Kanchedilal Sahu vs The Union Of India on 20 December, 2021

Author: Sheel Nagu

Bench: Sheel Nagu

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case Number and Parties Name	WP No.9199/2021 Kanchedilal Sahu Vs. Union of India and others
Date of Order	20/12/2021
Bench Constituted	Division Bench: Justice Sheel Nagu Justice Purushaindra Kumar Kaurav
Order delivered by	Justice Sheel Nagu
Whether approved for reporting	No
Name of counsels for parties	Shri Ravendra Kumar Tiwari, Advocate for the petitioner. Shri J.K. Jain, A.S.G. for the respondent No.1. Shri A.P. Singh, Dy. Advocate General for respondents No.1 & 2.
Law laid down	-
Significant paragraph numbers	-

ORDER

20.12.2021 Per: Sheel Nagu, J.

Challenge in this petition under Article 226/227 of the Constitution is to the order of preventive detention dated 1 st April, 2021 passed by the District Magistrate, Jabalpur detaining the petitioner under Section 3(2) of the National Security Act, 1980 (for short 'the NSA'). By way of amendment, further challenge is laid to the subsequently passed orders twice extending the period of preventive detention on 30.06.2021 till 02.10.2021 and on 28.09.2021 till 02.01.2022.

2. Learned counsel for the rival parties are heard on the question of admission and final disposal. Many a grounds of challenge are raised which are encapsulated as follows:

(i) The grounds for detention do not satisfy the foundational requirement of subjective satisfaction based on objective material;

(ii) The detenu has been denied reasonable opportunity of being heard;

(iii) All the offences alleged against the detenu primarily arise out of complaints made by police personnel.

(iv) On the date of passing of the impugned order of preventive detention dated 01.04.2021, the detenu was already in custody and thus the impugned order is vitiated by the vice of non-application of mind.

(v) The detenu faces prosecution in 9 criminal cases and in majority of the cases and in majority of the cases he has been granted bail.

3. It is pertinent to mention here that the ground of non-application of mind arising out of the fact that there is no recital in the impugned order disclosing that detaining authority was aware of the fact of detenu being already in custody, is not being pressed by learned counsel for petitioner since the same has been referred for adjudication before Larger Bench which is yet to be constituted. Learned counsel for the petitioner has thus given up this ground subject to the verdict of the Larger Bench and has argued on the other grounds raised in the petition.

4. A bare perusal of the impugned order dated 1 st April, 2021 (Annexure P/1) reveals the following offences registered against the detenu and their fate and present status detailed in a tabular illustration showing position as on the date of passing of the impugned order dated 01.04.2021 are as follows:-

Sr. No	Crime Number & Police Station	Section	Charge-sheet filed or not	Fate of the prosecution
1	Crime No.196/2017, P.S. Ghamapur.	328 IPC	Filed	Pending
	2018, P.S. Omti	Act		with fine of Rs.1,300/-.
4	2019, P.S. Omti Crime No.433/2019, P.S. Hanumantal	270 IPC, 5/13, MP Drugs Control Act, 18(C) Drugs and Cosmetic Act.	Yet not filed	Pending
5	Crime No.331/2019, P.S. Ranjhi	328 IPC 5/13 Drugs (Control) Act	Yet not filed	Pending

6	Crime No.187/2020, P.S. Ghamapur	5/13 MP Drug Control Act, 1949, 18(C) Drugs and Cosmetics Articles Act,	Yet not filed	Pending
	P.S. Belbagh	6, 5, 9, 10 Drugs and Cosmetics Act.		
8	Crime No.561/20, P.S. Hanumantal	328, 34 IPC, 5 & 13 Drugs Control Act,	Yet not filed	Pending
9	Crime	328 IPC,	Yet not filed	Pending
	Belbagh	Drugs and Cosmetics Articles Act, 1940.		

5. Pertinently, in majority of the aforesaid offences registered against the detenu, the allegation against the detenu is of selling prohibited drugs i.e. (Leegesic) Lupigesic and Avil Injection without doctor's prescription. The detenu was found selling these drugs unlawfully to large number of persons in the society including members of younger generation. The District Magistrate, Jabalpur on the strength of aforesaid material came to the subjective satisfaction that personal liberty of the detenu ought to be curtailed by invoking the provisions of NSA. The District Magistrate also found that because of the said criminal proclivity of the petitioner of repeatedly being involved in selling prohibited drugs without licence or prescription, the younger generation is being exposed to the adverse effect of drugs. The District Magistrate's subjective satisfaction was further based on the fact that in the face of the society being tormented by the adverse effects of Covid-19 pandemic, if the detenu is let loose then people at large who fall prey to drugs would damage their immune system thereby rendering vulnerable to Covid-19 infection.

6. On the procedural side, it is seen that the order of preventive detention dated 01.04.2021 was approved by the State on 06.04.2021 and was received by the Government of India on 15.04.2021 where-

after it was extended by another three months on 30.06.2021 and; thereafter for another three months on 28.09.2021. The detaining authority was further in possession of the material in shape of

the letter of Chief Medical and Health Officer dated 01.09.2020 and 10.09.2020 vide Annexure R/1 as regards the adverse affects of the drugs, repeatedly recovered from the petitioner, upon the human body and mind.

7. In the considered opinion of this Court, the power of preventive detention is though abhorrent to the concept of personal liberty but can be exercised on justified ground where prejudice to public order is palpable.

8. If the detenu had not been detained and his nefarious activities of repeatedly indulging in illicit sale of prohibited drugs, was not interfered with, then the detenu would have continued to wreck havoc upon the mind and body of large number of members of general public including the younger generation. Thus, in the considered opinion of this court, the District Magistrate had sufficient material available with him to arrive at subjective satisfaction that to prevent any further prejudice to public order, the detenu needs to be detained by exercise of the extra-ordinary power under the National Security Act.

9. As regards the ground of denial of opportunity of being heard prior to passing of impugned order of preventive detention is concerned, it is settled principle of law that in matters of preventive detention the concept of prior hearing does not exist. By the very extra-ordinary nature of power of preventive detention, there is no prerequisite for compliance of the principles of natural justice audi alteram partem as a sine qua non before exercising power of preventive detention. However, the petitioner was duly supplied with the relevant grounds and the supportive material on which the order of preventive detention was based.

10. The other ground of the impugned decision being primarily based on statements/complaints of police personnel is concerned, the petitioner is unable to point out any prejudice against any police personnel to compel this Court to discard their statements/complaint. Whether it is the police personnel or the members of general public making the complaint, it goes without saying that both have to be taken on their face value and in absence of any element of prejudice or malafide both statements stand on the same pedestal of reliability and thus cannot be rejected or excluded merely because the statement/complaint were made by police personnel. More so, material is available on record to indicate that due to nefarious activities of petitioner repeatedly indulging in surreptitious sale of unlicenced drugs, there was widespread fear psychosis which prevented the members of general public to come forward and make complaint or depose against the petitioner. In such a situation, the statement of the police personnel can very well be relied upon as has been done in the present case.

11. This Court in somewhat similar situation, in a case pertaining to manufacturing of synthetic milk, on 09.12.2019 in a bunch of three petitions including WP No.21937/2019 (Rajeev Gupta vs. State of M.P.) repelled the challenge to the order of preventive detention.

12. The Apex Court time and again has laid down that interference by way of judicial review in the matter of preventive detention is permissible in rare circumstances where there is no material at all to support the subjective satisfaction of the detaining authority or the ground of malafide is raised or

there is blatant denial of opportunity being heard to the detenu. Relevant extract of some of these pronouncements are reproduced below:

> 20. Testing the case at hand on the touchstone of the principles laid down in the decisions noted above, we find that the subjective satisfaction arrived at by the detaining authority in the case is based on consideration of all the relevant materials placed before it by the sponsoring authority. It is not the case of the appellant that the sponsoring authority did not place before the detaining authority any material in its possession which is relevant and material for the purpose and such material, if considered by the detaining authority, might have resulted in taking a different view in the matter. All that is contended on behalf of the detenu is that the detaining authority should have taken further steps before being satisfied that a case for detention under the COFEPOSA Act has been made out against the detenu. Whether the detention order suffers from non-application of mind by the detaining authority is not a matter to be examined according to any straitjacket formula or set principles. It depends on the facts and circumstances of the case, the nature of the activities alleged against the detenu, the materials collected in support of such allegations, the propensity and potentiality of the detenu in indulging in such activities etc. The Act does not lay down any set parameters for arriving at the subjective satisfaction by the detaining authority. Keeping in view the purpose for which the enactment is made and the purpose it is intended to achieve, Parliament in its wisdom, has not laid down any set standards for the detaining authority to decide whether an order of detention should be passed against a person. The matter is left to the subjective satisfaction of the competent authority.

Gurdev Singh v. Union of India, (2002) 1 SCC 545

14. It is well settled that the court does not interfere with the subjective satisfaction reached by the detaining authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the court but for the detaining authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the detaining authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.

Subramanian v. State of T.N., (2012) 4 SCC 699

40. The satisfaction of the detaining authority that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the facts and circumstances of the present case, the subjective

satisfaction of the detaining authority that the detenu is likely to be released on bail is based on the materials. A reading of the grounds of detention clearly indicates that detenu Nisar Aliyar has been indulging in smuggling gold and operating syndicate in coordination with others and habitually committing the same unmindful of the revenue loss and the impact on the economy of the nation. Likewise, the detention order qua detenu Happy Dhakad refers to the role played by him in receiving the gold and disposing of the foreign origin smuggled gold through his multiple jewellery outlets and his relatives. The High Court, in our view, erred in quashing the detention orders merely on the ground that the detaining authority has not expressly recorded the finding that there was real possibility of the detenus being released on bail which is in violation of the principles laid down in Kamarunnissa [Kamarunnissa v. Union of India, (1991) 1 SCC 128 : 1991 SCC (Cri) 88] and other judgments and Guideline 24. The order of the High Court quashing the detention orders on those grounds cannot be sustained.

Union of India v. Dimple Happy Dhakad, (2019) 20 SCC 609

13. Learned counsel for the petitioner has relied upon Full Bench decision of this Court in W.P. No.22290/2019 in the case of Kamal Khare vs. State of M.P. and others which in the considered opinion of this Court is distinguishable on facts since it pertains to seizure of cottage cheese (paneer) which was found to be substandard in quality leading to registration of offence punishable u/S 26(2)(ii) and Section 52 of the Food Safety and Standards Act, 2006 whereas this case turns on its own facts and thus Kamal Khare's case (supra) is of no avail to the petitioner.

14. Accordingly, in view of the above discussion, this Court declines interference in the impugned order and dismisses the present petition. No cost.

(Sheel Nagu)
Judge

(Purushaindra Kumar
Judge

YS/

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