

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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Writ Petition No.14215/2020
(Mohammad Yunus Vs. State of M. P. and Another)

Writ Petition No.14216/2020
(Mohammad Rais Vs. State of M. P. and Another)

Writ Petition No.14218/2020
(Mohammad Rafiq Vs. State of M. P. and Another)

Writ Petition No.14256/2020
(Azad Shah Vs. State of M. P. and Another)

Indore, dated 06/10/2020

Shri Manish Vijayvargiya, learned counsel for the petitioner(s).

Shri Vivek Dalal, learned Additional Advocate General for the respondent / State.

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No.14215/2020 are narrated hereunder.

02- The petitioner before this Court has filed present petition as a Habeas Corpus writ petition being aggrieved by order dated 04/09/2020 by which his brother *Hakim* aged about 19 years has been detained under the National Security Act, 1980.

03- The petitioner's contention is that the petitioner's brother, who is only 19 years of age, was detained by the police on 23-24/08/2020 (midnight) and a case was registered against him for an offence under Section 25 of the Arms Act. He has also been granted bail on 11/09/2020 in the aforesaid matter.

04- The petitioner has further stated that his further while his brother

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was in jail in respect of offence under Section 25 of the Arms Act, was informed on 04/09/2020 that District Magistrate in exercise of powers conferred under Section 3 of National Security Act, 1980 has passed an order of detention on 04/09/2020. The contention of the learned counsel for the petitioner is that the order of detention has been passed in a vindictive manner. The brother of the petitioner is not a hardcore criminal. By registering only one case under Section 25 of the Arms Act that too when he was in jail, the order of detention has been passed.

05- Learned counsel for the petitioner has also argued before this Court that the order of detention was required to be approved within twelve days and the same has not been done. It has been stated that only because he has participated in the possession of *Muharram*, the impugned order has been passed.

06- A detailed reply has been filed on behalf of the State Government and the State Government in reply has stated that the petitioner's brother was arrested for an offence under Section 25 of the Arms Act on intervening night of 23-24/08/2020 and a First Information Report was registered at Crime No.0420/2020. The solitary case referred against the brother of the petitioner as case number No.0420/2020 under Section 25 of the Arms Act.

07- The reply further reveals that an entry was made in the *Rojnamcha*, while brother of the petitioner was in jail on 30/08/2020, that brother of the petitioner and other co-accused persons on the eve of

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Muharram last year have taken out a procession carrying swords and therefore, to maintain public order in the city and from preventing the brother of the petitioner in acting any manner prejudicial to the security of the State, the Superintendent of Police has submitted a report on 03/09/2020 to the District Magistrate and the District Magistrate has passed an order on 04/09/2020 detaining the brother of the petitioner under the National Security Act, 1980.

08- It has been stated that the grounds of detention was served to the petitioner's brother along with supported documents on 05/09/2020 when he was in jail and the State Government has accorded approval to the detention order on 14/09/2020. The approval granted by the State Government was served to the petitioner's brother through letter dated 17/09/2020 and the matter is still pending before the Advisory Board.

09- This Court has carefully gone through the writ petition as well as reply filed by the respondents. Section 3 of the National Security Act, 1980 reads as under:-

“3. Power to make orders detaining certain persons.– (1)
The Central Government or the State Government may, –

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public

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order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.— For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) 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 (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an 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.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate 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:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

10- This Court really fails to understand that based upon a *Rojnamcha* Entry dated 30/08/2020 in which it was stated by the police that the

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brother of the petitioner has participated in the *Muharram* procession last year carrying swords, how he can be a threat to law and order problem. Participation in *Muharram* last year, even if it is presumed to be correct, has got no relevance with the procession which was to take place this year. There is no entry in the last year *Rojnamcha* also to that effect.

11- Not only this, at the time the order of detention was passed, the brother of the petitioner was in jail on account of a case under Section 25 of the the Arms Act. The report of Superintendent of Police dated 03/09/2020 reads as under:-

— : : “कार्यालय पुलिस अधीक्षक जिला राजगढ़ (ब्यावरा) म. प्र. : : —

क/पुअ/राज/रीडर/एनएसए/04/20 दिनांक 03/09/2020

प्रति,

जिला दण्डाधिकारी
जिला राजगढ़ (म.प्र.)

विषय:-अनावेदक हकीम पिता अब्दुल खालिद उम्र 19 साल नि. वजीर हुसैन मोहल्ला थाना सारंगपुर जिला राजगढ़ को राष्ट्रीय सुरक्षा अधिनियम 1980 की धारा 3(2) के अंतर्गत निरोध में लिये जाने हेतु प्रतिवेदन।

महोदय,

निवेदन कर लेख है कि कस्बा सारंगपुर कानून व्यवस्था की दृष्टि से अत्यन्त संवेदनशील कस्बा है यहां छोटी छोटी घटनाओं को साम्प्रदायिक स्वरूप देने की प्रवृत्ति यहां के आमजन में व्याप्त है इस कारण कई बार साम्प्रदायिक दंगे हुये है। यहां पर साम्प्रदायिक दंगे होने का एक प्रमुख कारण अवैध हथियार की खरीदी बिक्री व प्रदर्शन हो रहा है। ऐसी घटनायें कस्बा के अन्य समुदाय के लोगो की धार्मिक भावना को आहत करती है। अनावेदक हकीम पिता अब्दुल खालिद उम्र 19 साल नि. वजीर हुसैन मोहल्ला थाना सारंगपुर मे अवैध तलवारो को खरीद कर व बनाकर बेचता है, जिससे शातिर लोग धार्मिक जुलुस मे उन तलवारों का प्रदर्शन करते है जिससे कस्बा सारंगपुर की शांति व्यवस्था खराब होती है व दंगे होने की संभावना रहती है।

इसके किये गये अपराध का विस्तृत ब्यौरा निम्नानुसार है :

अप0कं0 420/20 धारा 25 आर्स एक्ट

दिनांक 24:08:20 को मुखबिर सूचना पर उनि अंकुर चौबे द्वारा आरोपी हकीम पिता अब्दुल खालिद उम्र 19 साल नि. वजीर हुसैन मोहल्ला को उसके साथी आरोपी सलमान पिता मो. रफीक उम्र 20 साल नि. वजीर हुसैन

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मोहल्ला को अवैध 04 तलवार व तलवार बनाने के 70 तलवार के मुठ जप्त कर आरोपियो को गिर. कर थाना सारंगपुर मे अपक्रं.420/20 धारा 25 आर्म्स एक्ट का कायम कर विवेचना मे लिया गया।

नकल रोज0सान्हा0 32/02/09/2020

बजे सुचना मुझ थाना प्रभारी निरीक्षक हाकम सिंह पंवार से है कि कस्बा सारंगपुर कानून व्यवस्था की दृष्टि से अत्यन्त संवेदनशील कस्बा है यहां छोटी छोटी घटनाओं को साम्प्रदायिक स्वरूप देने की प्रवृत्ति यहां के आमजन में व्याप्त है इसा कारण कई बार साम्प्रदायिक दंगे हुये है। यहां पर साम्प्रदायिक दंगे होने का एक प्रमुख कारण अवैध हथियार खरदी विक्री व प्रदर्शन हो रहा है। ऐसी घटनायें कस्बा के अन्य समुदाय के लोगो की धार्मिक भावना को आहत करती है। अनावेदक हकीम पिता अब्दुल खालिद उम्र 19 साल नि. वजीर हुसैन मोहल्ला थाना सारंगपुर कस्बा सारंगपुर में अवैध तलवारो को खरीद कर व बनाकर बेचता है, जिससे शातिर लोग धार्मिक जुलुस मे उन तलवारो का प्रदर्शन करते है जिससे कस्बा सारंगपुर की शांति व्यवस्था खराब होती है व दंगे होने की संभावना रहती है। अनावेदक को राष्ट्रीय सुरक्षा अधिनियम के अंतर्गत प्रतिबंधित करना अति आवश्यक हो गया है यदि अनावेदक को राष्ट्रीय सुरक्षा अधिनियम के अंतर्गत प्रतिबंधित नही किया गया तो क्षेत्र में अशांति फेलायेगा। अतः अनावेदक के विरुद्ध राष्ट्रीय सुरक्षा अधिनियम 1980 की धारा 3(2) के अन्तर्गत निरोध में लिये जाने के अंतर्गत कार्यवाही किया जाना पूर्णतः युक्ति युक्त एवं औचित्य पूर्ण होने से अनावेदक के विरुद्ध एनएसए क्र.02/20 तैयार किया जाकर आदेशित किये जाने हेतु जिला दण्डाधिकारी महोदय को प्रेषित किया जाता है। रिपोर्ट बाबत् करने तैयार जिला एनएसए क्र. 02/20 अनावेदक हकीम पिता अब्दुल खालिद उम्र 19 साल नि. वजीर हुसैन मोहल्ला के विरुद्ध

अनावेदक हकीम पिता अब्दुल खालिद उम्र 19 साल नि. वजीर हुसैन मोहल्ला थाना सारंगपुर कस्बा सारंगपुर मे अवैध तलवारो को खरीद कर व बनाकर बेचता है, जिससे शातिर लोग धार्मिक जुलुस मे उन तलवारो का प्रदर्शन करते है जिससे कस्बा सारंगपुर की शांति व्यवस्था खराब होती है व दंगे होने की संभावना रहती है। कस्बा सारंगपुर एवं आसपास के क्षेत्रों में लड़ाई झगडा, एवं तनाव का माहौल, बना रहता है। इसका समाज मे स्वतंत्र रहना घातक है। जिससे कस्बा सारंगपुर की लोक व्यवस्था पर विपरीत प्रभाव पड रहा है। इसका इतना आतंक है कि आमजन इसके भय के कारण थाने में रिपोर्ट करने व सूचना देने तक नही आ पाते है। गवाह को भी इतना डरा देता है कि वे इसके प्रकरणों में या तो गवाही नही देने जाते है या डर के मारे इसके विरुद्ध गवाही नही देते है। उक्त गतिविधियों को देखते हुए अनावेदक को राष्ट्रीय सुरक्षा अधिनियम के अंतर्गत प्रतिबंधित करना अति आवश्यक हो गया है यदि अनावेदक को राष्ट्रीय सुरक्षा अधिनियम के अंतर्गत प्रतिबंधित नही किया गया तो क्षेत्र में अशांति फेलायेगा। अतः अनावेदक के विरुद्ध राष्ट्रीय सुरक्षा अधिनियम 1980 की धारा 3(2) के अंतर्गत निरोध में लिये जाने हेतु प्रतिवेदन सादर प्रेषित है।

संलग्न :-

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| 5. सूची आपराधिक रिकार्ड | – 01 किता |
| 6. सूची आपराधिक दस्तावेज | – 01 किता |
| 7. प्रतिवेदन में उल्लेखित की प्र.सू.प्रतिवेदन/नकल
जरायम की नकल | – 01 किता |
| 8. सूची गवाहान | – 01 किता |
- पुलिस अधीक्षक
जिला राजगढ़”

The aforesaid report contains the entire material on the basis of which National Security Act, 1980 has been slapped upon the brother of the petitioner.

12- The undisputed facts also reveal that the order detaining the brother of the petitioner under the National Security Act, 1980 was passed on 04/09/2020 and the order dated 04/09/2020 reads as under:-

“न्यायालय जिला मजिस्ट्रेट, जिला राजगढ़ (ब्यावरा) म. प्र.

क्रमांक 109/प्रवाचक/2020

राजगढ़, दिनांक 04 सितम्बर 2020

आदेश

चूँकि मेरा, नीरज कुमार सिंह जिला मजिस्ट्रेट, जिला राजगढ़ (ब्यावरा) म.प्र. का यह समाधान हो गया है कि हकीम पिता अब्दुल खालिद उम्र 19 वर्ष, निवासी वजीर हुसैन मोहल्ला सारंगपुर थाना सारंगपुर, तहसील सारंगपुर जिला राजगढ़ को लोक व्यवस्था के अनुरक्षण के प्रतिकूल किसी भी रीति में कार्य करने से रोकने के अभिप्राय से उसको राष्ट्रीय सुरक्षा अधिनियम, 1980 की धारा-3 की उपधारा (2) के अधीन निरुद्ध करना आवश्यक है।

अतएवं उक्त अधिनियम की धारा 3 की उपधारा (2) सहपठित धारा (3) तथा म.प्र. शासन, गृह विभाग (सी-अनुभाग) के आदेश क्रमांक-एफ 31-05-1998-दो-सी-1 भोपाल दिनांक 01 जुलाई, 2020 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए मैं, नीरज कुमार सिंह, जिला मजिस्ट्रेट, जिला राजगढ़ (ब्यावरा) म. प्र. एतद् द्वारा आदेश देता हूँ कि हकीम पिता अब्दुल खालिद उम्र 19 वर्ष, निवासी वजीर हुसैन मोहल्ला सारंगपुर थाना सारंगपुर तहसील सारंगपुर जिला राजगढ़ को निरुद्ध किया जाए तथा केन्द्रीय जेल, भोपाल में रखा जाए।

(नीरज कुमार सिंह)
जिला मजिस्ट्रेट”

The order reflects that a youth of only 19 years of age with one

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criminal case that too under Section 25 of the Arms Act has become a threat to the society (law and order).

13- The order approving the detention was passed on 17/09/2020 and the same reads as under:-

“GOVERNMENT OF MADHYA PRADESH
HOME (C-SECTION) DEPARTMENT

ORDER

Bhopal, Dated 17/09/2020

F. NO.31-313/2020/II/C-1 : In exercise of the powers conferred by sub-section (4) of section 3 of the National Security Act, 1980 (No. 65 of 1980) the State Government has approved the detention order dated 04/09/2020 passed by the District Magistrate, Rajgarh against Hakim S/o Abdul Khalid R/o Distt. Rajgarh under sub-section (2) of section 3 of the said Act on dated 14/09/2020.

By order and in the name of the
Governor of Madhya Pradesh,

Sd/-

(Shri Das)

Under Secretary to Government of
Madhya Pradesh Home Department

F.NO.31-313/2020/II/C-1

Bhopal, Dated 17/09/2020

Copy forwarded to :-

- 1- District Magistrate, Rajgarh for information and necessary action.
- 2- The Superintendent, Central Jail Indore.
- 3- Under Secretary to Ministry of Home Affairs, NDCC II Building Jai Singh Road, New Delhi

Sd/- 17.09.2020

(Shri Das)

Under Secretary to Government of
Madhya Pradesh Home Department”

The order dated 17/09/2020 reflects that the approval has been granted on 14/09/2020. In case the approval was granted on 14/09/2020 why the order was not issued on the same day. It appears that the respondents have antedated the order of approval.

14- This Court while dealing with a similar writ petition i.e. **Writ Petition**

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No.13234/2020 (Tanveer Patel Vs. State of M. P. and Others) on
15/09/2020 has passed the following order:-

“14- This Court really fails to understand that if the approval was granted on 08/09/2020, why the approval order has been brought to the notice of this Bench after hearing was concluded that too the order is dated 15/09/2020. Resultantly, as the order is dated 15/09/2020 and the approval was certainly not granted by issuing any order within “twelve days” as required under under Section 3(4) of the Act of 1980.

15- Preventive detention means detention of a person without trial. The order of preventive detention is issued by an executive authority in its subjective satisfaction. Thus, preventive detention involves a serious encroachment on the right of personal liberty. The law of preventive detention is strictly construed, and compliance with procedural safeguards is insisted upon [**Union of India Vs. Paul Manickam** reported in (2003) 8 SCC 342].

16- The Hon'ble Supreme Court of India has gone to point out that personal liberty is one of the most cherished values of mankind. As the power of preventive detention encroaches upon personal liberty, it is the solemn duty of the Courts to ensure that this power is exercised strictly in accordance with the requirements of the Constitution and the law, and the concerned person is not deprived of his personal liberty otherwise than in accordance with law.

17- On account of procedure irregularities by the authorities, the Hon'ble Supreme Court in the case of **lcchu Devi Vs. Union of India** reported in (1980) 4 SCC 531 has set aside the detention under the COFEPOSA. In the case of **lcchu Devi**, there was an undue delay in supplying to her the copy of document and the material relied upon in the grounds of detention and there was unreasonableness, delay in considering the representation to the detenu.

18- In the considered opinion of this Court, keeping in view the fact that cases of 2005 and 2007 have been taken into account including the fact that there has been a violation of prohibitory order issued under Section 144 of the Code of Criminal Procedure, 1973, the action of the respondent / District Magistrate suffers from vice of non-application of mind and deserves to be quashed.

19- In the present case, the order of detention has been passed only because the petitioner has participated in a procession on the eve *Muharram* and that itself is certainly not a ground for detaining him by passing an order under the National Security Act, 1980.

20- The order passed by the District Magistrate refers to news published in *Nai Duniya, Dainik Bhaskar, Peoples Samachar*. The District Magistrate has formed his opinion on the basis of media trial. It is unfortunate that media trial has become very common these days and now the adjudicating authorities are delivering their judgments based upon media trials. Resultantly, there appears to be total non-

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application of mind on the part of the District Magistrate in passing the impugned order and therefore, the impugned order is here by quashed. The writ petition is allowed and the respondents are directed to set the petitioner at liberty forthwith.”

In light of the aforesaid judgment, this Court is of the opinion that the order of detention has not been confirmed within the statutory period i.e. within twelve days and therefore, the order of detention is no longer in force.

15- By taking in to account the sole case in which the petitioner was already in jail, the order of detention has been passed. The action of the respondent District Magistrate suffers from vice of non-application of mind and deserves to be quashed.

16- The another shocking aspect of the case is that a *Rojnamcha* Entry of 02/09/2020 has also been made to be the basis for passing the order of detention under the National Security Act, 1980. The *Rojnamcha* Entry reflects that the petitioner's brother is involved in manufacturing swords and in those circumstances it has become necessary to pass an order of detention.

17- In reply the respondents in reply to paragraphs 5.2 to 5.5 has stated as under:-

“In reply to the contents of para 5.2 to 5.5 it is submitted that on 24.08.2020 on receiving a secret information the present petitioner alongwith other co-accused persons were arrested for the offence punishable under section 25 of the Arms Act, the prosecution has seized four swords along with 79 sword handles from the possession of accused persons and they were arrested for the offences punishable under Section 25 of the Arms Act. The Superintendent of Police has submitted report before the Respondent No.2. The aforesaid documents reflects particularly the *Rojnamcha* Entry dated 30.08.2020 that the present petitioner and other co-accused persons last year on

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the festival of Moharram a procession was taken out and people who have participated in the procession were carrying swords in their hands which caused a law and order situation in the city and caused fear in the public. Looking towards the quantity recovered from the petitioner and, therefore, to maintain the public order in the city and from preventing the petitioner from acting in any manner prejudicial to the security of the State, the Superintendent of Police submitted its report dated 03.09.2020 before District Magistrate. Copy of the report of S.P., alongwith documents is annexed herewith as **ANNEXURE R/1.**”

In the aforesaid paragraph, it has been stated that last year the brother of the petitioner and other persons during *Muharram* took out a procession with swords. In case, if the brother of the petitioner and other persons took out a procession with swords last year, why the State Government has not filed the last year's *Rojnamcha* Entry. It appears that only in order to detain the petitioner's brother under the National Security Act, 1980 such an incorrect statement is being made before this Court and therefore, the petition deserves to be allowed and is accordingly allowed with a cost of Rs.10,000/-.

18- In other identical cases also, the order of detention has not been approved within twelve days and similar statement has been made that the persons detained took out procession last year on *Muharram* carrying swords. The other identical petitions are also allowed with a cost of Rs.10,000/- each.

19- The brother of the petitioner and other persons who have been detained on account of the order passed under National Security Act, 1980 be released forthwith. The impugned order of detention in the present case passed under the National Security Act, 1980 and other

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connected matters are set aside with a cost of Rs.10,000/- each.

20- The order under the National Security Act, 1980 has to be passed based upon cogent material, based upon the cases pending against the person keeping in mind that he has become a threat to the society as well as other factors as contained under the National Security Act, 1980. Passing of an order under the National Security Act, 1980 on singular case / frivolous grounds are diluting the effect of orders passed under the National Security Act, 1980. An order can be passed certainly against a person from preventing him from acting in any manner prejudicial to the security of state or from acting any manner prejudicial to the maintenance of public order, etc. and therefore, the exercise of passing an order of preventing detention in a casual manner frustrates the object of the National Security Act, 1980 itself. The preventive detention involves the serious encroachment on the right of personal liberty and therefore, it is the solemn duty of the Courts to ensure that this power is exercised strictly in accordance with the requirement of the Constitution and the law and the concern person is not deprived of his personal liberty otherwise in accordance with law. With the aforesaid, all the writ petition stand allowed.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

(SHAILENDRA SHUKLA)
J U D G E

Tej

Digitally signed by
Tej Prakash Vyas
Date: 2020.10.07
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