IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF SEPTEMBER, 2021

PRESENT

THE HON'BLE MR.SATISH CHANDRA SHARMA,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WPHC NO.49/2021

BETWEEN

KARTHIK @ ULLALU KARTHIK
S/O. MUNIRAJU,
33 YEARS, #1169
SHANIMAHATHMA TEMPLE ROAD,
ULLALU UPANAGARA,
BANGALORE NORTH TALUK,
BENGALURU CITY,

CURRENTLY LODGED AT
CENTRAL PRISON, BANGALORE,
BENGALURU- 560 100

... PETITIONER

(BY SRI ROHAN TIGADI, ADV. FOR
SRI VEERANNA G.TIGADI., ADV.)

AND:

1 . COMMISSIONER OF POLICE
NO. 1, INFANTRY ROAD,
BENGALURU 560 001

2 . STATE OF KARNATAKA
VIDHANA SOUDHA,
AMBEDKAR VEEDHI,
SAMPANGI NAGARA,
BENGALURU
KARNATAKA 560 001
(REPRESENTED BY SECRETARY,
HOME DEPARTMENT
LAW AND ORDER)

3 . SENIOR SUPERINTENDENT
CENTRAL PRISON,
BENGALURU 560 100

... RESPONDENTS

(BY SRI TEJAS KUMAR, HCGP)

THIS WPHC IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS AND DIRECT THE RESPONDENTS TO PRODUCE ORDER DATED 21.12.2021 BEARING NUMBER HD 126 SST 2020 PASSED UNDER SECTION 3(3) OF THE GOONDA ACT AND ETC.

THIS WPHC COMING ON FOR ORDERS THIS DAY, **ACTING CHIEF JUSTICE,** MADE THE FOLLOWING:

ORDER

The petitioner-Karthik @ Ullalu Karthik before this Court has filed the present petition being aggrieved by the order of detention under the Karnataka Goondas Act, 1985 (for short 'Goondas Act') dated 14.12.2020 passed by the Commissioner of Police, Bengaluru and the subsequent order of confirmation dated 21.12.2020 as well as the order passed by the State Government dated 30.01.2021 confirming the detention of the petitioner for a period of one year.

2. The undisputed facts of the case reveal that the petitioner is a resident of Bengaluru. It has been stated that the Commissioner of Police in exercise of powers conferred under Section 3(1) of the Goondas Act, has passed an order

of detention against the petitioner and as required under the statute, the same was approved by the State Government as provided under sub-section (3) of Section 3 of the Goondas Act. The petitioner has further stated that as per the statutory provisions of law governing the field, the matter has to be placed before the Advisory Board under Section 10 of the Goondas Act. The petitioner's case was also referred to the Advisory Board on 29.12.2020. The petitioner has further stated that he was directed to appear before the Advisory Board on 11.01.2021 and the petitioner did appear before the Advisory Board. The petitioner submitted a representation on 12.01.2021 and the same was not considered by the Advisory Board subsequently. It has been informed that the proceedings and the reports of the Advisory Board were submitted on 27.01.2021 with a opinion to the State Government to affirm the order of detention and finally the State Government has passed an order of confirmation dated 30.01.2021. The petitioner's grievance is that the representation submitted by him on 12.01.2021 has been looked into neither by the Advisory Board nor by the State Government at any point of time and the proceedings of the Advisory Board were drawn on 27.12.2021. As we

are dealing with the non-consideration of the representation, at the first instance, other grounds raised by the petitioner are not being looked into.

3. The State Government has filed a reply in the matter and the State Government has enclosed a copy of the representation submitted by the detenue along with its reply. The same is on record at page 70 in Kannada language and therefore, as it has been filed by the State Government only, it has not been denied by the State Government that representation was preferred on 12.01.2021. There is no reason to disbelieve that the petitioner has filed a detailed and exhaustive representation and it was certainly preferred by the petitioner to the Advisory Board. The State Government has not commented upon the aforesaid representation in its reply. The State Government has nowhere stated that the representation was considered by the Advisory Board or the State Government at any point of time. On the contrary, while filing the additional statement of objections, which is duly supported by an affidavit of Sri Basavaraj, Police Inspector, C.C.B., Bengaluru, has stated that no details of the representation have been furnished by

the petitioner. Paragraph No.5 of the additional statement of objections is reproduced as under:

> "5. It is humbly submitted that the petitioner has not given any details with regard to his representations in the aforesaid month. The copy of the representation is also not produced along with the amended petition. The petitioner also not given correct and proper date of his representation and as such, the statement in this paragraph is based on the assumption and presumption, without there being any material facts which required to be adjudicated. As such, the above ground is liable to be rejected."

4. It is really strange that the State Government after filing of copy of the representation along with the statement of objections, in the additional statement of objections, has stated that no details of representations have been furnished by the petitioner. Again, in the additional statement of objections, it is nowhere stated that the representation was considered by the Advisory Board or the State Government.

5. In the case of **K.M.Abdulla Kunhi & another v. Union of India and others** 1991(1) SCC 476, the Hon'ble Supreme Court has dealt with the issue of non-consideration of the representation by the appropriate State Government and the Advisory Board.

6. The Coordinate Bench of this Court in the case of **Smt.Jayamma v. Commissioner of Police, Bengaluru** reported in ILR 2019 Kar 1543 has referred to the aforesaid judgment and in the similar circumstances of non-consideration of the representation and the order of detention was set aside.

7. The statutory provisions of law governing the field as contained under Sections 3, 10, 11, 12 read 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 he the (opinion of the Board.

(4) The proceedings of the Advisory Board and its report, excepting that part of 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.
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> **12. Action upon the 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."

8. The aforesaid statutory provisions do confer right upon a detenue to prefer a representation and the same was done by the detenue by submitting a representation on 12.01.2021. He was afforded an opportunity of hearing by the Advisory Board on 11.01.2021 and the Advisory Board has finalised its Minutes as stated by the State Government and the Advisory Board has confirmed the order of detention on 20.01.2021 as reflected from the order passed by the State Government finally approving the order of detention. The order passed by the State Government dated 30.01.2021, which is in Kannada language is reproduced as under:

"ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ:ಹೆಚ್‌ಡಿ 126 ಎಸ್‌ಎಸ್‌ಟಿ 2020 ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ
ವಿಧಾನಸೌಧ
ಬೆಂಗಳೂರು, ದಿನಾಂಕ:30.01.2021

ಆದೇಶ

ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ ಇವರು ಕನಾಟಕ ಅಕ್ರಮ ಕಳ್ಳಭಟ್ಟಿ ಸಾರಾಯಿ ವ್ಯವಹಾರ, ಔಷಧಾಪರಾಧ, ಜೂಜುಕೋರ, ಗೂಂಡಾ ಅನೈತಿಕ ವ್ಯವಹಾರಗಳ ಅಪರಾಧ, ಕೊಳಚೆ ಪ್ರದೇಶಗಳನ್ನು ಅಕ್ರಮವಾಗಿ ಆಕ್ರಮಿಸಿಕೊಳ್ಳುವ ಮತ್ತು ವಿಡಿಯೋ ಅಥವಾ ಆಡಿಯೋ ಪೈರಸಿ ಚಟುವಟಿಕೆಗಳ ತಡೆ ಅಧಿನಿಯಮ 1985ರ (1985ರ ಕರ್ನಾಟಕ ಅಧಿನಿಯಮ 12) 3ನೇ ಪ್ರಕರಣದ (1) ಮತ್ತು (2)ನೇ ಉಪ ಪ್ರಕರಣದಡಿಯಲ್ಲಿ ಶ್ರೀ ಕಾರ್ತಿಕ್ @ ಉಲ್ಲಾಳ್ ಕಾರ್ತಿಕ್ ಬಿನ್ ಮುನಿರಾಜು, 33 ವರ್ಷ, ನೊ.1169, ಶನಿಮಹಾತ್ಮ ದೇವಸ್ಥಾನದ ಹತ್ತಿರ, ಉಲ್ಲಾಳು ಉಪ ನಗರ, ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕ್, ಬೆಂಗಳೂರು ನಗರ ಇವರ ವಿರುದ್ಧ ಆದೇಶ ಸಂಖ್ಯೆ: 15/ಸಿಆರ್‌ಎಂ(4)/ಡಿಟಿಎನ್/2020, ದಿನಾಂಕ: 14.12.2020 ರಂದು ಹೊರಡಿಸಿರುವ ಬಂಧನದ ಆದೇಶವನ್ನು, ಸದರಿ ಅಧಿನಿಯಮದ 3ನೇ ಪ್ರಕರಣದ 3ನೇ ಉಪಪ್ರಕರಣದನ್ವಯ ಸರ್ಕಾರವು ಆದೇಶ ಸಂಖ್ಯೆ:ಹೆಚ್‌ಡಿ 126 ಎಸ್‌ಎಸ್‌ಟಿ 2020, ದಿನಾಂಕ: 21.12.2020ರಲ್ಲಿ ಅನುಮೋದಿಸಿದ್ದು, ಸದರಿ ಅಧಿನಿಯಮದ 9ನೇ ಪ್ರಕರಣದಡಿ ರಚಿತವಾದ **ಸಲಹಾ ಮಂಡಳಿಯು "ಬಂಧಿಯನ್ನು ಒಂದು ವರ್ಷದ ಅವಧಿಗೆ ಬಂಧನದಲ್ಲಿಡಲು ಸಾಕಷ್ಟು ಕಾರಣಗಳಿವೆ"** ಎಂದು **ದಿನಾಂಕ: 20.01.2021ರ ವರದಿಯಲ್ಲಿ ಅಭಿಪ್ರಾಯಪಟ್ಟಿರುತ್ತದೆ**.

2. ಆದುದರಿಂದ, ಕರ್ನಾಟಕ ಸರ್ಕಾರವು ಸದರಿ ಅಧಿನಿಯಮ 12ನೇ ಪ್ರಕರಣದ (1)ನೇ ಉಪ ಪ್ರಕರಣದಡಿ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ, ಜಿಲ್ಲಾಧಿಕಾರಿ, ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ ಇವರು ಶ್ರೀ ಕಾರ್ತಿಕ್ @ ಉಲ್ಲಾಳ್ ಕಾರ್ತಿಕ್ ಬಿನ್ ಮುನಿರಾಜು, 33 ವರ್ಷ, ನಂ.1169, ಶನಿಮಹಾತ್ಮ ದೇವಸ್ಥಾನದ ಹತ್ತಿರ, ಉಲ್ಲಾಳು ಉಪ ನಗರ, ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕ್, ಬೆಂಗಳೂರು ನಗರ ಇವರ ವಿರುದ್ಧ ಹೊರಡಿಸಿರುವ ಬಂಧನ ಆದೇಶ ಸಂಖ್ಯೆ:15/ಸಿಆರ್‌ಎಂ(4)/ಡಿಟಿಎನ್/2020, ದಿನಾಂಕ:14.12.2020ನ್ನು ಸ್ಥಿರೀಕರಿಸಿದೆ.

3. ಬಂಧಿಯು ಕಾನೂನು ಬಾಹಿರ ಕೃತ್ಯಗಳಲ್ಲಿ ನಿರತನಾಗಿ ಕೊಲೆ, ಸುಲಿಗೆ, ಕೊಲೆ ಪ್ರಯತ್ನ, ಕರ್ತವ್ಯ ನಿರತ ಪೋಲೀಸರ ಮೇಲೆ ಹಲ್ಲೆ, ಜೀವ ಬೆದರಿಕೆ, ಗಾಂಜಾ ಮಾರಾಟ ಮುಂತಾದ ಗಂಭೀರ ಅಪರಾಧ ಪ್ರಕರಣಗಳಲ್ಲಿ ಭಾಗಿಯಾಗುತ್ತಾ, ಸಾರ್ವಜನಿಕರಲ್ಲಿ ಭಯ ಭೀತಿಯನ್ನುಂಟು ಮಾಡುವುದು, ಜಾಮೀನು ಷರತ್ತುಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿವ ಕೃತ್ಯಗಳಿಂದ ಸಾರ್ವಜನಿಕ ಶಾಂತಿ, ನೆಮ್ಮದಿಗೆ ಕಂಟಕಪ್ರಾಯನಾಗಿ ಪರಿಗಣಿಸಿರುವುದರಿಂದ, ಈತನ ದುಷ್ಕೃತ್ಯಗಳಿಂದಾಗಿ ಸಾರ್ವಜನಿಕರು ಭಯಭೀತಿಗೊಳ್ಳುವ ಪರಿಸ್ಥಿತಿಯನ್ನುಂಟು ಮಾಡಿರುತ್ತಾನೆ. ಈತನು ಭಾಗಿಯಾಗಿರುವ ಅಪರಾಧ ಪ್ರಕರಣಗಳಲ್ಲಿ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಂಡಿರುವುದನ್ನು ಲೆಕ್ಕಿಸದೆ, ತನ್ನ ಅಕ್ರಮ ಕಾನೂನು ಬಾಹಿರವಾದ ಚಟುವಟಿಕೆಗಳನ್ನು ಮುಂದುವರೆಸಿರುವುದರಿಂದ, ಸಾರ್ವಜನಿಕರು ಈತನ ವಿರುದ್ಧ ದೂರುಗಳನ್ನು ನೀಡಲು ಹಾಗೂ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸಾಕ್ಷಿ ನುಡಿಯಲು ಹೆದರುವ ಪರಿಸ್ಥಿತಿ ಉಂಟಾಗಿರುತ್ತದೆ.

4. ಇವರು ಪದೇ ಪದೇ ಅಪರಾಧ ಕೃತ್ಯಗಳಲ್ಲಿ ಭಾಗಿಯಾಗಿ, ನಂತರ ಪೋಲೀಸರಿಂದ ತಲೆ ಮರೆಸಿಕೊಂಡೇ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಜಾಮೀನು ಪಡೆದ ನಂತರದ ದಿನಗಳಲ್ಲಿಯೂ ಸಹ ಇವರ ನಡವಳಿಕೆಯಲ್ಲಿ ಬದಲಾವಣೆ ತಂದುಕೊಳ್ಳದೇ ನಿರ್ಭೀತಿಯಿಂದ ಅಪರಾಧ ಪ್ರಕರಣಗಳಲ್ಲಿ ಭಾಗಿಯಾಗುವ ಪ್ರವೃತ್ತಿಯುಳ್ಳವರಾಗಿರುತ್ತಾರೆ. ಇವರ ಈ ಅಪರಾಧಿಕ ನಡವಳಿಕೆಯಿಂದ ಬೆಂಗಳೂರು ನಗರದ ತಾವರೆಕೆರೆ, ಬ್ಯಾಡರಹಳ್ಳಿ, ಜ್ಞಾನಭಾರತಿ ಮತ್ತು ಕುಂಬಳಗೂಡು ಪೋಲೀಸ್ ಠಾಣೆಗಳಲ್ಲಿ 2012ರಿಂದ 2020ರವರೆಗೆ ಒಟ್ಟು 13 ಪ್ರಕರಣಗಳು ದಾಖಲಾಗಿರುತ್ತವೆ.

5. ಇವರ ವಿರುದ್ಧ ಹಲವು ಪ್ರಕರಣಗಳು ದಾಖಲಿಸಿದ್ದರೂ ಮತ್ತು ರೌಡಿ ಶೀಟ್‌ನ್ನು ತೆರೆದು ಎಚ್ಚರಿಕೆ ನೀಡಿ, ಸದರಿಯವರ ಅಪರಾಧಿಕ ಚಟುವಟಿಕೆಗಳ ಮೇಲೆ ನಿಗಾ ವಹಿಸಿದ್ದರೂ ಸಹ ತಮ್ಮ ಅಪರಾಧಿಕ ನಡವಳಿಕೆಯಲ್ಲಿ ಯಾವುದೇ ಸುಧಾರಣೆ ಮಾಡಿಕೊಂಡಿರುವುದಿಲ್ಲ. ರೂಢಿಗತ ಅಪರಾಧಿಯಾಗಿರುವ ಇವರು ಮತ್ತೆ ಅಪರಾಧಿಕ ಚಟುವಟಿಕೆಗಳಲ್ಲಿ ತೊಡಗಿಸಿಕೊಂಡು ಸಾರ್ವಜನಿಕ ಸುವ್ಯವಸ್ಥೆಯ ನಿರ್ವಹಣೆ ಮೇಲೆ ದುಷ್ಪರಿಣಾಮ ಬೀರುವ ಸಾಧ್ಯತೆ ಇರುವುದರಿಂದ ಗೂಂಡಾಕಾಯ್ದೆಯ ಅಧಿನಿಯಮ 13ನೇ ಪ್ರಕರಣದನ್ವಯ **ಬಂಧನ ಆದೇಶ ದಿನಾಂಕ 14.12.2020 ರಿಂದ ಒಂದು ವರ್ಷದವರೆಗೆ ಬಂಧನವನ್ನು ಮುಂದುವರೆಸಿ ಆದೇಶಿಸಿದೆ.**

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ
ಸಹಿ/–
(ಎಂ.ಆರ್.ಶೋಭಾ)
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ಒಳಾಡಳಿತ ಇಲಾಖೆ (ಕಾನೂನು ಮತ್ತು ಸುವ್ಯವಸ್ಥೆ)"

9. The English translation of the same is reproduced as under:

"GOVERNMENT OF KARNATAKA

No.HD/126/SST/2020 Karnataka Government Secretariat
Vidhana Soudha
Bangalore, dated: 30-01-2021

ORDER

The Deputy Commissioner, Bangalore City District has passed the order No.15/CRM(4) DTN/2020 dated 14-12-2020 against one Mr.Karthik@ Ullal Karthik son of Muniraju, 33 years, No.1169, Near Shani Mahathma Temple, Ullalu Satellite Town, Bangalore North Taluk, Bangalore City seeking approval for detention under the provisions of section 3(1)(2) of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug

Offenders, Gamblers, Goondas (Immoral Traffic offenders, slum Grabbers and Video or Audio pirates) Act, 1985. (Karnataka Act 12); and in furtherance the Government, under section 3(3) of the said Act, vide order No.HD 126SST/2020 dated 21-12-2020 has approved the same and accordingly under section 9 one Advisory Committee is formed and the said committee in its report dated 20-01-2021 has opined that "there are sufficient reasons for detention of the prisoner for one year".

2. Therefore The Government of Karnataka, exercising the powers vested under Act No.12, section (1) of the said Act, through the Deputy Commissioner, Bangalore city District, confirmed the order No.15/CRM(4)DTN/2020 dated 14-12-2020 passed against Mr.Karthik @ Ullal Karthik son of Muniraju, 33 years, No.1169, Near Shani Mahathma Temple, Ullalu Satellite Town, Bangalore North Taluk, Bangalore City.

3. The prisoner had involved in antisocial and unlawful criminal activities such as murder, extortion, attempt to murder, assault on Police who were on duty, life threat, ganza sale and such other heinous crimes, and as he has violated the norms of the bail thereby causing harm to public peace and harmony, and as he has continued with his criminal acts intimidating the general public the above said provision of the Law is invoked on him. He has been persistently taking part in criminal acts, threatening the complainants/witness persons, and people afraid of his threats were not coming to the Court for giving witness statements.

4. The said persons continued to indulge in criminal acts continuously and thereafter remained absconding from the eyes of the Police, and thereafter taking bail from the Hon'ble Courts, remains unchanged involving in criminal acts, and he has not reformed himself despite of several advises given to him. He is an habitual offender and against him, from 2012 to 2020 there were 13 criminal cases registered in Tavarekere, Byadarahalli, Jnanabharathi and Kumbalagodu Police Stations in Bengaluru City.

5. There are several criminal cases are there against this person and even after opening rowdy sheet and giving warning to the said person, with strict watch

> on all his activities, he has not reformed his character and conduct and has been an habitual offender persistently indulging in various criminal acts thereby causing breach of peace and harmony in the society, and leaving him at large will badly cause he maintenance of law and as such against him the order and as such the detention order is extended for one year from 14-12-2020, in pursuance of section 13 of the Act.
>
> For and on behalf and in the
> name of the Governor of Karnataka
>
> Sd/-
> (M.R.SHOBHA)
> Under Secretary to the Government,
> Dept. of Home Affairs (Law and Order)"

10. Meaning thereby, the State Government has nowhere in the aforesaid order or in the written statement submitted by it has stated that the representation of the detenue was considered by the Advisory Board or by the State Government in spite of there being a catagoric ground taken by the petitioner. Paragraphs-39, 40, 41 and 42 of the judgment delivered in the case of **Smt. Jayamma** (supra) are reproduced as under:

> "39. In a decision between Moosa Huseinsanghar and State of Gujarat [(1993) 1 SCC 511 : AIR 1994 SC 1479.] , wherein the Hon'ble Apex Court has observed relying upon various other earlier rulings in the following manner:
>
> > "The contents of Article 22(5) as well as the nature of duty imposed thereby on the detaining authority support the view that so long as there is a representation made by the detenu against the order of detention, the

> aforesaid dual obligation under Article 22(5) arises irrespective of the fact whether the representation is addressed to the detaining authority or to the Advisory Board or to both. The mode of address is only a matter of form which cannot whittle down the requirement of the constitutional mandate in Article 22(5) enacted as one of the safeguards provided to the detenu in case of preventive detention."
>
> It must, therefore, be held that merely because the representation was addressed to the Advisory Board and not to the State Government., did not absolve the State Government from the constitutional obligation flowing from Article 22(5) to consider the said representation."

40. In the last decision cited by the Learned Additional Advocate General between K.M. Abdulla Kunhi and Union of India [(1991) 1 SCC 476.] , wherein the Hon'ble Apex Court has made the following observation—

> "(I) The constitutional right to make representation under clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. However, the obligation of the government to afford to the detenu an opportunity to make representation and to consider such representation is distinct from its obligation to refer the case of detenu along with the representation to the Advisory Board under clause (4) of Article 22 read with Section 8(c) of the COFEPOSA Act to enable the Board to form its opinion and send a report to the government. It is implicit in clauses (4) and (5) of Article 22 that the government while discharging its duty to consider the representation, can not depend upon the views of the Board on such representation. It has To consider the representation on its own without being influenced by any such view of the Board. The obligation of the government to consider the representation is different from the obligation

> of the Board to consider the representation at the time of hearing the references. The government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers the representation and the case of the detenu to examine whether there is sufficient case for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the government. The right to have the representation considered by the Government is safeguarded by Clause (5) of Article 22 and it is independent of the consideration of the detenu's case and his representation by the Advisory Board under clause (4) of Article 22 read with Section 8(c) of the Act."

41. Last, but not least, the decision of the Hon'ble Apex Court between Golam Biswas and Union of India [(2015) 16 SCC 177.] , also play a dominant role. In this particular decision, the Hon'ble Apex Court has observed that—

> "Placement of detenu's representation before the Advisory Board is mandatory obligation of the competent authority and its binding effect is also considered. If the Advisory Board upholds the order of detention, it would be open to Central Government to continue detention or release detenu, depending on the merits of each case. The fact that opinion of the Advisory Board against continuance of order of detention is final vis-a-vis the appropriate Government is the motivating imperative for requiring appropriate Government to forward pending representation of detenu to Advisory Board so as to enable it to traverse entire panorama of grounds taken against detention order for an effective, timely and meaningful consideration of the case of detenu."

42. On materials reading and understanding the above said decisions, it is amply clear that the detaining

> authority has to provide an opportunity as early as possible complying all the requirements of law along with the detention order and the documents relied upon by the detaining authority to the detenu so as to enable him to make an effective representation to the detaining authority. If the Government itself is the detaining authority under sub-Clause (1) of Section 3 of Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video or Audio Pirates Act, 1985, then the Government has to consider the representation filed by the detenu, if the said power of detention is provided to any other authority under sub-Clause (3) of Section 3, the said detaining authority has to consider the representation filed by the detenu. Thereafter, the detention order containing grounds and other materials along with the representation has to be sent to the Advisory Board under Section 10 of the Act for its consideration. Then, under Section 11 of the Act, the Advisory Board after considering the materials placed before it, i.e., including representation of the detenu has to give its opinion to the State Government within seven weeks from the date of detention of the concerned. Thereafter, under Section 12 of the Act, the Government either confirm the detention order or vacate the order of detention of the person concerned depending on the report of the Advisory Board. However, if the Advisory Board has reported that there are 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."

11. In the light of the aforesaid judgment, as the representation was not considered either by the Advisory Board or by the State Government and as we are dealing with the right of personal liberty, the order of detention deserves to be quashed.

12. The Apex Court in the case of **K.M.Abdulla Kunhi and another (**supra) while dealing with the case of COFEPOSA has held that in case a detenue is having a constitutional right to make representation under Clause (5) of Article 22, by necessary implication guarantees the constitutional right to a proper consideration of the representation. The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law and the Advisory Board, on the other hand, considers the representation of the detenue to examine whether there is sufficient case for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the Government.

13. In the present case, the representation of the petitioner-detenue has not been considered either by the Government or by the Advisory Board. There is no averment made in the written statement filed by the State Government.

14. The other shocking aspect of the case is that in respect of detention order, which has been passed by the

Commissioner of Police affirmed by the State Government, the Inspector of Police has filed his affidavit in a casual manner. It has been stated that the petitioner has not given details with regard to his representation and has not filed any representation along with the amended petition.

15. In the present case, as the order of detention was passed by the Police Commissioner, it was the duty of the Commissioner of Police to file his affidavit along with the statement of objections.

16. As we are dealing with a case of personal liberty and the petitioner is in detention since 14.12.2020, this Court is of the opinion that the petition deserves to be allowed with cost of Rs.25,000/-. The petition is **allowed with the cost of Rs.25,000/-.** Though Rs.25,000/- is a meager amount, as it is a case of violation of personal liberty, however, keeping in view the totality of the facts and circumstances of the case, the cost is confined to Rs.25,000/- and the same be paid to the petitioner-detenue within a period of 30 days from today. It is further made clear that this Court has not expressed any opinion on merits in respect of the other grounds raised by the petitioner, and

this Court has considered only the ground raised by the petitioner relating to the submission of his representation and its non-consideration.

17. As this Court has set aside the order of detention, the continuation of the petitioner under detention is illegal. Hence, the Registrar General is directed to communicate this order passed by this Court to the Commissioner of Police, Bengaluru as well as the Senior Superintendent, Central Prison, Bengaluru, to pass consequential order forthwith, in case the petitioner is not required in other criminal cases.

With the aforesaid, the petition stands **allowed.**

SD/-
ACTING CHIEF JUSTICE

SD/-
JUDGE

TL