

The High Court of Madhya Pradesh
WP 4297.2021
[Somkant Singh Vs. State of M.P.& others]
Gwalior dated 16.06.2021

Shri Sanjay Bahirani, learned counsel for petitioner.

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

Heard through video conferencing.

1. This petition u/Art. 226 of the Constitution assails the order of preventive detention dated 11/1/2021, P/1, detaining the petitioner for a period of 3 months u/Sec. 3(2) of National Security Act, 1980 (for brevity "NSA") and the order of extension of said period by another 3 months passed by the State Govt. on 7/4/2021 which is under challenge by way of amendment as P/3.
2. Learned counsel for petitioner Shri Bahirani and learned Additional Advocate General Shri Mody are heard on the question of admission and final disposal.
3. Short reply filed by the State and the reply to the amendment are perused.
4. Learned counsel for petitioner in support of challenge to the impugned order raised following grounds:-

(A) As petitioner was already in custody since 25/12/2020 in connection with Crime No. 896/2020 registered at Police Station Porsa, District Morena (M.P.) alleging offences punishable u/Ss. 51 & 57 of Food Safety & Standards Act, 2006 and Ss. 272, 273, 420 IPC, the District Magistrate, Morena while passing the impugned order of preventive detention on

11/1/2021 did not expressly assign reasons for further detaining petitioner who was already in custody. It is submitted that in the absence of any such recital in the order of preventive detention revealing that the District Magistrate knew about petitioner being in custody the impugned order is vitiated.

(B) The order of preventive detention was not forthwith sent to the State Government for confirmation thereby violating Sec. 3(4) of NSA.

(C) The ground of preventive detention was not communicated to the petitioner thereby violating the mandatory provision of Sec. 8 of NSA.

(D) Without waiting for chemical report as to whether milk and milk products seized from premises of petitioner were adulterated/harmful for human consumption, the District Magistrate passed the order of preventive detention thereby showing non-application of mind.

5. After hearing learned counsel for rival parties, this court need not go into all grounds except the first since the petition deserves to succeed on the said ground alone.

6. Bare reading of the impugned order P/1 dated 11/1/2021 and subsequent order of extension P/3, dated 7/4/2021 shows that both the orders do not expressly contain the recital disclosing that District Magistrate and the State Govt. were conscious of the fact of petitioner being in custody at the time of passing of the order of preventive detention.

6.1 Decisions of Apex Court in “Vijay Kumar Vs. State of Jammu & Kashmir & Others 1982 (2) SCC 43 (para 10), Merugu Satyanarayana Vs. State of Andhra Pradesh and Others 1982 (3) SCC 301 (para 12) and order dated 2/2/2021 in W.P.19548/2020 [Awadhesh Sharma Vs. State of M.P. and others] of this court are pressed into service. Relevant paras of the said three decisions are quoted below for ready reference and convenience:-

(i) Vijay Kumar Vs. State of Jammu & Kashmir & Others (1982) 2 SCC 43:

“The detenu in para 3 of his petition before this Court has specifically averred that he was arrested on June 26 1981, the correct date being June 25, 1981, under a false and fabricated charge. Shri K.S. Salathia, Deputy Secretary to Government of Jammu & Kashmir, Home Department, who has filed the counter affidavit has with reference to the averments made in para 3 of the petition made a very very ambiguous statement that for the purpose of J and K Public Safety Act the petitioner was arrested on July 11, 1981, pursuant to the detention order. It is nowhere suggested that the detaining authority was aware of the fact that the detenu was already in jail and that keeping in view the fact the detenu was already locked up in jail yet it was considered necessary for preventing him from acting in a manner prejudicial to the security of the State to pass the detention

order. It may further be pointed out that Shri A. Sahasranaman, the District Magistrate of Jammu who has made the impugned detention order, filed an affidavit on February 7, 1982. Of course, in fairness to him it must be stated that this affidavit was for the limited purpose of pointing out as to how he dealt with the case of Hans Raj, another detenu whose detention was quashed by this Court subsequent to the order of this Court. It may be noticed in passing that Hans Raj and the detenu were involved jointly in the activity, which led to the detention of the detenu. Even though this affidavit was filed for the limited purpose, it came on record after the case was taken up for hearing by this Court and the affidavit at least does not throw any light on the vexed question whether the detaining authority was aware of the fact that the detenu on being suspected of having committed a serious offence, was already in jail for a period of more than a fortnight before the date of the impugned detention order. Preventive detention is resorted to, to thwart future action. If the detenu is already in jail charged with a serious offence, he is thereby prevented from acting in a manner prejudicial to the security of the State. May be, in a given case there yet may be the need to order preventive detention of a person already in jail. But in such a situation the detaining

authority must disclose awareness of the fact that the person against whom an order of preventive detention is being made is to the knowledge of the authority already in jail and yet for compelling reasons a preventive detention order needs to be made. There is nothing to indicate the awareness of the detaining authority that detenu was already in jail and yet the impugned order is required to be made. This, in our opinion, clearly exhibits non-application of mind and would result in invalidation of the order. We, however, do not base our order on this ground.”

(ii) Merugu Satyanarayana Vs. State Of Andhra Pradesh and Others (1982)3 SCC 301:-

“12. One can envisage a hypothetical case where a preventive order may have to be made against a person already confined to jail or detained. But in such a situation as held by this Court it must be present to the mind of the detaining authority that keeping in view the fact that the person is already detained a preventive detention order is still necessary. The subjective satisfaction of the detaining authority must comprehend the very fact that the person sought to be detained is already in jail or under detention and yet a preventive detention order is a compelling necessity. If the subjective satisfaction is reached without the awareness of this very relevant fact the detention order is likely to be vitiated. ”

(iii) **Order of coordinate bench of this court dated 2/2/2021 passed in W.P.19548/2020 [Awadhesh Sharma Vs. State of M.P. and others]:-**

“4.3 This court thus is left with no option but to presume that grounds of detention were not communicated to petitioner within a maximum period of 5 days, i.e. latest by 7th December, 2020 (in the absence of any exceptional circumstances indicated by the State).

5. Coming to Ground No. 3 (supra) it is not disputed by the State, in its reply, that petitioner was in custody since 1/12/2020 whereas the impugned order of preventive detention was passed on 2/12/2020 vide P/1. Thus, it was incumbent upon the State to demonstrate that despite petitioner being in custody and despite District Magistrate having knowledge of this fact the order of preventive detention was required to be passed. This knowledge on the part of District Magistrate should reflect expressly in the impugned order of preventive detention and cannot be left to be presumed by implication. This court is bolstered in its view by the decisions of Apex Court in *Vijay Kumar Vs. State of Jammu & Kashmir & Others (1982) 2 SCC 43 (para 10)*, *Merugu Satyanarayana Vs. State of Andhra Pradesh and Others (1982) 3 SCC 301 (para 12)*, and coordinate bench decision of this court in *Md. Vakil Vs. State of M.P. & Others, reported in 2014 (2) MPLJ 613*

(para 4).

5.1 The aforesaid discussion and the view of Apex Court and this Court which has been consistently followed till date is to the effect that in the absence of recital in the order of detention that Detaining Authority was knowing about the petitioner being already in custody and yet required to be detained or else he may breach public order, vitiates the order of preventive detention. As such, this court has no hesitation to hold that the order of preventive detention is vitiated in the eyes of law for being an outcome of non-application of mind.

6.1 In view of above the State has failed to satisfy that procedure established by law under NSA in particular u/Sec. 3(5) and Sec. 8 has been followed. Thus, mandate of Art. 22 of the Constitution stands breached. Hence, this Court is left with no option but to interfere in the matter.”

6.2 The law laid down by Apex Court makes it clear that since the order of preventive detention is essentially of preventive nature and not punitive, it is thus to prevent a person sought to be detained of indulging in activities which are likely to be prejudicial to public order. The person sought to be detained can act in the manner which is prejudicial to public order only when he enjoys personal liberty. If personal liberty is already curtailed by detaining the said person in a particular offence and as the case herein, then the question of such person enjoying personal liberty

to indulge in activity which is likely to be prejudicial to public order does not arise. In view of above, on the said short ground both the impugned orders P/1 dated 11/1/2021 and P/3 dated 7/4/2021 which are bereft of any express reason stand vitiated.

7. In the present case, neither District Magistrate while passing impugned order P/1 dated 11/1/2021 nor the State Govt. while extending period of preventive detention by another three months vide P/3 dated 7/4/2021 gave any indication in express terms in their respective orders that passing of the order of preventive detention in the facts & circumstances was necessary despite the petitioner being in custody. Absence of any recital in the orders impugned P/1 and P/3 implies that mind was not applied by the District Magistrate and the State Govt. on this crucial aspect that petitioner who was already in custody could not have indulged in activities prejudicial to public order. The orders impugned P/1 & P/3 are thus vitiated on the anvil of Art.14 of the Constitution of India and deserve to be struck down on the said sole ground.

8. Before parting, this Court would like to express it's anxiety that in the recent past in several cases challenging order of preventive detention where the proposed detenu was already in custody, concerning District Magistrates did not assign compelling reasons to adopt the extraordinary mode of preventive detention. This lacuna left by the District Magistrates rendered the entire exercise at the administrative level a nullity since it has to

be struck down on the anvil of NSA and the law laid down by Apex Court.

8.1 This Court on earlier occasion in the case of *Anshul Jain Vs. State of M.P. and others (WP.1118.2021)* decided on 1/4/2021 had sent a word of advice to the State Govt. to counsel all District Magistrates on the said aspect asking them to strictly adhere to the statutory procedural requirement under NSA.

Relevant para of said decision is reproduced below:-

“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 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]***".

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.”

8.2 This Court time and again reiterates that NSA is a manifestation of Article 22 of the Constitution. Article 22 stipulates safeguards against unlawful arrest and further carves out an exception permitting the extraordinary course of preventive detention to be adopted by the State only in exceptional situation. Preventive detention strikes at the very root of the right of personal liberty guaranteed by the most sacrosanct of the fundamental right, i.e. Art. 21 which protects life and personal liberty. It is for this reason that whenever State exercises such exceptional course of action in shape of preventive detention it needs to follow statutory procedural law prescribed under NSA to the hilt. Slightest of lapse in following mandatory procedural law laid down under NSA can render the entire exercise of preventive detention and the orders passed, a nullity.

8.3 As such this Court advises the State to issue appropriate direction for counselling all the District Magistrates for strictly following the statutory procedural requirement not only under NSA but also those emanating out of decisions of Apex Court (supra).

8.4 This Court has also noticed that large number of cases of preventive detention are coming to the fore arising out of

incidents of manufacture of synthetic/adulterated milk. Manufacture of synthetic/adulterated milk is an offence which causes not only serious harm to the consumers which are very large in number but is akin to injecting slow poison in the society which destroys health and lives of the members of general public by gradually causing diseases which show its dilapidating affect on human bodies after several years. The worse scenario is that the most affected are the infants and children who are largest consumers of milk. This Court in one of its decisions in a bunch of petitions including *WP No.21937/2019 (Rajeev Gupta Vs. State of M.P.) decided on 9/12/2019* where the order of preventive detention was challenged and the same arose out of the incident of manufacture of synthetic/adulterated milk had made some directives relevant paras of which are quoted below:-

“14.1 The grounds shown is that there is wide-spread discontentment and fear in the minds of large sections of the society due to circulation/distribution of synthetic milk in the market which cannot be distinguished by a common man from the real milk thereby making the common man and the children to run the risk of consuming synthetic milk thereby exposing themselves to disease and death. The detaining authority has also held that the act of the petitioner of distributing synthetic milk camouflaged as real milk in the market is like spreading slow poison in the society. Thus, satisfaction of live and proximate danger to public order appears to be palpable. Chemical

and synthetic material being mixed with real milk or being used as synthetic milk per se and distributing the same in the open market where no one can distinguish between synthetic and real milk creates an extremely dangerous situation for health and lives of not only the able-bodied citizens but also the children right from an infant to adolescent. It is common knowledge that majority of consumption of milk is by infants and adolescents. Children are the future of our nation on whose shoulders rests the progress and development of the country. If these shoulders are rendered weak and infirm by consuming synthetic milk treating the same to be real, the over all development of the nation would be retarded. Harmful chemicals being mixed with milk or used for preparing synthetic milk may lead to different kinds of unknown diseases which would cause debilitating effect upon the infant, adolescents and children rendering them incapable to take up their responsibility and discharged their duties as citizens of this country. The children, the family, the society and the nation would suffer. Constant and regular consumption of harmful chemicals in shape of synthetic/adulterated milk may cause genetic defects thereby risking the lives of the future generation who are still to be born and are in the womb of their mother who is a victim of synthetic milk.

14.2 The act of petitioners of selling synthetic milk in the market making it available for all and sundry who consumed it on a regular basis,

sends shivers down the spine of consumers on coming to know of the adverse effect over mind and body. This spreads a spell of fear among large sections of society who consume the synthetic milk, disturbing their peace of mind and body about the lurking adverse effects which may manifest in shape of debilitating diseases, destroying their mind, body and psyche for all times to come. This fear psychosis sends ripples of disturbance all around, disrupting the even tempo of life, thereby causing breach in public order.

17. There is another ground raised by learned counsel for the petitioners, that the report of food analyst merely reveals sub-standard or adulterated material but it does not reveal that the same is poisonous for human consumption.

17.1 The discussion made above reveals that synthetic milk was being prepared by chemicals which by no stretch of imagination can be treated as safe for human consumption. The damage caused to the human health by the synthetic material when consumed under the impression of real milk can be slow but in long run can be debilitating for the mind and body which may give rise to unknown diseases in the future of which no cure may be available. As such merely because the report of analyst showed that the material seized from the premises of the petitioners was not poisonous for human consumption does not make the case of petitioner any better. The apprehension nursed in the mind of people of wide-spread

damage to their body and mind due to regular consumption of synthetic milk casts a spell of fear psychosis where humans are under constant threat of losing their health, mind and body. The adverse effect of consumption of synthetic milk under the impression that the same is real is the same as continuously inhaling poisonous air though in small quantity which may not in the short run get manifested as disease or injury, but may sprout up as a debilitating, incurable disease may be after few years or a decade. Thus, this argument of learned counsel for the petitioner does not hold any water.”

8.5 The idea behind quoting the aforesaid observations is to highlight the difficulty being faced by the executive in the face of offence of manufacture of synthetic/adulterated milk attracting negligible punishment under the law. Chapter XIV of the Indian Penal Code stipulates offences affecting the public health, safety, convenience, decency and morals. Offences which are ordinarily alleged against manufacture of synthetic/adulterated milk, are punishable u/Ss. 272 & 273 IPC which provide maximum punishment of six months imprisonment or with one thousand rupees fine or both. These offences are non-cognizable, bailable and triable by Magistrate and therefore are totally inadequate to provide for punishment which is not commensurate to the gravity of the offence from the point of view of its far reaching consequences over the health of infants, children and even adults. These provisions u/Ss. 272 & 273 IPC are not deterrent at all and

therefore delinquents committing these offences continue to commit such offences with impunity.

9. In view of the above, piquant situation of the non-deterrent nature of the offences u/Ss.272 & 273 IPC the executive is compelled to initially take recourse to Sec.420 IPC and thereafter to the extraordinary power of preventive detention.

10. This Court thus beseeches the legislature to either make the provision under IPC more stringent and deterrent or prescribe higher punishment under Food Safety and Standards Act so the executive is not tempted to adopt the extraordinary measure of preventive detention in cases of food adulteration.

11. Registry is directed to communicate this order to the Chief Secretary of the Govt. of M.P. for taking suitable action to prevent recurrence of such incidents as enumerated above.

12. In view of above, both impugned orders Annexure-P/1 dated 11/1/2021 passed by Collector, Morena and Annexure-P/3 dated 7/4/2021 passed by the State are quashed. However, the District Magistrate is at liberty to exercise the means of preventive detention against the petitioner provided the prerequisites for invoking this extraordinary provision exist.

13. Petition stands **allowed** with the aforesaid observations.

(Sheel Nagu)
Judge
16/06/2021

(Vishal Mishra)
Judge
16/06/2021

(Bu)