

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**



DATED THIS THE 31ST DAY OF AUGUST, 2023

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

WRIT PETITION NO. 201957/2023 (GM-RES)

BETWEEN

SMT. SHRENIKA

...PETITIONER

(By SRI. S. S.MAMADAPUR, ADVOCATE)

AND

1. THE STATE OF KARNATAKA,
RED BY ITS SECRETARY,
DEPARTMENT OF INTERNAL
ADMINISTRATION (LAW AND ORDER),
VIDHAN SOUDHA,
BANGALORE-01.
2. THE DEPUTY COMMISSIONER AND
THE DISTRICT MAGISTRATE,
VIJAYPUR-586 101.
3. THE SUPERINTENDENT OF POLICE,
VIJAYPUR-586 101.
- 4 . THE DEPUTY SUPERINTENDENT OF POLICE,
INDI-SUB DIVISION, INDI-586209.

....RESPONDENTS

(BY SRI. S. ISMAIL ZABIULLA, ADDL. ADV.GENERAL
AND SRI. MALLIKARJUN C. BASAREDDY, GA)



THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRYING TO, ISSUE A WRIT OF CERTIORARI OR ANY OTHER ORDER OR DIRECTION IN THE NATURE OF A WRIT QUASHING THE DETENTION ORDER PASSED BY THE 2ND RESPONDENT DATED 10.04.2023 IN CASE BEARING NO. MAG/CR-24/2021-22 AS PER ANNEXURE-A IN RESPECT OF DETENUE SRI. HUCHAPPA @ DHANARAJ S/O MALLAPPA @ MALLIKARJUN KALEBAG. AND ISSUE A WRIT OF CERTORARI OR ANY OTHER ORDER OR DIRECTION THE NATURE OF WRIT QUASHING THE ORDER PASSED BY THE IST RESPONDENT BEARING NO. HD 211 SST 2023 DATED 19.04.2023 AS PER ANNEXURE-D CONFIRMING THE ORDER OF DETENTION PASSED BY THE 2ND RESPONDENT AS ILLEGAL AND VOID.

THIS PETITION COMING ON FOR PRELIMINARY HEARING 'B' GROUP AND HAVING BEEN HEARD AND RESERVED ON 16.08.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, **RAJESH RAI K J.**, MADE THE FOLLOWING:

ORDER

Petitioner, wife of Sri.Huchappa @ Dhanaraj Kalebag, (for short 'detenue') has filed the present petition being aggrieved by the order of detention of her husband under the provisions of The Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Gundas, Immoral Traffic Offenders, Slum-Grabbers and Video or Audio Pirates Act, 1985 (hereinafter referred to as "Goonda Act") dated 10.04.2023 passed by the District Commissioner and District Magistrate, Vijayapur (respondent No.2) in case bearing No.MAG-CR-24/2021-

22, as well as the confirmation order passed by the State of Karnataka represented by its Secretary, Department of Internal Administration (Law and Order), (respondent No.1) vide order bearing No.HD 211 SST 2023 dated 19.04.2023 for a period of 12 months.

2. The undisputed facts of the case would reveal that the petitioner is the wife of Sri.Huchappa @ Dhanaraj Kalebag i.e., detinue and they both are the residents of Ambedkar Nagar, Indi. It has been stated that the Deputy Superintendent of Police Indi, Sub Division, Indi, submitted a report bearing No.1702:2022 dated 04.10.2022 to the Superintendent of Police, Vijayapur for accepting the proposal of Circle Inspector, Indi, for invoking the provisions of Goonda Act against the detinue. Based on the same, the respondent No.3 i.e., Superintendent of Police submitted a proposal to the Deputy Commissioner and the District Magistrate, Vijayapur, in case bearing No.16/DCRB/169/2023 dated 08.04.2023 to invoke the provisions of Goonda Act, 1985, against the detinue for preventive detention under

Section 2(g) of the said Act. Accordingly, respondent No.3 i.e., sponsoring authority along with the proposal, submitted compilation of documents containing the particulars of the detenu i.e., social, educational, economical background and the particulars of the cases in which the detenu is allegedly involved. On the basis of the said proposal submitted by respondent No.3 i.e., sponsoring authority, the respondent No.2 exercising the powers under Section 3(1) of the Goonda Act passed an order dated 10-04-2023 in case bearing No. MAG/CR-24/2021-22 as per Annexure-A, detaining the detenu for an initial period of 12 days starting from the date of passing of the order. That on 10-04-2023 the detaining authority supplied the documents to the detenu and respondent No.2 also intimated the detenu about the detention order dated 10.04.2023, that he can prefer an appeal to the State Government and Advisory Board against the order of preventive detention. Thereafter, the respondent No.2 vide letter bearing No. MAG/CR-24/2021-22 dated 11-04-2021 forwarded the proposal to respondent No.1 for confirmation/approval of the order of

preventive detention of the detenu and based on such proposal, the respondent No.1 i.e., State Government confirmed the order of detention passed by respondent No.2 vide order dated 19.04.2023 bearing order No.HD 211 SST 2023 as per Annexure-D and thereby directed the detenu to be kept in detention for a period of 12 months starting from 10.04.2023. The said order of detention is challenged under this writ petition. However, before filing this writ petition, the petitioner has filed WP.(HC) No. 200006/2023 before the co-ordinate bench of this Court, which came to be disposed of by order dated 20.06.2023 reserving liberty to the petitioner to file appropriate writ petition against the detention orders. Hence, the petitioner filed this writ petition.

3. We have heard Sri.S.S.Mamadapur, learned counsel for the petitioner and Sri. S.Ismail Zabiulla, learned Addl. Advocate General appearing for Sri.Mallikarjun C.Basareddy, Government Advocate appearing for respondents.

4. Learned counsel for the petitioner vehemently contended that the impugned orders at Annexures-A & D passed by respondent Nos.1 & 2 being capricious, illegal and arbitrary are liable to be quashed. He would further contend that invocation of the provisions of Goonda Act against the detenu in order to keep him under detention for a period of 12 months is illegal and impermissible. According to the counsel, as per the provisions of Section 3(2) of the Goonda Act, the authority at the first instance has to pass an order of detention for a period of 3 months and thereafter if the authority intends to detain further, it has to pass further detention order for another period of 3 months i.e. after expiry of every three months there must be fresh order of detention. Hence, the order of detention for 12 months at one stretch being contrary to the principles laid down by this Hon'ble Court and also to the provisions of the Goonda Act. He would further contend that as per the provisions of the Act, soon after the detention, all the documents which the authority intends to rely, should be placed before the Advisory board within 21 days along with the grounds of detention of the

detenue. However, in this case, those documents were placed beyond the period of 21 days, which infringed the rights of the detenue to defend his illegal detention. He further contends that the sponsoring authority/respondent No.3 has furnished a booklet containing various particulars of the detenue running into 611 pages, but the sponsoring authority has willfully and intentionally withheld several other relevant documents which would have weighed in the mind of the detention authority while passing the impugned orders. Further the sponsoring authority has not furnished the bail orders wherein the detenue was enlarged on bail in the cases registered against him, resulting in suppression of relevant material facts. He would further contend that whenever the order of detention is passed, sponsoring authority or the detaining authority has to make available the grounds of detention to the detenue and he should be informed about his right to make an appeal to the State Government or the Advisory Board. However, in this case, no such opportunity was extended to the detenue. He also contends that the translated, legible copy of the grounds

of detention were not supplied to the detenu to enable him to file/submit effective representation as contemplated under the provisions of Section 3(2) of the Goonda Act.

5. According to the learned counsel most of the relevant documents relied by the authority are in English and Marathi languages. Though the authority translated the documents of Marathi language to Kannada, the only language which known to the detenu, but failed to translate the documents which are in English language. As such there is great miscarriage of justice caused to the detenu to submit an effective representation before the government or to the Advisory Board. Learned counsel pointed out that several documents in the compilation furnished by the detaining authority are not legible copies so also not translated copies from English to Kannada language since the detenu studied up to 3rd standard and knows only Kannada language. Learned counsel would also contend that there is no sufficient opportunity provided to the detenu to submit his representation either before the

State Government or to the Advisory Board, as such there is a clear violation of Section 3, 10, 11 and 12 of the Goonda Act. Hence, he prays to allow the petition and quash the impugned order passed by respondent Nos.1 and 2 at Annexures-A and D.

6. Per contra, learned Addl. Advocate General appearing for respondents submit that the order of detention passed by respondent No.1 dated 19.04.2023 in respect of the detention of the detenu does not suffer from any perversity or illegality and the same is based on the report submitted by respondent No.4-Circle Police Inspector, Indi, to respondent No.3 i.e. sponsoring authority dated 04.10.2022 and also the proposal submitted by respondent No.3 in case bearing No.16/DCRB/169/2023 dated 08.04.2023 to invoke the provisions of the Goonda Act. He would further contend that there is no such procedural lapse committed by the authority while invoking the provisions of Goonda Act, for the detention of the detenu. The respondent Nos.1 and 2 after complying all the legal formalities as contemplated

under the provisions of Goonda Act, passed the detention order against the detenu.

7. The learned Addl. Advocate General, relied upon the documents produced by respondent No.3 in respect of the illegal activities pertaining to the detenu and would submit that on a careful perusal of those documents depicts that there are 10 cases pending against the detenu under the provisions of IPC, out of those 10 cases the detenu is acquitted in 4 cases and 5 cases are pending for trial in different Courts and 1 case is under investigation. According to the report submitted by respondent No.3, the detenu has committed the crimes even after he was released from jail and continued to commit the crimes till the order of detention and by violating the externment order, he has entered the Vijayapur District and attempted to commit heinous offences like kidnap and attempt to commit murder and he has no fear of law. He has been involved in number of cases and along with his gang members and he has been attacking people with weapons and assaulting them in

public places. Shopkeepers, vegetable and fruit vendors are giving money to him on his demand as they are afraid of him. Though there is information against him but no one is coming forward to lodge complaint because of fear. In spite of taking adequate precautionary measures under section 107 and 110 of Cr.P.C., there was no improvement in the behavior of the detenu. He along with his gang members continued to involve and commit various offences like murder, attempt to murder, robbery and threatening people for money etc., in an organized way. Hence, in order to prevent that, the detention order is passed under the provisions of Goonda Act. As such the sponsoring authority has rightly passed the said order and the same is sustainable under law.

8. Learned Addl. Advocate General also raised the question of maintainability of the writ petition by contending that the writ of certiorari is not maintainable in case of illegal detention under Goonda Act and the petitioner has to challenge the same in a writ of habeas

corpus as held by the coordinate bench of this Court in W.P.(HC) No.14/2023 dated 07.06.2023.

9. Learned Addl. Advocate General would further contend that the detention order initially passed on 10.04.2023 and thereafter on 19.04.2023, the respondent No.2 forwarded the order of detention to respondent No.1. Considering the reasons mentioned in the report, respondent No.1 passed the detention order on 19.04.2023. Further, on 12.05.2023 the State Government placed the same before the Advisory Board and the same was confirmed by the Advisory board vide order dated 22.05.2023. The Advisory Board opined that there is sufficient cause to detain the detinue. Therefore there is no procedural lapse in the case and respondent No.1 has rightly passed the detention order. Hence, he prays to dismiss the petition. In support of his arguments, he relied upon the judgment of the Hon'ble Apex Court in the case of ***Union of India and others Vs. Dimple Happy Dhakkad*** in Criminal Appeal No.1064/2019 (arising out of SLP CrI. No.5459/2019) and ***K.M.Abdulla***

Kunhi and Another Vs. Union of India and Others reported in ***AIR 1991 574***, and also the recent judgment passed by the Hon'ble Apex Court in SLP (Criminal) No.9492/2023 (***Pesala Nookaraju Vs. The Government of Andhra Pradesh and Others***).

10. We have bestowed our anxious consideration to the submission made by the learned counsel appearing for the parties so also perused the documents available on record.

11. Having heard the learned counsel for the parties so also having perused the documents the point that would arise for our consideration is;

"Whether the order passed by respondent No.2 dated 10.04.2023 and respondent No.1 dated 19.04.2023 are sustainable under law?"

12. On careful perusal of the order passed by respondent No.1 dated 19.04.2023 as per Annexure-D by confirming the order passed by respondent No.2 dated 10.04.2023 as per Annexure-A, both the said orders

passed under the provisions of Section 3(3), 3(1) and 3(2) of the Goonda Act.

13. The statutory provisions of law governing the field as contained under Sections 3, 10, 11 and 12 reads as under:

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

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.

12. Action upon report of Advisory Board.-

(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in section 13, as they think fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the State Government shall revoke the detention order and cause the person to be released forthwith."

14. The aforesaid statutory provisions depicts that when any order is made under Section 3(3) 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 12 days after the making thereof, unless, in the meantime, it has been approved by the State Government.

15. On a careful perusal of the case on hand, the respondent No.2 on the basis of proposal submitted by respondent No.3-sponsoring authority exercising the powers under Section 3(1) of the Goonda Act passed an order dated 10.04.2023 by detaining the detenu for a period of 12 days. Subsequently, the respondent No.1 vide order bearing No.HD 211 SST dated 19.04.2023 confirmed the said order at Annexure-A by directing the detenu to be kept in detention for a period of 12 months starting from 10.04.2023.

16. The Division Bench of this Court in the case of ***Earanna Alias Bonda Earanna Vs. State of Karnataka***

and Others, reported in **2016(5) Kar.L.J. 81(DB)**, held at paragraph No.8 is as under:

"8. The Apex Court has noticed that the State Government, the District Magistrate or the Commissioner of Police are the authorities conferred with the power to pass orders of detention. The only difference is that the order of detention passed by the Government would remain in force for a period of three months in the first instance whereas similar orders passed by the District Magistrate or the Commissioner of Police shall remain in force for an initial period of 12 days. The continuance of detention beyond 12 days would depend upon the approval to be accorded by the Government in this regard, sub-section (3) of Section 3 makes this clear. Section 13 of the Act mandates that the maximum period of detention under the Act is 12 months. It is to be noticed that it is also the same under the Karnataka Act insofar as the maximum period of detention is concerned. The Supreme Court has interpreted the scheme of the Act as not providing for the extension of the period of detention beyond a period of three months at a time. In other words the Apex Court has held that if the Government intends to detain an

individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months and at least three orders of extension, for a period not exceeding three months each, and has also expressed that the requirement to pass orders of detention from time to time in the manner as stated above was nothing but an implementation of the mandate contained in clause (4)(a) of Article 22 of the Constitution of India.

17. However, The Hon'ble Apex Court in *Nookaraju's* case stated supra, at paragraph Nos.42 and 43 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."

18. Hence, on careful perusal of the dictum laid down by the Hon'ble Apex Court in the above judgment it is clear 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 3 months. Only if any period is specified in the confirmatory order then the period of detention would be up to such, if no period is specified, then it would be for a maximum period of 12 months from the date of detention. The State Government need not review the order of detention every three months after it has passed the confirmatory order. Hence, in our considered view, there is force in the submission made by the learned Addl. Advocate General that the detention order is not bad in law due to not extending periodically

i.e., once in 3 months as contended by the learned counsel for the petitioner.

19. A careful perusal of the documents submitted by the respondent No.3-sponsoring authority to the detinue, i.e., the compilation of documents/booklet running into 611 pages in respect of the cases and the grounds for his detention, as rightly pointed out by the learned counsel for petitioner, the sponsoring authority has not furnished translated copies i.e., English to Kannada language and legible copies of those documents to enable the detinue to make his effective representation both before the Government and Advisory Board. The said position of law is settled by the co-ordinate bench of this Court in ***Writ Petition (HC) No.33/2022*** between ***Smt.Parvathamma Vs. Commissioner of Police and others***, wherein it is held that non-supply of the legible documents/copies to the detinue, withholds his right to make proper representation before the Advisory Board. The same is in utter violations of the provisions of Article 22(5) of the Constitution of India.

20. In another judgment of the co-ordinate bench of this Court in **Writ Petition (HC) No.51/2022** between **Smt.R Ramya Vs. Commissioner of Police and others**, held in a similar manner. Even 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**, has recently re-iterated the settled principle of law to that effect wherein at paragraph No.6 has observed 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."

21. On careful perusal of the compilation/documents supplied by the detaining authority, the detaining authority has failed to furnish the translated copies of some of the documents to the detenu

i.e., Page Nos.41 to 44, 49 to 52, 53 and 54, 93, 101 to 112, 113 to 127, 131 to 151, 167 to 169, 178 to 186 and 189 to 197 and most of those documents are in English language and which are not translated to Kannada language and some of the documents are also not legible.

22. It is an admitted fact that the detinue has studied upto 3rd standard and do not know English language, as such it is bounden duty of the detaining authority to provide the translated copies of those documents. Nevertheless, the law contemplates that in order to give an effective representation to the Government and before the Advisory Board, such an opportunity has to be provided to the detinue by the detaining authority. In the case on hand, even the detaining authority has failed to made known the grounds of detention to the detinue within the specified period of 21 days as contemplated under Section 3(3) of the Goonda Act.

23. The co-ordinate Bench judgment of this Court in the case of ***Iranna Vs. Government of Karnataka and***

Others, reported in **2006(4) Kar.L.J.200 (DB)**, by relying the judgment of 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**, it is held at paragraph No.6 as follows;

"From the aforesaid judgments of the Supreme Court, it is clear that the procedural requirements, are the only safeguards available to a detenue 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."

24. In the case on hand, the initial detention order as per Annexure-A, passed on 10.04.2023. Admittedly, the detenu was produced before the Advisory board on 16.05.2023. As per the relevant provisions of Goonda act, the detenu shall produce before the Advisory Board within 21 days. But in the instant case, the respondents failed to produce the detenu within the stipulated period i.e., on or before 01.05.2023. Nevertheless, there was no sufficient opportunity given to the detenu to submit his representation either before the Government or before the Advisory Board as contemplated under Section 3(3) of the Goonda Act which not only a gross violation of the provisions of law but also the violation of natural justice under Article 22(5) of the Constitution of India as per the settled position of law by this Court and Hon'ble Apex Court stated supra.

25. The arguments advanced by the learned Addl. Advocate General in respect of the maintainability of the

writ petition is concerned, though the coordinate bench of this Court in WP(HC) No.14/2023 held that in case of preventive detention, a writ of habeas corpus is maintainable, nevertheless in the case on hand, admittedly the appellant approached this Court by filing a writ of habeas corpus No.200006/2023 and the coordinate bench of this Court by relying the judgment rendered by the co-ordinate bench of this Court in WP(HC).No.100008/2023 disposed the said writ petition by reserving liberty to the petitioner to file appropriate writ petition. Hence, the petitioner once again approached this Court by filing this writ petition. Hence, in our considered view, this writ petition is maintainable due to the liberty granted by the coordinate bench of this Court in W.P.(HC)No.200006/2023 dated 20.06.2023.

26. Though the learned Addl. Advocate General relied upon the judgment of the Hon'ble Apex Court in *Dimple's* case stated supra, on careful perusal of the dictum laid down by the Apex Court in the said judgment that detaining authority must be satisfied that the detenu

is likely to be released and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities. But in the case on hand, the respondent authority have failed to substantiate the said aspect for the reasons that, though the respondents stated 10 case pending against the detenu, but out of those 10 cases 4 cases were already acquitted and 1 case is on trial stage. Most of the cases are of the year 2013, 2015 and 2018. There are no such recent cases filed against the detenu. Further, as discussed supra though the detaining authority served the documents to the detenu but the translate and legible copies are not supplied to the detenu. Hence, the judgment cited by the Addl. Advocate General are not applicable to the present case.

27. As we are dealing with the case of personal liberty of the detenu since he is in detention from 10.04.2023 and respondents have failed to comply the mandatory provisions contemplated under the Goonda Act

and also the order of detention is passed against the law laid down by the Hon'ble Apex Court and also the coordinate bench of this Court in catena of judgments, we are of the considered view that the order of detention passed by respondent Nos.1 and 2 as per Annexure-D and A respectively are liable to be quashed. In that view of the matter, the petition deserves to be allowed. Hence, we answer the point raised above and proceed to pass the following;

ORDER

- a. The petition is allowed.
- b. The detention order dated 10.04.2023 passed by respondent No.2 in case bearing No.MAG-CR-24/2021-22 and the order dated 19.04.2023 passed by respondent No.1 bearing No.HD 211 SST 2023, are quashed. Consequently, the respondents are directed to set the detenue at liberty.

- c. Registry is directed to communicate the order to the respondent Nos.1 and 2 as well as the Jail authorities to release the detinue forthwith, in case, he is not required in any other cases.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

msr