

Anwar Hussain Through His Son Mohammad ... vs State Of Madhya Pradesh Though ... on 24 February, 2025

Author: Vivek Rusia

Bench: Vivek Rusia

NEUTRAL CITATION NO. 2025:MPHC-IND:5117

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IN THE HIGH COURT OF MADHYA PRADESH
AT I N D O R E

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA
&

HON'BLE SHRI JUSTICE GAJENDRA SINGH
ON THE 24th OF FEBRUARY, 2025

WRIT PETITION No. 4330 of 2025

ANWAR HUSSAIN THROUGH HIS SON MOHAMMAD ALTAF HUSSAIN

Versus

STATE OF MADHYA PRADESH THROUGH PNCIPAL SECRETARY AND
OTHERS

Appearance:

Shri Ravindra Singh Chhabra, learned Senior Counsel
Maheshwari, learned counsel for the petitioner.

Shri Bhuwan Gautam, learned Government Advocate for
State.

Shri Himanshu Joshi, learned Deputy Solicitor Genera
Union of India.

WITH

WRIT PETITION No. 3901 of 2025

RAJESH PAHADIYA

Versus

UNION OF INDIA THROUGH PRINCIPAL SECRETARY AND OTHERS

Appearance:

Shri Mohd. Rafik Sheikh, learned counsel for the pet

Shri Himanshu Joshi, learned Deputy Solicitor Genera
Union of India.

ORDER

NEUTRAL CITATION NO. 2025:MPHC-IND:5117 Per : Justice Vivek Rusia Since the controversies involved in these petitions are identical in nature, with the joint request of the parties, they are finally heard and decided by this common order. Facts of W.P. No.4330 of 2025 are being taken into consideration.

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the validity of the order dated 08.11.2024 passed by the Collector / District Magistrate under Section 3(1)(2) of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (in short 'the Act of 1980'), whereby the petitioner was directed to be detained for a period of six months.

FACTS OF THE CASE

02. The Junior Supply Officer and other officials from the Food Supply Department reached the warehouse situated at Mayur Bagh Colony, Near Sai Mandir, Jawahar Tekri Road, Indore. No authorized person was found there for one to two hours. The police were called by them, and the lock of the warehouse was broken. The first panchnama at 8:30 pm was drawn to that effect. By that time few employees working in the warehouse were reached there. 2.1. The second panchnama was drawn at 10:00 pm after conducting a search inside the warehouse. The statement of Aasif Ali was recorded to the effect that this warehouse belongs to Rajesh Pahadiya (petitioner in W.P. No.3901 of 2025) and the fortified rice and wheat purchased from the beneficiaries of Public Distribution System (PDS) are stored in this warehouse. He also disclosed that he works for Khushi Trading Company. No bill, voucher or rent NEUTRAL CITATION NO. 2025:MPHC-IND:5117 agreement was provided to the search team. According to the petitioner, third panchnama was drawn at 11:35 pm and an illegible copy of the same was provided to him.

2.2. The search team seized 152 bags of wheat (75.15 quintal) and 521 bags of rice (277.40 quintal) of total value of Rs.8,96,791/-. As per the second panchnama, three samples of 1 - 1 kg of rice were sealed. No samples of wheat were prepared. The Junior Supply Officer vide letter dated 20.10.2024 sent two samples of 500 - 500 gms to the Madhya Pradesh State Supply Corporation, Indore and District Quality Controller. The samples were tested and a report to that effect was provided to the Junior Supply Officer vide letter dated 22.10.2024. As per the report, the rice in the samples was found fortified rice of Public Distribution System. So far as the wheat is concerned, it was reported that it appears to be for the Public Distribution System, hence no definite opinion was given. 2.3. On the basis of said search and enquiry, an FIR was registered under Section 3/7 of the Essential Commodities Act, 1955 against (i) Rajesh Pahadiya, (ii) Anwar Hussain and (iii) Asif Ali on the complaint of Junior Supply Officer.

2.4. The District Supply Officer vide letter dated 28.10.2024 requested the District Magistrate, Indore for initiation of detention proceedings under the Act of 1980 against Rajesh Pahadiya, Anwar Hussain and Asif Ali. On the basis of the aforesaid order, vide order dated 08.11.2024, the District Magistrate passed an order of detention for a period of six months in exercise of power conferred under Section 3(1)(2) of the Act of 1980.

2.5. After receipt of the detention order and grounds of detention, NEUTRAL CITATION NO. 2025:MPHC-IND:5117 the petitioner sent a representation dated 22.01.2025 to the Collector, State Government and Central Government. The State Government received the representation on 24.01.2025, the Collector received the representation on 23.01.2025 and the Central Government received the representation on 27.01.2025. Thereafter, the present writ petition has been filed.

03. Vide order dated 05.02.2025, Government Advocate was directed to file a reply within three working days. On 10.02.2025, the State Government sought further time and three days was granted to file a reply positively. On 17.02.2025, again this writ petition came up for hearing, but no reply was filed. The OIC was directed to remain present at 2:30 pm and the Home Secretary was directed to remain present before this Court through Video Conferencing. At 2:30 pm, the OIC was present, but he failed to give a valid explanation for the non-filing of the reply. However, the Home Secretary was not present through V.C. On 18.02.2025, it was informed that another writ petition had been filed by Rajesh Pahadiya and the Government Advocate undertook to file a reply in the said writ petition also. Now along with the reply, the State Government has filed a copy of order dated 17.02.2025, whereby the State Government rejected the representation. However, the Central Government neither decided the representation nor filed any reply.

04. Meanwhile, the State Government filed a charge-sheet against the petitioner under Sections 318(4), 336(3) & 340 of the Bhartiya Nyaya Sanhita, 2023 (corresponding to Sections 420, 468 & 471 of the Indian Penal Code). The bail application of the petitioner has been rejected by the learned Trial Court.

NEUTRAL CITATION NO. 2025:MPHC-IND:5117 SUBMISSIONS OF THE PARTIES

05. Shri R.S. Chhabra, learned Senior Counsel appearing for the petitioner submitted that the factum of addition of this non-bailable offence in the FIR was not brought to the knowledge of the detaining authority, otherwise the order of detention would not have been passed. There is no explanation with respect to the delay of 24 days in considering the representation of the petitioner by the State of M.P. and after the filing of this petition, representation has been rejected in a hasty manner without application of mind.

5.1. Learned Senior Counsel further submitted that three samples of 1 - 1 kg of rice were taken, but the Junior Supply Officer sent only two samples of 500 - 500 kg and no explanation to that effect has been given in the reply which means that the samples, which were taken in petitioner's presence from the warehouse were not sent to the Madhya Pradesh State Supply Corporation for testing. It is further submitted that there is an allegation against the petitioner that he procured the fortified wheat and rice from the beneficiaries of the Public Distribution System. If that be so, then no case is made out against him because after the distribution of fortified rice and wheat to the beneficiaries, they are free either to consume the same or sale in the market, hence, same is out of the purview of the Public Distribution System. The petitioner cannot be prosecuted or detained for storage of fortified rice and wheat in these circumstances. 5.3. In support of these contention, Shri Chhabra, learned Senior Counsel has placed reliance upon various judgments delivered by the Apex Court in the cases of Ranbir Singh v/s T. George Joseph, District Magistrate, Meerut reported in (1990) Supp SCC 54, Prof. NEUTRAL CITATION NO. 2025:MPHC-IND:5117 Khaidem Ibocha Singh v/s State of Manipur reported in (1972) 2 SCC 576, Durga Shaw & Others reported in (1970) 3 SCC 696, Pavitra N Rana v/s Union of India reported in (1980) 2 SCC 338, Sarabjeet Singh Mokha v/s District Magistrate, Jabalpur reported in (2021) 20 SCC 98, Rama Dhondu Borade v/s V.K. Saraf, Commissioner of Police reported in (1989) 3 SCC 17, Ashadevi v/s K. Shivraj, Additional Chief Secretary. to the Government of Gujarat reported in (1979) 1 SCC 22, Ahamed Nassar v/s State of

Tamil Nadu reported in (1999) 8 SCC 47, State of Manipur v/s Buyamayum Abdul Hanan reported in 2022 SCC OnLine SC 1455, Ameena Begum v/s State of Telangana reported in (2023) 9 SCC 587 and Raziya Umar Bakshi v/s Union of India reported in 1980 Supp SCC 195.

06. Learned counsel appearing for the petitioner in W.P. No.3901 of 2024, in addition to aforesaid arguments submits that there is a violation of Sections 4, 5 & 8 of the Act of 1980. No documents or grounds of detention have been supplied to this petitioner in order to submit the effective reply.

07. Learned Government Advocate for the respondents / State has argued in support of the impugned order of detention and sought for dismissal of the writ petition.

APPRECIATION & CONCLUSION

08. The petitioner applied for bail before the trial Court and the same has been rejected on merit. The petitioner is not supposed to disclose his defence in this petition, hence, he is permitted to reserve the right to disclose same in the trial. Any opinion and findings given by us here in this order shall not be used against any of the parties before the NEUTRAL CITATION NO. 2025:MPHC-IND:5117 trial Court.

09. The petitioner is challenging the order of detention on technical grounds. It is evident from the second panchnama prepared at 10:00 pm that three samples of 1 - 1 kg were drawn, and all were seized in the presence of the witnesses. Along with the letter dated 20.10.2024 two samples of 500 - 500 gms were sent and there is no explanation by the respondents in the reply as to how three samples of 1-1 kg have been changed to two samples of 500 - 500 gm. Therefore, this creates doubts that the samples of the rice which were taken from the warehouse were sent to the laboratory for test and the report of changed rice and wheat was found to be fortified. The impugned detention order based on these test reports cannot be upheld.

10. After the passing the detention order under Section 3 of the Act of 1980, the authority making the order shall as soon as may be, but not later than five days; or in exceptional circumstances not later than ten days from the date of detention communicate the grounds on which the order has been passed shall supply to the detenu in order to afford him earliest opportunity of representation to the appropriate Government.

11. Section 10 of the Act of 1980 mandates that in every case, where a detention has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under Section 9. Nothing is mentioned in the return as to whether the case of the petitioners was placed before the Advisory Board within three weeks. Only in the order dated 17.02.2025 filed along with the reply of the State, it is mentioned that the order of detention was approved by the State Government on 08.11.2024 and sent to the NEUTRAL CITATION NO. 2025:MPHC-IND:5117 Advisory Board on 21.11.2024. It is also mentioned that on 28.12.2024, the Advisory Board granted the approval, and thereafter, the representation was rejected. Neither any document has been filed, nor the original file is produced before this Court to confirm these dates.

12. Under sub-section (3) of Section 3 of the Act of 1980, no order shall remain in force for more than twelve days after making thereof unless in the meantime it has been approved by the State Government. In this case, the order of detention dated 08.11.2024 was not approved by the State of M.P. within a period of 12 days. No document has been filed to show that the order dated 08.11.2024 has been approved by the State Government, it was only sent on 21.11.2024 to the Advisory Board. There is no approval by the State Government within 12 days as per sub-section (3) of Section 3 of the Act of 1980. The order of approval has not been filed in the return, no date has been mentioned in the order dated 17.02.2025 about the approval by the Government. It is to be noted that the original file about the detention order has not been produced before this Court for perusal, therefore, we have no reason to believe the State Government that the order of detention dated 08.11.2024 has not been approved by the State Government within twelve days and after twelve days, hence, the order lost its effect after 12 days from the date of its passing. The further proceedings before the Advisory Board and the confirmation order dated 17.02.2025 were held after the expiry of the detention order and have no meaning.

13. Even if it is believed that the order of detention has been approved by the State Government, the delay in rejecting the representation on 17.02.2025 i.e. after more than three months remained unexplained in the reply. In the case of Prof. Khaidem Ibocha Singh NEUTRAL CITATION NO. 2025:MPHC-IND:5117 (supra), due to the unexplained delay of 17 days in deciding the representation, the Apex Court has declared the order of detention illegal and directed to release of the detenu. In the case of Durga Show (supra), the delay of 16 days in deciding the representation has been declared illegal and set aside by the Apex Court. Recently, in the case of Sarabjeet Singh Mokha (supra), the Apex Court has set aside the order of detention on the grounds of delay in deciding the representation.

14. Therefore, we have hesitation in holding that post-operative care has not been taken properly after passing the detention order to keep the detention order alive by the competent authority.

15. We are also not happy, with the way the State Government took time to file the reply. The writ petition in the nature of habeas corpus challenging the order of detention is liable to be decided within seven days as the petitioner is kept under detention without trial by suspending his fundamental rights. Even after granting several opportunities, a very vague reply has been filed without necessary documents, dates and events and the original record of the proceedings undertaken by the detaining authority has not been produced before this Court.

16. In view of the foregoing discussion, the impugned order of detention dated 08.11.2024 passed by respondent No.2 / District Magistrate in both the writ petition is hereby quashed. Petitioners - Anwar Hussain & Rajesh Pahadiya shall not be treated under detention under the Act of 1980 forthwith.

17. Both the Writ Petitions stand allowed with the cost of Rs.20,000 - 20,000/- payable to the petitioners by the Government of NEUTRAL CITATION NO. 2025:MPHC-IND:5117 Madhya Pradesh.

Let a copy of this order be kept in the connected petition also.

(VIVEK RUSIA)
JUDGE

Ravi

(GAJENDRA SINGH)
JUDGE