

Aman Singh Yadav vs The State Of Madhya Pradesh on 12 July, 2023

Author: Rohit Arya

Bench: Rohit Arya, Sanjeev S Kalgaonkar

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IN THE HIGH COURT OF MADHYA
PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ROHIT ARYA
&
HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR
ON THE 12 th OF JULY, 2023
WRIT PETITION No. 15211 of 2023

BETWEEN: -

AMAN SINGH YADAV S/O SHRI BANWARI SINGH
YADAV, AGED ABOUT 19 YEARS, BAMROLI TEHSIL
GOHAD DISTRICT BHIND (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SANJAY BAHIRANI WITH SHRI HARSHAD BAHIRANI -
ADVOCATES)

AND

1. THE STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL SECRETARY
FOOD CIVIL SUPPLY CUM CONSUMER
PROTECTION DEPTT. VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)
2. SECRETARY OF HOME MINISTRY DEVISION
(C) BHOPAL (MADHYA PRADESH)
3. DIST. MAGISTRATE BHIND (MADHYA
PRADESH)
4. SUPERINTENDENT OF POLICE BHIND
(MADHYA PRADESH)
5. TOWN INSPECTOR P.S. GOHAD CHAURAHA
BHIND (MADHYA PRADESH)
6. JAIL SUPERINTENDENT CENTRAL JAIL
GWALIOR (MADHYA PRADESH)

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.....RESPONDENTS

(BY SHRI MPS RAGHUVANSHI - LEARNED ADDL. ADVOCATE
GENERAL)

T h i s petition coming on for HEARING this day, JUSTICE
ROHIT ARYA passed the following:

ORDER

The petitioner is before this Court taking exception to the impugned order of detention dated 03.12.2021 passed by District Magistrate, Bhind in exercise of the powers under Sub Section (2) read with Sub Section (3) of Section 3 of National Security Act, 1980 read with State Government Notification No.F31-5-98-Do-C-1 Bhopal dated 17th September, 2021 where-under, the petitioner has been ordered to be detained for three months in Central Jail, Gwalior as his activities were found to be prejudicial to the maintenance of supplies and services essential to the community. Admittedly, the petitioner has been supplied the grounds of detention.

During the course of arguments, it transpired that the petitioner has challenged legality, validity and propriety of the impugned order before this Court by filing W.P.No.28190 of 2021 at the pre-detention stage, wherein, this Court had declined to interfere in the said order while dismissing the Writ Petition on 18.04.2022.

It appears that one Avdhesh Sharma who had supplied three bags of 25 Kg each containing Maltodextrin Powder to the petitioner, was also subjected to detention order of the even date. He had filed a representation before the Central Government under section 14 (1-a) of the National Security Act and the Central Government vide order dated 30.12.2021 has revoked the detention order dated 03.12.2021 for the reasons quoted below :

"Reference representation dated 09.12.2021 submitted by Gaurav Sharma on behalf of his father Avdhesh Sharma (Detenu) for revocation of detentin order dated 03.12.2021 which has been passed by District Magistrate, Bhind. After careful consideration of the representation, it is felt that there are sufficient provisions under substantive law to deal with alleged activities of the detenu. Therefore, the Central Govt. is pleased to revoke repeat revoke the detention order issued against the detenu under Section 14 (1) of the National Security Act, 1980. The said revocation order is without prejudice to taking appropriate actin under substantive law".

Shri Sanjay Bahirani with Shri Harshad Bahirani Advocate for the petitioner, at the first instance, tried to persuade this Court that the impugned order dated 03.12.2021 passed in respect of the petitioner tantamounts to misuse of process of law and is unsustainable in the wake of the decision of the Central Government in the case of Avdhesh Sharma (Supra). He further bolsters his submissions with the help of the judgment of Hon'ble Supreme Court reported in (2011) 5 SCC 244 (Rekha Vs. State of Tamil Nadu) and followed in subsequent judgment of Supreme Court reported in (2012) 2 SCC 386 (Munagala Yadamma Vs. State of Andhra Pradesh and Others). He submits that if a person is found to be in possession of an adulterant and if he can be dealt with by registration of a case for penal action as provided for under Section 57 of the Food Safety and Standard Act, 2006, recourse to preventive detention under National Security Act is not warranted.

In the instant case, as only alleged adulterant was found to be in possession of the petitioner, recourse of registration of a case for penal action could have been taken and no preventive detention as has been found by Central Government in the case of Avdhesh Sharma (Supra), was necessary. Hence, this Court may quash the impugned detention order.

Per contra, Shri M.P.S Raghvuanshi, learned Addl. Advocate General has raised a preliminary objection as against maintainability of the writ petition on the premise that the said order of detention since has been subject matter of W.P.No.28190 of 2021 which stands dismissed by this Court on 18.04.2022, the same order cannot be made subject matter of this writ petition for the same relief of quashment thereof. The same is hit by the principles of constructive resjudicata applicable to the writ proceedings under Article 226 of the Constitution of India. Further, decision of Central Government in the case of Avdhesh Sharma (Supra), by no stretch of imagination, can be pressed into service for seeking quashment of the detention order passed against the petitioner by this Court in the obtaining facts and circumstances. The case of Avdhesh Sharma (Supra) is distinguishable from that of the petitioner as he was found to have been allegedly selling Maltodextrin Powder to the petitioner whereas, the petitioner is admittedly in the business of supply of milk and its products to the public at large and huge quantity of said powder i.e. three bags of 25 Kg each and 16 empty milk tanks were seized from his possession. Thus apprehension of use of said adulterant for supply of milk cannot be ruled out. Learned counsel also tried to impress upon this Court that there is a distinguishable recognition in law between concept of 'law & order' and that of 'public order'. To maintain public order, apprehension of any activity prejudicial to the security of the State or to maintain public order or to the maintenance of supplies and services essential to the community, can be good grounds to issue an order of preventive detention against a person. He relied upon the judgment rendered by Constitution Bench of Hon'ble Apex Court in the case reported as (1975) 3 SCC 198 (Haradhan Saha & Another vs The State Of West Bengal & Ors) and prays for dismissal of the writ petition.

At this stage, Shri Bahirani fairly submits that he may be permitted to withdraw this Writ Petition with liberty to pursue his representation filed under Section 14 (1-a) of the National Security Act on 30.06.2023 pending before the Central Govt. seeking revocation of the detention order as according to him, his case is covered not only with that of Avdhesh Sharma (Supra) but also by the dictum of law as laid down by Hon'ble Supreme Court in the cases of Rekha and Munagala Yadamma (Supra).

This Court refrains from commenting upon the contentions advanced by either party and permits the petitioner to withdraw this Writ Petition with liberty to pursue his pending representation. This Court hopes and trusts that the competent Authority of the Central Govt. shall bestow conscious consideration on the submissions advanced before it for the purpose of revocation of detention order and pass a self contained speaking order.

Let the Authority decide the same and pass such an order within one week from the date of production of certified copy of the order passed today with additional submissions, if any.

With the aforesaid, the Writ Petition stands disposed of.

(ROHIT ARYA)

JUDGE

Rks

RAM

Digitally signed by RAM KUMAR SHARMA
DN: c=IN, o=HIGH COURT OF MADHYA PRADESH BENCH
GWALIOR, ou=HIGH COURT OF MADHYA PRADESH BENCH

KUMAR

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