 17160/10. The case is pending trial."

11) As rightly pointed out by Ms. Anitha Shenoy, learned counsel for the State, the perusal of the records and all the above details furnished in the detention order clearly show that the appellant-detainee started his career in criminal field when he was 30 years old and is now about 60 years. In the beginning, he was the follower of notorious rowdies Jairaj and Korangu Krishna. Later, he formed his own gang consisting of his own younger brother Krishna @ Kitti along with others.

Krishna @ Kitti met his end in police encounter during 1996 in Rajajinagar P.S. Crime No. 125 of 1996 for the offences punishable under Sections 141, 143, 147, 148, 302 read with Section 149 IPC. The records also indicate that the detainee has about 28 associates assisting him in his criminal activities and a number of cases are pending against them. The detainee has no regard for human life. The cases registered against him pertain to murder, attempt to murder, dacoity, rioting, assault, damage to public property, provoking the public, extortion while settling land disputes, possessing illegal weapons etc. Though he was sentenced to undergo rigorous imprisonment for 9 years, that has not deterred him to put a stop to his criminal activities. In fact, from the year 1981 up to 2010, he has systematically committed these criminal activities.

12) All the abovementioned details which have been correctly stated in the detention order clearly show that the appellant is not amenable to ordinary course of law. It also shows that even after his release on bail from the prison on various occasions, he again started indulging in same type of offences, particularly, threatening the public life, damaging public property etc. All these aspects have been meticulously considered by the Detaining Authority and after finding that in order to maintain public order, since his activities are prejudicial to the public, causing harm and danger, the Detaining Authority detained him as 'goonda' under the Karnataka Act No. 12 of 1985 for a period of 12 months and the same was rightly approved by the Advisory Board and the State Government. Inasmuch as the Detaining Authority has taken note of all the relevant materials and strictly followed all the safeguards as provided in the Act ensuring the liberty of the detainee, we are in entire agreement with the decision of the Detaining Authority as well as the impugned order of the High Court affirming the same.

13) Learned counsel for the appellant very much relied on a recent decision of this Court in Rekha (supra). In the above case, against the detention order dated 08.04.2010 imposed on Ramakrishnan under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 on the allegation that he was selling expired drugs after tampering with labels and printing fresh labels showing them as non-

expired drugs, his wife filed a habeas corpus petition before the Madras High Court. The said writ petition came to be dismissed on 23.12.2010. Hence, wife of the detenu therein, approached this Court by way of special leave to appeal. In the same judgment, this Court has extracted the detention order and the grounds for detaining him under the Tamil Nadu Act, 1982. The grounds show that there is reference to one incident relating to selling expired drugs and the Detaining Authority by pointing out that necessary steps are being taken by his relatives to take him out on bail and since in similar cases, bails were granted by the courts after lapse of some time and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public health and order and recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, on the materials placed and after fully satisfying the Detaining Authority has passed an order under the Tamil Nadu Act, 1982. In para 7, the Bench has pointed out that in the grounds of detention, no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. The grounds extracted therein also are bereft of any further details. In those circumstances, this Court taking note of various earlier decisions came to the conclusion that normal recourse to ordinary law would be sufficient and there is no need for invocation of the special Act.

14) In the case on hand, we have already extracted criminality, criminal activities starting from the age of 30 and details relating to eleven cases mentioned in the grounds of detention. It is not in dispute that in one case he has been convicted and sentenced to undergo rigorous imprisonment for a term of nine years. He had been acquitted in two cases and four cases are pending against him wherein he was granted bail by the courts. It is the subjective satisfaction of the Detaining Authority that in spite of his continuous activities causing threat to maintenance of public order, he was getting bail one after another and indulging in the same activities. In such circumstances, based on the relevant materials and satisfying itself, namely, that it would not be possible to control his habituality in continuing the criminal activities by resorting to normal procedure, the Detaining Authority passed an order detaining him under the Act No. 12 of 1985. In view of enormous materials which are available in the grounds of detention, such habituality has not been cited in the above referred Rekha (supra), we are satisfied that the said decision is distinguishable on facts with reference to the case on hand and contention based on the same is liable to be rejected.

15) Though learned counsel for the appellant has not raised the objection i.e. delay in disposal of his representation since that was the only contention before the High Court, we intend to deal with the same. We have already stated that the detention order was passed on 22.09.2010 by the Commissioner of Police, Bangalore City. The said order was approved by the Government on 30.09.2010 and the case was sent to Advisory Board on 08.10.2010 and the Board sat on 04.11.2010. The Government received the report of the Advisory Board on 10.11.2010. Confirmation detaining the detenu for a period of 12 months was issued on 16.11.2010.

Representation of the detenu through Central Prison was sent on 06.10.2010 i.e. before passing of the confirmation order by the Government. This Court in K.M. Abdulla Kunhi & B.L. Abdul Khader vs. Union of India & Ors. and State of Karnataka & Ors. (1991) 1 SCC 476 (CB) has clearly held that the authority has no constitutional duty to consider the representation made by the detenu before the order of confirmation of the detention order. There is no constitutional mandate under Clause

(5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. In other words, the competent authority can consider the representation only after the order of confirmation and as such the contentions raised by the appellant as if there was delay in consideration is baseless and liable to be rejected. As pointed out above, the counsel for the appellant did not raise any objection as regards to the same.

16) On going through the factual details, various materials in the grounds of detention in view of continuous activities of the detenu attracting the provisions of IPC, continuous and habituality in pursuing the same type of offences indulging in committing offences like attempt to murder, dacoity, rioting, assault, damaging public property, provoking the public, attempt to grab the property of members of the public, extortion while settling land dispute, possessing illegal weapons and also of the fact that all the procedures and statutory safeguards have been fully complied with by the Detaining Authority, we agree with the reasoning of the Detaining Authority as approved by the Government and upheld by the High Court.

17) Under these circumstances, we find no merit in the appeal. Consequently, the same is dismissed.

.....J. (P. SATHASIVAM)J. (DR. B.S. CHAUHAN)
NEW DELHI;

SEPTEMBER 19, 2011.