

Mahendra Son Of Shri Shyoram @ Shivram vs The State Of Rajasthan ... on 8 May, 2023

Bench: Manindra Mohan Shrivastava, Anil Kumar Upman

[2023/RJJP/009861]

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Habeas Corpus Petition No.15/2023

Mahendra Son Of Shri Shyoram @ Shivram, Aged About 25
Years, Resident Of Bopiya, Police Station Patan, District Sikar
(Raj.) (At Present Detenue In Central Jail, Jaipur) Through His
Wife Smt. Hansa Devi Wife Of Shri Mahendra, Resident Of Ward
No. 8, Bopiya, Tehsil Neem Ka Thana, District Sikar (Raj.)

----Petit

Versus

1. The State Of Rajasthan, Through The Secret
- Department Of Home, Government Of Rajasth
- Secretariat, Jaipur.
2. District Magistrate, Sikar, District Sikar (Raj.)
3. Superintendent Of Police, Sikar, District Sikar (Raj.)

----Respondent

For Petitioner(s)	:	Mr. Ravindra Singh Shekhawat, Advocate with Mr. Prameshwar Lal Pilania, Advocate
For Respondent(s)	:	Mr. Ghanshyam Singh Rathore, GA- cum- AAG with Mr. Santosh Singh Shekhawat, Advocate Mr. Razesh, (S.I.), SHO P.S. Patan

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

REPORTABLE
08/05/2023

1. By this petition under Article 226 of the Constitution of India,
the petitioner has prayed for issuance of writ in the nature of
habeas corpus, assailing the order of preventive detention passed

by the District Magistrate, Sikar approved by the Government and Advisory Board.

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2. The District Magistrate, Sikar on the basis of the material and report submitted before it by the Superintendent of Police, Sikar, recorded satisfaction that with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, it has become necessary to direct detention of the petitioner. In exercise of powers conferred under Section 3 of the Rajasthan Prevention of Anti-Social Activities Act, 2006 (hereinafter referred to as "the Act of 2006"), the District Magistrate passed the order of preventive detention for a period of one year on 13.06.2022. Vide order dated 13.06.2022, the State Government granted approval to the order in exercise of its powers under Sub-Section (3) of Section 3 of the Act of 2006. Vide memo dated 28.06.2022, the Government of Rajasthan forwarded the order of detention dated 13.06.2022 passed by the District Magistrate, Sikar along with grounds of detention to the Chairperson of the Advisory Board, PASA at Jaipur. Thereafter, the detenue was produced before the Advisory Board on 27.07.2022 through video conferencing and after affording opportunity of hearing to the petitioner/detenue and perusal of record produced before it, the Advisory Board submitted its report in terms of provisions contained in Section 11 of the Act of 2006 recording its

opinion that there exists sufficient cause for detention of the petitioner-detenu and thereby confirmed the detention. After receiving the opinion of the Advisory Board, the State Government vide order dated 01.09.2022 directed detention of the petitioner for a period of one year w.e.f. 13.06.2022.

3. The petitioner, aggrieved by the order of detention, confirmation by the Advisory Board and approved by the State

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Government has filed this petition. Assailing legality and validity of the order of detention, learned counsel for the petitioner contends before us that the detention is illegal and unsustainable in law on account of violation of provisions contained in Sections 9 & 11 as also Section 14 of the Act of 2006.

4. Elaborating his submissions, learned counsel for petitioner submitted that the mandate of Section 9 of the Act of 2006 was not followed inasmuch as the petitioner was not afforded any opportunity of hearing before passing the order of detention by the Magistrate. He would next submit that he was not given opportunity to make representation as mandatorily required under Section 9 of the Act of 2006. Therefore, the order of detention is liable to be declared as illegal.

5. The second submission of learned counsel for the petitioner

is that though the detention order was passed on 13.06.2022, it was placed before the Advisory Board for the first time on 27.07.2022 whereas mandatory requirement of provision contained in Section 11 of the Act of 2006 is that the State Government is obliged under the law to place before

the Advisory Board, the grounds on which the order of detention has been made and the representation, if any, made by the detainee within three weeks from the date of detention. Therefore, it is contended, the detention order is not sustainable in law.

6. The third submission of learned counsel for the petitioner is that no case is made out for invoking powers of preventive detention because such powers are to be exercised sparingly, after recording finding of satisfaction as envisaged under Section 3 of the Act of 2006. He would submit that there are few criminal [2023/RJJP/009861] (4 of 16) [HC-15/2023] cases which were earlier registered against the petitioner but later on, the frequency of registration of criminal cases considerably reduced. It is further submitted that in one case the petitioner has already been acquitted whereas in other three cases, the application for closing of the case on the basis of compromise has already been submitted. In criminal cases which have been registered against the petitioner, so far, no conviction order has been ordered. Therefore, it is argued, the petitioner is being falsely implicated by the police only with a view to keep him under detention for one reason or the other.

7. Lastly, it is submitted that Section 14 of the Act of 2006 provides for maximum period of detention as one year. The State Government or the Advisory Board have not assigned any specific reason why the petitioner was required to be detained for a maximum period of one year.

8. In support of his submissions, learned counsel for the petitioner has placed reliance on Shaik Nazneen Versus The State of Telangana & Others, Criminal Appeal No.908/2022, Rajesh Sharma alias Raju Pandit Versus State of Rajasthan & Others, 2017 CRI. L.J. 3420, Pebam Ningol Mikoi Devi Versus State of Manipur & Others, (2010) 9 SCC 618, Guddu @ Hazrat Ali Versus The State of Rajasthan & Others, D.B. Habeas Corpus Petition No.249/2021, Omprakash @ Omi @ O.P. Versus The State of Rajasthan & Others, D.B. Habeas Corpus Petition No.217/2022, Ajay Rinwa Versus The State of Rajasthan & Others, D.B. Habeas Corpus Petition No.220/2018.

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9. On the other hand, learned counsel for the State would submit that the order of detention has been passed strictly in accordance with the mandate of the Act of 2006. He would submit that the petitioner is a hard core criminal and against him as many as 15 criminal cases have been registered which includes commission of offences of extortion, dacoity, murder etc. When he became threat to the public order, vide memo dated 09.06.2022 the Superintendent of Police, Sikar forwarded to the District Magistrate the details of the criminal activities of the petitioner along with the history of various criminal cases registered and pending against him.

10. The District Magistrate, Sikar, empowered under notification dated 08.06.2022 issued by the State Government in exercise of powers under Sub-Section (2) of Section 3 of the Act of 2006, recorded satisfaction that the petitioner is continuously involved in serious criminal cases and has become habitual offender and also perpetrator of crime. It was also recorded that due to criminal activities of the petitioner, there is sense of fear and threat of life amongst the public residing in the area. On recording of such satisfaction, the District Magistrate passed the order of detention. He would also submit that not only the provisions of Section 9 of the Act of 2006 but the provisions of

Sections 11 & 14 all have been fully and substantially complied with by the competent authority and there is no violation of any of the statutory provisions. He would next submit that the petitioner was duly afforded an opportunity of hearing before the Advisory Board also and after hearing him, Advisory Board, after taking into consideration the complete material on record, particularly large [2023/RJJP/009861] (6 of 16) [HC-15/2023] number of criminal cases involving the commission of heinous offences, confirmed the order of detention. The petitioner has been detained for a period of one year taking into consideration that he is involved in heinous offences like murder, dacoity, extortion etc. Learned State Counsel has placed reliance on the case of Om Prakash @ Oma @ Jeevan Ram Versus The State of Rajasthan & Others, D.B. Civil Writ (Habeas Corpus) Petition No.377/2021.

11. We have heard learned counsel for the parties, perused the record as also the order passed by the District Magistrate, Sikar. During the course of arguments, learned State counsel produced before us the opinion of the Advisory Board.

12. The Superintendent of Police, Sikar vide his memo dated 09.06.2022 forwarded to the District Magistrate, information regarding petitioner's criminal activities which disclosed that since 2012, the petitioner had indulged in various criminal cases. The report disclosed that against the petitioner as many as 15 criminal cases have been registered and except one, which has been decided on the basis of compounding of offence, other criminal cases are still pending consideration. The Superintendent of Police, Sikar giving details of each and every criminal case and also detailed history of criminal activities that on 20.12.2019 the petitioner was recorded as hard core criminal operating his own gang as its head. It further recorded that petitioner is involved in murder, dacoity, extortion, assault repeatedly. He, in contact with the hard core criminals of the neighboring States, has formed gang and then committed offences. It also recorded that the public is so afraid that nobody is coming forward to submit report or give [2023/RJJP/009861] (7 of 16) [HC-15/2023] evidence. It also gives details of commission of crimes after having been released on bail in various criminal cases.

13. The District Magistrate having gone through the complete details of the criminal activities of the appellant, as forwarded by the Superintendent of Police, Sikar vide his memo dated 09.06.2022, recorded satisfaction that the petitioner, since 2012, is involved in commission of serious offences like murder, attempt to murder, dacoity, extortion, loot, illegal possession of weapon, ransom etc. and he is a habitual offender creating sense of fear amongst public. On the basis of such material and satisfaction recorded, the District Magistrate passed the order of detention on 13.06.2022. A copy of the order has been annexed along with the petition. The State has filed its return and along with the same, a copy of memo dated 06.02.2023 (Annexure-R/2) has also been filed which shows that after the order of detention was passed, the appellant was admitted to Central Jail on 14.06.2022. In reply to miscellaneous amendment applications, a copy of the order of detention bearing signature of the petitioner has been filed. Further a copy of memo dated 13.06.2022 of the District Magistrate, addressed to the petitioner, has also been placed on record which records that as the order of detention along with necessary grounds and records has been explained which may be acknowledged after receiving, reading and understanding the same. It bears signature of the petitioner of having received on 14.06.2022 itself. Moreover, aforesaid memo dated 13.06.2022 also

records that the petitioner was informed in writing that if he wants to make any representation before the [2023/RJJP/009861] (8 of 16) [HC-15/2023] Government/Advisory Board/High Court, he may send such representation through the Superintendent, Central Jail, Jaipur.

14. Acknowledgment of receipt on 14.06.2022 given by the petitioner himself has also been placed on record, which clearly proves that the order of detention along with its grounds and the entire records were supplied to the petitioner in presence of two witnesses.

15. It is thus clear that the petitioner has not only been served with the copy of the order of detention along with its grounds but also informed in writing regarding his right to prefer a representation.

16. Section 9 of the Act of 2006 reads as under:-

"9. Grounds of order of detention to be disclosed to detenu.- (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 three 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."

17. The requirement of Section 9 of the Act of 2006 is that communication of the order of the detention along with the grounds on which the detention order has been made, has to be made to the detenu, as soon as may be, but not later than three days from the date of detention.

18. The order of detention contains the grounds on which the detention order was passed. The entire records leading to issuance [2023/RJJP/009861] (9 of 16) [HC-15/2023] of detention order running in as many as 238 pages were also supplied to the petitioner, duly acknowledged by him. Memo dated 13.06.2022 clearly records in writing regarding informing the petitioner of his right to prefer a representation to the State Government. Therefore, the challenge to the order of detention on the alleged violation of Section 9 of the Act of 2006 does not have any merit and is, therefore, rejected.

19. The other ground of challenge to the order of detention is that the provisions contained in Section 11 of the Act of 2006 have been violated inasmuch as the grounds of detention have not been placed before the Advisory Board within a period of three weeks from the date of detention of the petitioner.

20. The undisputed position on the record is that order of detention was passed on 13.06.2022, the petitioner was admitted to Central Jail, Jaipur on 14.06.2022 and the order of detention along with grounds was communicated to the petitioner on 14.06.2022. The provisions contained in Section 11 of the Act of 2006, read as below:-

"11. 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 10 the grounds on which the order has been made and the representation, if any, made by the "detenue" and where the order has been made by an authorized officer, also the report made by such officer under sub-section (3) of section 3."

21. Interpretation of the aforesaid provision came up for consideration before the Division Bench of this Court in the case of Om Prakash @ Oma @ Jeevan Ram (supra). A similar [2023/RJJP/009861] (10 of 16) [HC-15/2023] argument, as has been raised in the present case, was also raised in that case by stating that Section 11 of the Act of 2006 required the order of detention with grounds to be placed before the Advisory Board within three weeks and though a memo was issued within three weeks and though the order of detention along with the grounds was forwarded by the State Government to the Advisory Board within a period of three weeks, the matter was actually placed before the Advisory Board for consideration after expiry of three weeks.

22. This Court in the case of Om Prakash @ Oma @ Jeevan Ram (supra) held as below:-

"9. The legal requirement of placing before the Advisory Board the grounds on which the order of detention has been made is pari materia to the provisions contained in Section 10 of the National Security Act, 1980. The provision casting a duty on the appropriate Government to place before the Advisory Board the order of detention along with its grounds was considered by their Lordships in the Hon'ble Supreme Court in the case of Raisuddin alias Babu Tamchi Vs. State of Uttar Pradesh and Another, (1983) 4 SCC 537. The words, "place before" were interpreted and it was held that Section 10 of the National Security Act, 1980 does not mean anything more than, "forward to" or "submit before" the Advisory Board, the relevant papers relating to the detention of the detenue. It was held by the Hon'ble Supreme Court as below:

"5. The last point urged on behalf of the petitioner is that there has been a violation of the provisions of the Section 10 of the Act because the Advisory Board had not considered the case of the petitioner within three weeks from the date of detention. As already noticed, the petitioner submitted his representation to the District [2023/RJJP/009861] (11 of 16) [HC-15/2023] Magistrate against the detention only on November 24, 1982 even though he had been arrested and placed under detention on November

8. The said representation reached the State Government on December 6, 1982. In the meantime, the petitioner's case had been referred by the State Government to the Advisory Board on November 18 itself. The representation received from the petitioner was forwarded by the State Government to the State Advisory Board on December 9, 1982. The Advisory Board held its meeting on December 10, 1982 and, after affording a personal hearing to the petitioner, made its report finding sufficient

cause for the detention of the petitioner. The argument put forward on behalf of the petitioner is that Section 10 mandatorily enjoins the State Government to take steps to see that the case of the detenu is considered by the Advisory Board within three weeks from the date of detention. We are unable to see any merit in this contention. Section 10 reads:

Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate 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 by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of Section 3, also the report by such officer under sub-section (4) of that section.

Under the section, a duty is cast on the appropriate Government to "place before" the Advisory Board constituted under Section 9 within three weeks from the date of detention, the grounds on which the order of detention has been made and the representation, if any, made by the person affected by the order. The petitioner's counsel wanted us to interpret the words "place before the Advisory Board" as meaning "get considered by the Advisory Board". We are wholly unable to accede to this argument. Under the terms of the section, the duty cast on the appropriate Government is to forward to the Advisory Board constituted under Section 9 within three weeks from the date of detention, the papers pertaining to the detention of the detenu [2023/RJJP/009861] (12 of 16) [HC-15/2023] consisting of the grounds on which the order has been made, the representation, if any, made by the person affected by the order, etc. It is to be remembered that the Advisory Board is not an entity subordinate to the Government. It is a wholly independent body consisting of persons who are or have been or are qualified to be appointed as Judges of a High Court. It is entirely for the Advisory Board to regulate its schedule of holding meetings and conducting its business in accordance with the procedure laid down under Section 11 of the Act which has specified a time limit of seven weeks from the date of detention for the submission of the Board's report to the appropriate Government. It is, therefore, wholly wrong to interpret the words "place before" as meaning anything more than forward to or submit before the Advisory Board the relevant papers relating to the detention of the detenu. In the present case, the Advisory Board has disposed of the petitioner's case well within the period of seven weeks specified in sub-section (1) of Section 11 of the Act. This contention of the petitioner is also, therefore, devoid of substance."

10. Relying upon the aforesaid decision of the Hon'ble Supreme Court, Division Bench of this Court in the case of Kamal Kishore Tripathi (supra) interpreted the legal requirement under Section 11 of the PASA Act, 2006 and held that the legal requirement of placing before the Advisory Board would mean, "forwarding to" or "submitting before" the Advisory Board the relevant papers relating to the detention of the detenu. It was held thus:

"10. The Supreme Court in Raisuiddin alias Babu Tamchi Vs. State of Uttar Pradesh & Another, (1983) 4 SCC 537 held that Section 10 of the National Security Act, 1980 casts a duty on the appropriate Government to forward to the Advisory Board within three weeks from the date of detention, the relevant papers pertaining to the detention. Therefore, the words 'place before' in that section does not mean anything more than 'forward to' or 'submit before' the Advisory Board the relevant papers relating to the detention of the detenu. The Advisory Board is a wholly independent body which can regulate its schedule of holding meetings and conducting its business in accordance with the procedure laid down under Section 11 of the Act, which has specified a time [2023/RJJP/009861] (13 of 16) [HC-15/2023] limit of seven weeks from the date of detention for the submission of the Board's report to the appropriate Government. In view of aforesaid judgment of the Supreme Court in Raisuiddin alias Babu Tamchi(supra), what is required of the State Government is to forward grounds of detention of the detenu to the Advisory Board within three weeks."

Applying the aforesaid decision of the Hon'ble Supreme Court and the decision of Division Bench of this Court to the admitted facts of the present case, it is apparent that the order of detention was passed on 09.10.2021 and the State Government, in exercise of powers under Section 11 of the PASA Act, 2006, referred the case along with order of detention as well as the grounds of such detention to the Advisory Board constituted under Section 10 of the PASA Act, 2006 vide memo dated 26.10.2021. We have perused the original records of the Advisory Board, which contains memo dated 26.10.2021 of the State Government addressed to the Chairperson, Advisory Board, PASA at Jaipur. The said letter of reference was forwarded along with the order of detention dated 09.10.2021 issued by the District Magistrate, Sikar along with the grounds of detention. Thus, apparently the aforesaid exercise was done within a period of three weeks from the date of detention of the petitioner and, therefore, there is no violation of legal requirement of placing before the Advisory Board the grounds on which the order has been made. Contention of learned counsel for the petitioner in this regard is, therefore, rejected."

23. In view of above enunciation of law, it is clear that in the present case also, the State Government forwarded the order of detention along with the grounds on which detention order was passed to the Chairperson of the Advisory Board vide its memo dated 28.06.2022, a copy of which has been placed on record as [2023/RJJP/009861] (14 of 16) [HC-15/2023] Annexure-R/4 along with the reply. Therefore, within a period of three weeks, the State Government forwarded the order of detention along with the grounds to the Chairperson of the Advisory Board though it was placed before the Advisory Board after the expiry of three weeks. In view of above consideration, there is substantial compliance of the legal requirement of Section 11 of the Act of 2006. Consequently, it cannot be said that there has been violation of the mandate of Section 11 of the Act of 2006.

24. Learned counsel for the petitioner has placed reliance upon various decisions including decision of the Supreme Court in the case of Pebam Ningol Mikoi Devi Versus State of Manipur (supra). The aforesaid decision does not come to the aid of the petitioner because in the present case violation of any of the statutory provisions contained in the Act has not been found.

25. The reliance placed on the decision of the Supreme Court in the case of Shaik Nazneen Versus The State of Telangana (supra) is misplaced in law. In that case, Hon'ble Supreme Court, on facts, recorded a finding that the case in hand did not warrant invocation of the preventive detention law.

26. Reliance placed on judgment in the case of Guddu @ Hazrat Ali Versus The State of Rajasthan (supra) is also misplaced on facts because in that case it was found that the cases registered against the petitioner were not of such a nature as to consider the petitioner therein being involved in anti social activities. In the present case, as is obvious, among 15 cases, recent criminal cases registered against the petitioner in the year 2021 show that the criminal cases have been registered for [2023/RJJP/009861] (15 of 16) [HC-15/2023] alleged commission of offences for murder, dacoity, loot, extortion, possessing illegal arms. Therefore, it is not a case where trivial offences have been registered and therefore, only on the ground of number of cases, a case of preventive detention would not be made out.

27. Reliance placed on the decision in the case of Omprakash & Omi @ O.P. Versus The State of Rajasthan (supra) is also of no help to the petitioner because in that case, on facts, this Court found that there was violation of provisions contained in Section 9 of the Act of 2006 inasmuch as opportunity of making a representation at the earliest by the detenue was not afforded. In the present case, as has been discussed hereinabove, the petitioner has been informed in writing regarding his right to prefer a representation at the earliest i.e. the day on which he was detained.

28. Reliance placed on the decision of the Division Bench of this Court in the case of Ajay Rinwa Versus The State of Rajasthan (supra) is also of no help because in that case, on facts, it was found that while confirming a fresh order of detention, opinion of the Advisory Board was founded upon 19 criminal cases out of which 16 cases were those which were reckoned for in the first detention order which was quashed by the Court.

29. Reliance placed on the decision of the Division Bench of this Court in the case of Rajesh Sharma alias Raju Pandit Versus State of Rajasthan (supra) is also misplaced both in law as well as on facts. It was held in the aforesaid decision, as is clear from what has been held in paragraph 15, 16, 17, 18 and 19 that words [2023/RJJP/009861] (16 of 16) [HC-15/2023] "place before" cannot be interpreted to mean anything more than forward to or submit before the Advisory Board the relevant papers relating to the detention of the detenue. The principles laid down in the case of Rajesh Sharma alias Raju Pandit Versus State of Rajasthan (supra) have been followed by the Division Bench of this Court in the case of Om Prakash @ Oma @ Jeevan Ram (supra).

30. Last but not the least, learned counsel for the petitioner fervently raised the contention regarding period of detention. Taking into consideration that the petitioner has undergone more than 11 months of the preventive detention out of one year and particularly taking into consideration that against him as many as 15 criminal cases were registered out of which five cases were registered from 2018 to 2021 and last 5 criminal cases registered against him related to commission of offences under Sections 382, 427, 364, 302, 395, 386 IPC which are all serious offences, we are not inclined to interfere with the period of detention.

31. In the result, no ground is made out to interfere with the order of detention. The petition fails and is, accordingly, dismissed.

(ANIL KUMAR UPMAN),J (MANINDRA MOHAN SHRIVASTAVA),ACTING CJ Karan/1 Powered by TCPDF (www.tcpdf.org)