

High Court of Madhya Pradesh:**Bench at Indore**

Case Number	WP No.9878/2021
Parties Name	Sonu Bairwa Vs. State of M.P. & Ors.
Date of Order	07/07/2021
Bench	<u>Division Bench:</u> Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri. Mudit Maheshwari, learned counsel for petitioner. Shri Pushyamitra Bhargava, learned A.A.G for respondents/ State.
Law Point	<p>* National Security Act, 1980 – Section 3(2) – It can be invoked in three contingencies and a citizen can be detained:</p> <p>i) for preventing him from acting in any manner prejudicial to the security of State.</p> <p>ii) for preventing him from acting in any manner prejudicial to the maintenance of public order.</p> <p>iii) for preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community.</p> <p>*Interpretation of Statute – Use of “Explanation” – Explanation may be added to include something within or to exclude something from the ambit of the main enactment or the connotation of some word occurring in it.</p> <p>*“Explanation”- The object of an explanation to a statutory provision is ordinarily:</p> <p>(a) to explain the meaning and intendment of the Act itself;</p> <p>(b) where there is any obscurity or</p>

vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful;

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment; and

(e) it cannot, however, take away a statutory right with which any person, under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

***Section 3(2) of NSA Act- 'Explanation' –** The explanation does not eclipse the entire main provision namely Section 3(2) of NSA Act. Indeed, it only takes out the aspect of blacklisting of certain commodities which are covered by The Prevention of Blackmarketing And Maintenance of Supplies of Essential Commodities Act, 1980.

***“Public Order” – Section 3 of NSA Act –** It is very wide and during pandemic like situation, action of blacklisting of essential drug like remedisivir brings the action within the purview of “public order”.

***Acting under dictate –** The social media post of Chief Minister does not essentially shows that it was read out and acted upon by the District Magistrate. The contents of social media post cannot be equated with an administrative order unless a direct nexus between the post and detention order is established.

	<p>*Precedential Value of a judgment-A judgment of a Court cannot be read as Euclid's Theorem. This is trite that a judgment of a Court cannot be read as <i>Euclid's</i> theorem [See <i>Bharat Petroleum Corporation Ltd. Vs. N.R. Vairmani (2004) 8 SCC 579, C.Ronald Vs. UT Andaman & Nicobar Islands (2011) 12 SCC 428, Deepak Bajaj Vs. State of Maharashtra (2008) 16 SCC 14</i>]. This is equally settled that little difference in facts or an additional fact may make a lot of difference in the precedential value of a decision.</p> <p>*NSA Act 1980- A person already under arrest can still be detained under the NSA Act if three conditions are satisfied:-</p> <ul style="list-style-type: none"> i) detaining authority had knowledge about detenu's custody, ii) there exists real possibility of detenu's release on bail and, iii) necessity of preventing him from indulging in activities prejudicial to the security of State or maintenance of public order upon his release on bail.
Significant Numbers	13 to 30

ORDER
(Passed on 07th July, 2021)

Sujoy Paul, J:-

The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution to assail the order dated 17/5/2021 whereby the District Magistrate in exercise of power u/S.3(2) read with (3) of National Security Act, 1980 (for short "NSA Act") detained the petitioner.

2. The petitioner was detained by District Magistrate by stating that the petitioner indulged in black marketing of Remedesivir injections. Two such injections were recovered from him. In a situation when highest numbers of Covid patients were there at Indore, the act of petitioner has caused serious threat to the 'public

order'. In view of aforesaid conduct, the detention order was passed and the grounds therefor were supplied to him.

3. Criticizing this order Shri Maheshwari, learned counsel for petitioner submits that detention order was supplied to the uncle of the petitioner and it was not supplied to his parents. This runs contrary to the observations made by Supreme Court in *A.K. Roy Vs. Union of India (1982) 1 SCC 271*.

4. The next contention is that the petitioner was already in custody because of an FIR lodged prior in time. Subsequently, petitioner was formally arrested and detained under the NSA Act. The District Magistrate and State government in relevant documents mentioned the status of petitioner as "absconding". This information was factually incorrect and had potential to adversely affect the process of application of mind by the State government, Advisory Board or Central Government. Reliance is placed on a recent order passed by this Court in W.P. No.9792/2021 (*Yatindra Verma Vs. State of MP*) decided on 24.06.2021.

5. Shri Maheshwari placed reliance on various social media posts of the Chief Minister of the State wherein he expressed his opinion that the persons indulged in black marketing of Remedesivir injections are liable to be detained under the NSA Act. The order of detention passed by District Magistrate amounts to acting under dictate is the next contention of Shri Maheshwari. Thus, subjective satisfaction and element of application of mind was absent on the part of the District Magistrate. By taking assistance of *(1975) 2 SCC 81 (Khudiram Das Vs. State of West Bengal & Ors.)* and *2020 SCC Online All. (Dr. Kafeel Khan vs. State of U.P.)* it is submitted that in a matter of this nature where fundamental rights and right of freedom of a citizen sought to be taken away, the authorities were required to act with utmost care and caution. Reliance is placed to 'Explanation' to sub-section (2) of Sec 3 of NSA Act. It is submitted that the

Explanation, in no uncertain terms, makes it clear that if somebody acted in a manner which is prejudicial to the maintenance of supplies and services essential to the community but such act falls within the ambit of The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Blackmarketing Act) such person cannot be detained under the NSA Act. To elaborate, it is submitted that Sec.3(29) of General Clauses Act talks about “Indian Laws” which is wide enough to include the The Essential Commodities Act, 1955 and also the blackmarketing Act. The “drug” is the first entry in the Schedule appended to The Essential Commodities Act, 1955. Thus, the detention under the NSA Act runs contrary to the aforesaid explanation. Lastly, Shri Maheshwari submits that a person already arrested can very well be detained under the NSA Act, but in order to detain him further, certain conditions are to be fulfilled which were considered by this Court in extenso in *Yatindra Verma* (supra). These conditions were not satisfied in the instant case. It was not mentioned that there is a likelihood of petitioner’s indulging in the same activity or committing act of blackmarketing of Remedisivir injection again. For these cumulative reasons, the detention order is liable to be set aside.

6. *Per contra*, Shri Pushyamitra Bhargava, learned A.A.G for the State fairly submits that the first ground relating to “absconion” is covered by the view taken by this Court in *Yatindra Verma* (supra). However, a careful reading of *Yatindra Verma* (supra) shows that the reason for setting aside the detention order was not providing the right of representation to the same authority namely District Magistrate. The detention order in the said case was not interfered with because the petitioner therein was shown to be “absconding”.

7. So far question of “subjective satisfaction” and application of mind is concerned, learned A.A.G urged that the necessary ingredients on the basis of which NSA Act can be invoked were taken care of and

only thereafter impugned order was passed. By taking this Court to the FIR (Annexure R/2) and report of Superintendent of Police (Annexure R/7), it is contended that the action of petitioner in indulging in black marketing of Remedesivir became a threat to “public order”. Indore, town of Madhya Pradesh had the highest number of Covid patients. There was severe scarcity of injections, oxygen, beds etc. The petitioner’s act was detrimental to “public order” and, therefore, NSA Act was rightly invoked.

8. Furthermore, it is contended that purpose of communicating the detention order to the detenu and the family members was to make them aware about grounds of detention and detention order so that they can take legal recourse against it. If order is communicated to petitioner’s paternal uncle, it cannot be said that information has not reached to the person concerned. No prejudice is caused to the petitioner.

9. So far explanation to Sec.3(2) of NSA Act is concerned, learned counsel for State submits that a careful reading of 'Explanation' shows it talks about “maintenance of supplies and services essential to the community”. It is further argued that a careful reading of Sec.3(1)(b) of the Blackmarketing Act shows that it is in two parts. In order to treat a commodity as essential commodity, twin conditions are to be satisfied namely; the commodity must be defined as an essential commodity under the Act of 1955 and a provision has been made in any other law in relation to the said commodity. In the instant case, in absence of any such provision being made, the ingredients of Sec.3(1)(b) are not satisfied. This argument of petitioner thus deserves rejection.

10. The next contention of learned A.A.G is that in the case of *Yatindra Verma* (supra) an oxyflow meter which was not a drug was found in his possession whereas in the instant case an essential drug namely Remedesivir was found in his possession. There is no flaw in

decision making process. In absence thereof, in view of recent order passed by this Court in WP No. 9529/2021 (*Smt. Monica Tripathi Vs. State of MP & Ors.*) no interference is warranted.

11. The parties confined their arguments to the extent indicated above.

12. We have bestowed our anxious consideration on rival contentions and perused the record.

13. The interesting conundrum relating to liberty and regarding extent of liberty and aspect of curtailment thereof is wonderfully explained by *K.K. Mathew, J.* in *Smt. Indira Nehru Gandhi vs. Raj Narain (1975 (Supp.) SCC 1)*:-

“the major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence; and the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these means in the ever shifting tangle of human affairs.”

14. The first grievance put forth by petitioner is that in the instant case, the District Magistrate and other authorities passed the orders mechanically. This runs contrary to law laid down by Supreme Court in *Khudiram Das (supra)* and judgment of Allahabad High Court in *Dr. Kafeel Khan (supra)*. This Court in its recent order passed in *Yatindra Verma (supra)* opined that when a detenu was not absconding and yet the authorities mentioned in their orders that he was absconding, it shows non-application of mind or acting in a mechanical manner. Thus, there is no hesitation in holding that the orders to the extent petitioner was shown to be absconding are passed without proper application of mind. However, it is noteworthy that the order of detention in case of *Yatindra Verma* was not set aside for incorrectly mentioning the word “absconding”. On the contrary the operative reason for setting aside the detention order in the said case was that detenu's valuable right to make a representation against the

detention order to the same authority who passed the detention order was infringed and such denial has vitiated the detention order.

15. The learned counsel for the petitioner has taken pains to contend that present petitioner is similarly situated qua *Yatindra Verma (supra)*. The language employed in their detention orders are identical, hence petitioner is entitled to get similar treatment. The argument on the first blush appears to be attractive, but lost much of its shine on closure scrutiny. In *Yatindra Verma (supra)*, the petitioner therein was carrying an oxyflow meter and allegation was that he was trying to blackmarket it, whereas in the instant case, the petitioner was allegedly carrying remedesivir injections, a life saving /essential drug to fight corona virus. The SP's report in the instant case shows that the petitioner was carrying those injections. The city of Indore was struggling to cope up the acute shortage of drugs, oxygen, beds etc. because of corona pandemic. Blackmarketing of remedesivir injection has direct impact on "public order". The petitioner, who was already detained, if released could indulge into same activity because the scarcity of remedesivir is still there was the report of SP which was relied upon by District Magistrate.

16. In the factual backdrop of this case, the necessary parameters on which a person already under arrest can be detained under the NSA Act are satisfied. The judgment of *Yatindra Verma (supra)* cannot be mechanically pressed into service in this case. This is trite that a judgment of a Court cannot be read as *Euclid's* theorem [See *Bharat Petroleum Corporation Ltd. Vs. N.R. Vairmani (2004) 8 SCC 579, C.Ronald Vs. UT Andaman & Nicobar Islands (2011) 12 SCC 428, Deepak Bajaj Vs. State of Maharashtra (2008) 16 SCC 14*]. This is equally settled that little difference in facts or an additional fact may make a lot of difference in the precedential value of a decision (See *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd & Ors.(2003) 2 SCC 111*).

17. A person, who is already in custody can still be detained under NSA Act if i) detaining authority had knowledge about detenu's custody, ii) there exists real possibility of detenu's release on bail and, iii) necessity of preventing him from indulging in activities prejudicial to the security of State or maintenance of public order upon his release on bail. In the instant case, all the aforesaid ingredients were satisfied. (See: *Kamini Yadav vs. State of MP & Ors.* - WP No.25986/2018) and judgment of Supreme Court reported in (2012) 7 SCC 181 (*Konungjao Singh vs. State of Manipur & Ors.*).

18. The Apex Court in (1986) 4 SCC 407 (*Rajkumar Singh vs. State of Bihar*) opined as under:-

“Preventive detention as reiterated as hard law and must be applied with circumspection rationally, reasonably and on relevant materials. **Hard and ugly facts make application of harsh laws imperative.**”
(*Emphasis supplied*)

19. Blackmarketing of a drug like remedesivir in days of extreme crisis is certainly such an ugly act and fact which can very well be a reason for invoking Section 3 of NSA Act against the petitioner by District Magistrate.

20. *Section 3(2) of NSA Act* and explanation reads as under:-

“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 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 Blackmarketing 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.”

(Emphasis supplied)

21. The use of “explanation” in a statute is an internal aid to construction. *Fazal Ali J in (1985)1 SCC 591 (S. Sundaram Pillai & Ors. vs. V.R. Pattabiraman & Ors.)* culled out from various judgments of Supreme Court the following as objects of an explanation to a statutory provision:-

(a) to explain the meaning and intendment of the Act itself;

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful;

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment; and

(e) it cannot, however, take away a statutory right with which any person, under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

This principle is consistently followed by Supreme Court in *(2004) 2 SCC 249 (M.P. Cement Manufacturers Association vs. State of MP & Ors.)* and *(2004) 11 SCC 64 (Swedish Match AB vs. Securities & Exchange Board of India)*.

22. These examples are illustrative in nature and not exhaustive. An “explanation” may be added to include something within or to exclude something from the ambit of the main enactment or the connotation of some word occurring in it (See: *Controller of Estate Duty, Gujarat Vs. Shri Kantilal Trikamlal AIR 1976 SC 1935*).

Similarly a negative explanation which excludes certain types of category from the ambit of enactment may have the effect of showing that the category leaving aside the excepted types is included within it (See *First Income Tax Officer, Salem Vs. Short Brothers (P) Ltd. AIR 1967 SC 81*). Thus, the explanation in the instant case, has a limited impact on main provision i.e. sub-section (2) of Section 3 of NSA Act. It does not dilute or take away the right of detaining authority under the NSA Act regarding eventualities relating to maintenance of 'public order' or security of the State.

23. A microscopic reading of Section 3(2) with 'Explanation' leaves no room for any doubt that Sub-Section (2) is wide enough and deals with three contingencies when a citizen can be detained:

- i) for preventing him from acting in any manner prejudicial to the **security of State**.
- ii) for preventing him from acting in any manner prejudicial to the maintenance of **public order**.
- iii) for preventing him from acting in any manner prejudicial to the **maintenance of supplies and services essential to the community**.

24. The 'explanation' is limited to the contingency (iii) aforesaid only. The argument of Shri Maheshwari that since remediesvir is an essential drug/commodity, therefore, obstruction to its supply or blackmarketing can be a reason to invoke the blackmarketing act, but NSA Act cannot be invoked, is liable to be discarded for the simple reason that Sub-Section (2) of Section 3 is wide enough which contains and deals with three contingencies, whereas 'explanation' takes only one beyond the purview of the NSA Act if it is covered by Blackmarketing Act.

25. We find force in the argument of learned Additional Advocate General that blackmarketing of remediesvir creates a threat to "public order". We have taken this view recently in the case of *Yatindra*

Verma (supra) also. If 'public order' is breached or threatened, in order to maintain 'public order', NSA Act can very well be invoked. Thus, “explanation” appended to Sub-Section 2 of Section 3 of NSA Act will not exclude the operation of NSA Act in a case of this nature where 'public order' is breached, threatened and put to jeopardy.

26. Interpretation of a statute must depend on the text and the context. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. (See: *1987(1) SCC 424- RBI vs. Peerless General Finance and Investment Co. Ltd.*)

27. The Apex Court in *(2013) 3 SCC 489 (Ajay Maken vs. Adesh Kumar Gupta & Anr.)* held as under:-

“Adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In the words of V.R. Krishna Iyer, J., such an approach would be “to see the skin and miss the soul”. Whereas, “The judicial key to construction is the composite perception of the deha and the dehi of the provision.” (*Board of Mining Examination v. Ramjee (1977) 2 SCC 256, Para-9*)”

28. Sub-Section 2 of Section 3 is very wide and as noticed above, deals with three eventualities (*See: Para-23*). “Explanation” to Sub-Section 2 deals with a small part of it. The intention of law makers in inserting the 'explanation' is to take out cases of blackmarketing from NSA Act to some extent, to the extent it is covered by the Black Marketing Act. 'Explanation', by no stretch of imagination can eclipse the entire main provision namely, Sub-Section 2 of Section 3. The plain and unambiguous language of Sub-Section 2 of Section 3 makes it clear that the Competent Authority/Govt. can pass order of detention if one of the eventuality out of said three is satisfied. In the instant case, the District Magistrate has taken a plausible view that 'public order' is being threatened by petitioner. Thus, we are unable to hold

that order of detention is beyond the purview of Sub-Section 2 of Section 3 of NSA Act.

29. We will be failing in our duty if argument of Shri Maheshwari relating to “acting under dictate” is not taken into account. On the basis of certain social media posts of the Chief Minister of the State wherein he expressed his view that persons involved in black marketing of Remdesivir/drugs should be detained under NSA Act, it was argued that the detention order passed by the District Magistrate is in furtherance of said posts and amount to acting under dictate. We do not see any merit in this contention. The social media posts cannot be equated with an administrative order/instruction. It is not necessary that every social media post of a government functionary is seen/read out and followed in the administrative hierarchy. Had it been an executive instruction/order issued by higher functionary to act in a particular manner and in obedience thereof District Magistrate would have passed a detention order, perhaps the matter would have been different. Unless a clear nexus is established between the social media posts and the detention order, it cannot be said that District Magistrate has acted under dictate. Apart from this, the impugned order of District Magistrate has been examined by us on the necessary parameters and it was found that he has used his discretion in accordance with law and thus this argument of petitioner must fail.

30. So far question of communication of detention order to the uncle of petitioner is concerned, suffice it to say that no prejudice was caused to the petitioner because of such communication. Indeed petitioner filed this petition and had taken legal recourse with quite promptitude. In absence of showing any prejudice, no interference on this count is warranted and judgments of *A.K. Roy (supra)* and *Dr. Kafeel (supra)* are of no help to the petitioner.

31. The petitioner is unable to show any flaw in the decision making process adopted by District Magistrate. In absence of

establishing any such illegality, no interference is warranted.

32. Petition sans substance and is hereby **dismissed**.

(SUJOY PAUL)
JUDGE

(ANIL VERMA)
JUDGE

Vm/soumya

