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The High Court of Madhya Pradesh

WP.1118.2021

[Anshul Jain Vs. State of M.P. and others]

Gwalior dated : 01.04.2021

Shri Sanjay Kumar Bahirani, learned counsel for the petitioner.

Shri Ankur Mody, learned Additional Advocate General for the State.

Learned counsel for the rival parties are heard.

1. The instant petition filed u/Art. 226/227 of the Constitution assails the order of preventive detention passed by District Magistrate Guna (M.P.) on 18/12/2020 by exercising powers u/S. 3(2) of National Security Act, 1980 (for brevity NSA) directing detaining of petitioner for a period of three months.

2. Since the grounds for detention reveal seizure of certain mis-branded and adulterated items from premises of petitioner, challenge to the order of detention is made primarily to the extent that the offence registered pursuant to the said raid did not lead to a situation which may give rise to prejudice to public order. However, later the petitioner has amended his petition and added few more grounds, namely that food items were not found to be unsafe for human consumption and lastly failure of

the State to demonstrate actual communication of order of detention and its grounds to the Central Govt. thereby raising ground of Secs. 3(2),(4) and 3(5) of the NSA.

2.1 The chronology of events for convenience and ready reference is detailed below:-

DATE	EVENT
26/10/2017	Crime No.744/2017 registered u/S. 4 of Gambling Act read with Ss. 420, 467 & 468 IPC against petitioner.
19/11/2020	Raid conducted in factory of petitioner from where samples of Dhaniya powder, Haldi Powder, Mirchi Khadi, Dhaniya Danthal, Shyam Masala Powder and colour were taken. Consequently, Crime No. 1231/2020 registered at Police Station Cantt., District Guna alleging offences punishable u/Ss. 272, 273 IPC and Ss. 26, 27(2)(e) 51, 52, 57 & 63 of Food Safety Act, 2006.
20/11/2020	Samples of seized materials were sent for chemical examination.
26/11/2020	Report from Laboratory was received communicating that Dhaniya powder, Mirchi powder, Shyam Masala Powder and Dhaniya Danthhal and colour were either mis-branded or adulterated.
11/12/2020	P.S. Cantt., Guna forwarded case to S.P. Guna for taking action against petitioner. Then S.P. Guna by letter dated 11/12/2020 vide P/7 recommended and forwarded the case to District Magistrate Guna for taking appropriate action against petitioner under NSA.
18/12/2020	Order of preventive detention is passed by D.M., Guna vide P/1 dated 18/12/2020.
19/12/2020	Petitioner is taken in physical custody.
19/12/2020	Petitioner is supplied with grounds

	for detention.
21/12/2020	D.M., Guna reports the matter to the State Govt. for approval.
22/12/2020	State Govt. receives the case from D.M., Guna.
23/12/2020	State Govt. approves the preventive detention order vide R/8.
24/12/2020	State Govt. forwarded the case to Govt. of India for confirmation u/S. 3(5) of NSA.
20/01/2021	Advisory Board confirms the order of prevention detention vide R/9.

2.2 After hearing learned counsel for rival parties this court is of the considered view that the instant petition deserves to be allowed essentially on 2 grounds:-

- (i) Failure of the State to establish that the order of detention and of approval by the State u/S. 3(4) of NSA was not actually communicated to the Central Govt. in terms of Sec. 3(5).
- (ii) That District Magistrate Guna took 3 days time from 18/12/2020 (the date of order of preventive detention) till 21/12/2020 (when the case was forwarded to the State Govt. by D.M., Guna for approval by the State Govt.) thereby failing to discharge statutory obligation contained in Sec. 3(4) of NSA.

2.3 As regards ground No.(i) in absence of any material to

show that order of approval by the State was actually communicated to the Central Govt. petitioner relies upon decision of coordinate bench at the Principal Seat at Jabalpur in the case of **Vivek Khurana Vs. State of M.P. in WP.1362/2020 decided on 20.05.2020**, relevant extracts of which is reproduced below:-

*“8. The State has replied to the same in paragraph 9 of its reply. According to the State, the communication of the report to the Central Government need not be made to the Petitioner as that is not a requirement u/s. 3(5) of the NSA. However, there is no categorical assertion by the State that the requirement of S. 3(5) of the NSA has been satisfied. Annexure R/5 at page 19 of the reply is the order of approval of the detention dated 17/01/2020. In the list of persons to whom the said order has been forwarded at the base of the order, is the Under Secretary to the Ministry of Home Affairs, New Delhi at S.No.3. Annexure R/5 is the copy of the approval u/s/ 3(4) of the NSA sent to the District Magistrate, Katni. The State has not filed a copy of the intimation specifically marked to the Central Government. Besides, it is also mandatory to enclose the grounds of detention and understandably so. The Communication of the approval to the Central Government u/s. 3(5), relating to a detenu’s*

*detention under the NSA, is not an empty formality but a solemn act to ensure that the Central Government is in a position to appreciate the necessity of detaining the Petitioner under S. 3(2) of the NSA Act. The non-dispatch of the grounds of detention to the Central Government can render further detention unlawful. In this case, the state has not find any document to reveal that (a) approval of the State Government dated 10/01/2020 has been dispatched to the Central Government as mandated under section 3 (5) of the NSA and (b) if sent, whether the said intimation included the grounds of detention pertaining to the Petitioner here.*

*9. Under the circumstances, we find that there has been no compliance of section 3 (5) of the NSA which renders the impugned order of detention bad in law and therefore the same set-aside. We ordered dated to 02/01/2020 is quashed. The Petitioner if he is in detention shall be released forthwith if not wanted in any other case. With the above the Petitioner is finally disposed of.”*

2.4 The ratio laid down in the aforesaid case applies squarely to the facts prevailing in the instant case as State Govt. has brought out no material to show that after forwarding approval order alongwith grounds to the Central Govt. vide letter dated

24/12/2020 R/8 the same was actually received by the Central Govt. or not and therefore this Court is left with no option but to draw adverse inference that the Central Govt. did not receive the said letter R-8 dated 24/12/2020 thereby violating the provision of Sec. 3(5) of NSA.

3. As regards ground no.(ii) of District Magistrate failing to report the fact of passing of order of preventive detention alongwith its ground to the State Govt. "forthwith" in terms of Sec. 3(4) of NSA, decision of Apex Court in the case of ***Hetchin Haokip Vs. State of Manipur and others [(2018) 9 SCC 562]*** is pressed into service, relevant portion of which is reproduced below:-

*"15. The expression "forthwith" under Section 3(4), must be interpreted to mean within reasonable time and without any undue delay. This would not mean that the detaining authority has a period of twelve days to submit the report (with grounds) to the State Government from the date of detention. The detaining authority must furnish the report at the earliest possible. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to unavoidable circumstances beyond the control of the authority and not because of administrative laxity.*

*16. In the present case, the District Magistrate submitted the report to the State Government on the fifth day (17.7.2017), after the date of the detention order (12.7.2017). The reason for the delay of five days is neither mentioned in the*

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*State Government's order confirming the detention order, nor in the impugned judgment. It was for the District Magistrate to establish that he had valid and justifiable reasons for submitting the report five days after passing the order of detention. As the decision in Keshav Nikanth Joglekar Vs. Commnr. of Police, 1956 SCR 653: AIR 1957 SC 28, holds, the issue is whether the report was sent at the earliest time possible or whether the delay in sending the report could have been avoided. Moreover, as the decision in Salim Vs. State of W.B., (1975) 1 SCC 653: 1975 SCC (Cri) 290, holds, there should be no laxity in reporting the detention to the Government. Whether there were administrative exigencies which justify the delay in sending the report must be explained by the detaining authority. In the present case, as we shall explain, this was a matter specifically placed in issue before the High Court. The District Magistrate offered no explanation. This would vitiate the order of detention."*

3.1 The ratio laid down in ***Hetchin Haokip (supra)*** while interpreting expression "**forthwith**" found in Sec. 3(4) squarely applies to the present case as the order of preventive detention herein was passed on 18/12/2020 whereby District Magistrate Guna took 3 long days time to forward case to the State Govt. for approval. Neither in the return nor in additional return of State there is any explanation as to why case was lying idle for 3 days from 19/12/2020 to 21/12/2020 in the office of District Magistrate, Guna.

3.2 The expression "forthwith" found in Sec. 3(4) of NSA obliges the State to explain each day's delay in forwarding the

case to the State Govt. for approval. Absence of explanation or the same being not satisfactory, renders the order of preventive detention, vitiated.

3.3 The concept of preventive detention is an anathema to the fundamental right of personal liberty. Though Constitution carves out an exception empowering the executive authority to exercise this extraordinary power of preventive detention to prevent occurrences of breach of public order but it is of utmost importance that procedure laid down for depriving this fundamental right is to be strictly followed, or else it would render the order of preventive detention nullity.

4. This Court has come across various cases in the recent past where on account of procedural lapses in following due process of law laid down in Sec. 3 and other provisions of NSA the order of preventive detention which may have been passed on justified grounds suffers annulment.

4.1 It is thus essential that State issue guidelines to all District Magistrates so that timeline provided in following due process of law u/S. 3 and other provisions of NSA are strictly adhered to by all District Magistrates/State Govt.

4.2 It is also seen that original record produced from office of concerned District Magistrate ordinarily does not contain following materials:-

- (i) The exact date of forwarding with proof of dispatch by the District Magistrate to the State for approval.
- (ii) The exact date with material to show receipt of the order of preventive detention by the State.
- (iii) The exact date of dispatch alongwith material of forwarding the order of approval by the State to the Central Govt.
- (iv) The exact date of receipt by the Central Govt. of order of approval of the State Govt. alongwith ground.
- (v) When an order of preventive detention is passed by District Magistrate/State against a person already in custody, then the order of preventive detention does not reveal in specific words that the competent authority was conscious of this fact and yet for reasons to be recorded in the order deems it necessary to preventively detain the person concerned.

4.3 This satisfaction of competent authority is to reflect from the order of preventive detention or else it may not stand the test of law laid down by Apex Court in “**Smt. Shashi Aggarwal Vs. State of U.P. and others [AIR 1988 SC 596]**”.

5. Consequently, this petition stands allowed to the following extent:-

*The impugned order dated 18/12/2020*

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*passed by District Magistrate, Guna (M.P.) Vide P/1, the order of approval by the State dated 23.12.2020 vide R/8 and as well as order of Advisory Board dated 20.01.2021 vide R/9 stand quashed.*

6. The Registry of this Court is directed to communicate copy of this order to the Chief Secretary of Govt. of M.P. and and Principal Secretary of Law and Legislative Affairs, Bhopal, M.P., for information and remedial action.
7. No cost.

**(Sheel Nagu)**  
**Judge**  
**01/04/2021**

**(Anand Pathak)**  
**Judge**  
**01/04/2021**

**(Bu)**

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