

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

<b>Case No. Parties Name</b>	<b>Writ Petition No.28071/2021</b> <i>Suresh Upadhyay</i> vs. <i>State of Madhya Pradesh &amp; others</i>
<b>Date of Order</b>	<b>16/02/2022</b>
<b>Bench Constituted</b>	<b><u>Division Bench :</u></b> <b>Justice Sheel Nagu</b> <b>Justice Dwarka Dhish Bansal</b>
<b>Order passed by</b>	<b>Justice Dwarka Dhish Bansal</b>
<b>Whether approved for reporting</b>	No
<b>Name of counsels for parties</b>	<b><u>For petitioner:</u></b> Shri Jitesh Shrivastava, Advocate <b><u>For respondents:</u></b> Shri Pradeep Singh, Government Advocate
<b>Law laid down</b>	-
<b>Significant paragraph numbers</b>	-

**ORDER**

**16/02/2022**

**Per : Dwarka Dhish Bansal J.**

In the present petition, powers of judicial review under Article 226 of the Constitution of India is invoked to assail the legality, validity and propriety of order of preventive detention passed by the District Magistrate, Bhopal on 25.06.2021 by invoking Section 3 (1) of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for brevity "**Act of 1980**").

2. The petitioner has challenged the order dated 25.6.2021 (Ann.P.1) with the contention that he was served with the show cause notice dated 18.6.2021

regarding certain irregularities in procedure and distribution of the essential commodities, in pursuance of which he submitted the reply on 1.7.2021, and even prior to the cut off date the order was passed. It is also contented that FIR was also registered against the petitioner under Section 3/7 of Essential Commodities Act at Crime No.225/2021. Upon filing an application for grant of anticipatory bail, the same was allowed by this Court vide order dated 30.11.2021 passed in M.Cr.C. No.48806/2021. It is further contended that upon appearing before the concerning police station on 7.12.2021 for furnishing the bail the police arrested the petitioner on the same day i.e. on 7.12.2021 and sent him to jail.

3. After filing of the return by the State government the petitioner prayed for and was permitted to amend the writ petition vide order dated 2.2.2022 whereby the petitioner has also challenged the order dated 6.7.2021 (Ann.P.3) and order dated 12.7.2021 (Ann.P.4) with the contention that the petitioner came to know about the said orders for the first time after filing of this petition.

4. Placing reliance on the orders passed by this Court on 14.12.2021, 22.12.2021 and 21.1.2022 in W.P.No.16947/2021, W.P.No.27038/2021 and W.P.No.305/2022 respectively, lot many grounds have been raised by learned counsel for petitioner in support of challenge to the aforesaid orders but the ground which appeals to this Court is that the order of preventive detention was passed by the District Magistrate on 25.6.2021 but the matter was sent to the State Government on 5.7.2021 for approval.

5. Learned counsel for State submits that communication of the aforesaid order could not be made to the petitioner and since the petitioner was absconding and could only be physically detained/arrested on 7.12.2021, the District

Magistrate could only thereafter forward the case along with grounds of detention to the State Government for approval under Section 3(3) of the Act of 1980.

6. For ready reference and convenience, Section 3 of the Act of 1980 is reproduced below:-

***"3. Power to make orders detaining certain persons.-***

*(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of the commodities 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, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means-*

*(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955) or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or*

*(b) dealing in any commodity-*

*(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or*

*(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a), with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.*

(2) Any of the following officers, namely:

(a) District Magistrates;

(b) Commissioners of Police, wherever they have been appointed, may also if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(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 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 authority 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.*

(4) *When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (1) 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."*

*(emphasis supplied)*

7. From a bare perusal of sub-section (3) of Section 3 of the Act of 1980, the expression "forthwith" employed in the said provision obliges the District Magistrate passing the order to report the fact of having passed the order of preventive detention to the State Government immediately without unnecessary delay. This obligation cast upon the District Magistrate is in regard to the order of preventive detention but not in regard to the act of physical arrest of the detenu. The reason is obvious; the State Government is required to approve the decision of detention and not the detention *per-se*.

8. It seems that in the instant case, District Magistrate failed to discharge this obligation in as much as forwarding the case to the State Government after nearly 10 days of passing of impugned order.

9. The Apex Court recently had an occasion to consider the purport, scope and intent of the expression "forthwith" contained in Section 3(3) of a *pari materia* enactment: National Security Act in the case of **Hetchin Haokip Vs. State of Manipur and others, (2018) 9 SCC 562**, laying down the following:-

*“9. This Court has examined the meaning of “forthwith,” in the context of statutes providing for preventive detention. In Keshav Nilkanth Joglekar v. Commissioner of Police, 1956 SCR 653, a Constitution Bench of this court interpreted Section 3(3) of Preventive Detention Act, 1950 (now repealed), which was similar to Section 3(4) of the Act. The court compared the text of Section 3(3) with Section 7 (equivalent to Section 8 of the Act). It observed that “forthwith” is different from “as soon as may be” in that, under Section 7 the time permitted is “what is reasonably convenient,” whereas under Section 3(3), only that period of time is allowed, where the authority could not, without its own fault, send the report. The Court laid down the following test for determining whether the action of the authority was compliant with the “forthwith” requirement:*

*“10. Under section 3(3) it is whether the report has been sent at the earliest point of time possible, and when there is an interval of time between the date of the order and the date of the report, what has to be considered is whether the delay in sending the report could have been avoided.”*

*(emphasis supplied)*

10. In view of above, the period between passing of order of preventive detention i.e. 25.6.2021 to 5.7.2021 can by no stretch of imagination fall within the expression "forthwith". More so, there is no explanation for the delayed communication by the District Magistrate to the State Government and, therefore, the impugned order of preventive detention stands vitiated.

11. Consequently, the impugned order dated 25.6.2021 (*Annexure P/1*) passed by the District Magistrate and all the consequential orders of affirmation and

extension dated 06.07.2021 (Annexure P/3) and 12.07.2021 (Annexure P/4) passed by the State Government are quashed.

12. The petitioner be forthwith released from custody provided he is not required in detention qua any other offence.

13. The petition stands **allowed** sans cost.

**(SHEEL NAGU)**  
**JUDGE**

**(DWARKA DHISH BANSAL)**  
**JUDGE**

kkc/Pallavi

