

Vijay Gupta vs The State Of Madhya Pradesh on 7 June, 2021

Author: Prakash Shrivastava

Bench: Prakash Shrivastava

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WP. No.2452/2021

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT
AT JABALPUR

Case No.	WP No.2452/2021
Parties Name	Vijay Gupta Vs. State of M.P. and others
Date of Order	07/06/2021
Bench Constituted	Division Bench: Justice Prakash Shrivastava Justice Akhil Kumar Srivastava Justice Prakash Shrivastava
Judgment delivered by	No
Whether approved for reporting	No
Name of counsels for parties	Shri Manish Upadhyaya, learned counsel for the petitioner. Shri Ajay Pratap Singh, learned Deputy Advocate General and Shri Rahul Deshmukh, Panel Lawyer for the respondents.
Law laid down	-
Significant paragraph numbers	-

ORDER

07.06.2021 Per: Prakash Shrivastava, J.

The petitioner is aggrieved with the order dated 13.01.2021 passed by the District Magistrate, Jabalpur under Section 3(2) of the National Security Act, 1980 (for short 'NSA') for a period of three months.

2. The facts in nutshell are that on 20.12.2020, the Food Safety Officer had submitted a representation to the Police Station, Sanjeevani Nagar alleging that the petitioner is making artificial Ghee by using edible oil, Vanaspati Dalda and essence of Ghee. On that basis, the action

was initiated against the petitioner. On 24.12.2020, the Superintendent of Police had forwarded its report alongwith a report of Food Analyst to District Magistrate, Jabalpur for initiating proceedings under the NSA against the petitioner. The District Magistrate had passed the impugned detention order on 13.01.2021 and had supplied the same to the petitioner alongwith the report of the responding authority, SHO and report of the Food Safety Officials. The detention order was approved by the State Government on 18.01.2021 and; thereafter, the Advisory Board constituted under Section 9 of the Act had opined that there was sufficient cause for detention. The State Government had affirmed the order of detention by confirmation order dated 09.02.2021. During the course of arguments, the learned Deputy Advocate General for the State has informed that the detention order has been extended upto 15.07.2021 by order dated 12.04.2021. On 20.12.2020, Crime No.424/2020 for offence punishable under Section 420 of the Indian Penal Code (IPC) read with Section 51, 52, 26(2) of the Food Safety and Standard Act, 2006 (FSSA) was also registered at Police Station, Sanjeewani Nagar, District Jabalpur and the petitioner was taken in custody. The petitioner was granted bail on 04.01.2021.

3. Learned counsel for the petitioner submits that the petitioner has remained in detention for about five months and a copy of the report of Advisory Board has not been supplied and the Ghee allegedly seized from the petitioner is not harmful and it is not a case of disturbing public order. He has also submitted that at the most offence under the FSSA is made out and petitioner has no criminal past, therefore, provisions of NSA have wrongly been invoked.

4. Learned Deputy Advocate General has opposed the petition by submitting that due process has been followed and order of detention has been approved by the Advisory Board and the same has also been confirmed by the State. He has submitted that the petitioner was involved in the activity of manufacturing artificial Ghee and the materials used in this regard have been seized from the petitioner, therefore, in addition to taking action under the FSSA, the petitioner has also been detained under the NSA. He has also submitted that even one single act is sufficient to invoke the provisions of NSA and sufficiency of material cannot be looked into by this Court.

5. We have heard the learned counsel for the parties and perused the record.

6. Section 3(2) of the NSA inter alia permits detention of a person to prevent him from acting in any manner prejudicial to the maintenance of public order. The Supreme Court in various pronouncements had laid down the clear distinction between 'law and order' and 'public order'. Expression 'Law and Order' is wider in scope because contravention of law always affect 'law and order'. Public order has narrow ambit as it can be effected by only such contravention which will affect the community at large. The public order is the even tempo of the community taking the country as a whole or even a specified locality. If a contravention effects only a few individuals directly involved then it is an instance of 'law and order' but if it causes disturbance to even tempo of life then it would be a case of 'public order' [2004 (7) SCC 467 (Commissioner of Police and others vs. C. Anita) and 1992 (2) SCC 177 (Harpreet Kaur vs. State of Maharashtra and another)]. In normal circumstances, violation of the provisions of Food Safety Standard Act is a case affecting 'law and order'. It can be a case of 'public order' if even tempo of life of a society or a locality is affected on account of such violation. In the former case, registration of offence under the FSSA is sufficient

and invoking the provisions of NSA may not be sustained but later may be a case where invocation of provisions of NSA may be justified. The Full Bench of this Court also in the case of Kamal Khare vs. State of M.P. and others in WP No.22290/2019 order dated 22nd of April, 2021 has considered the issue if in case of violation of FSSA, 2006, the provisions of NSA can be invoked and has held as under:

"35. Adverting now to the question whether the offence committed under Food Safety and Standards Act, 2006, which contains penalty clause, under no circumstances can form basis to make an order of preventive detention of the offender whose activities are prejudicial to maintenance of public order under the National Security Act, 1980, the question referred to the larger Bench itself contains the answer to it that if an offence committed by an accused under Food Safety and Standards Act, 2006 whose activities are prejudicial to maintenance of public order, can be detained under NSA. It would however depend on the facts and situation of a given case. What has been argued before us in the present case is that the petitioner - Kamal Khare was booked for committing an offence under Section 26(2)(ii) and Section 52 of the FSSA on the basis of solitary incident in which certain sample of cottage cheese (Paneer) collected from his shop as per the report of food analyst was found not confirming to the prescribed standard. In facts like this, it could be then for the detaining authority to arrive at the subjective satisfaction whether the activities of the person sought to be detained under the NSA are prejudicial to maintenance of public order. In other words, whether the material grounds on which such inference is sought to be drawn is really so compelling as to arrive at the subjective satisfaction which is envisaged in sub-section (2) of Section 3 of NSA that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, his detention would be necessary."

7. The Full Bench has taken note of the various pronouncements and has drawn the distinction between public order and law and order as under:

44. What can therefore be culled out from all the afore-discussed judgments is that whether an act would constitute simple breach of law and order, or breach of public order, would solely depend on the degree and extent of its reach and effect upon the society. Public order is even tempo of the life of the community of an area or even a locality, as a whole. Degree of disturbance upon the life of the community would determine whether it affects public order. An act by itself may not be a determinative factor of its gravity, but it is potentiality of its effect on the even tempo of the life of community that makes it prejudicial to the maintenance of public order. If the effect of act is restricted to certain individuals or a group of individuals, it merely creates a law and order problem but if the effect, reach and potentiality of the act is so deep and pervasive that it affects the community at large and disturbs the even tempo of the community that it becomes a breach of the public order. It therefore cannot be said that a single act would in all and every circumstances not be sufficient to affect public order or even tempo of the society. What is material is the effect of the act and

not the number of acts and therefore what has to be seen is the effect of the act on even tempo of life of the people and the extent of its reach upon society and its impact."

The Full Bench in the case of Kamal Khare(supra) has also taken note of the personal liberty which is infringed by invoking the provisions of NSA in the cases which only relate to the law and order and has observed as under:

"48. While therefore keeping the above referred to principles of law in view, the detaining authority is under an obligation to ensure that personal liberty of an individual is the most precious and prized right guaranteed under the Constitution. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention which are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are indeed in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order. If the offences complained of against the person are of a nature which can be dealt with under the ordinary law of land, taking recourse to the provisions of preventive detention would be contrary to the Constitutional guarantees enshrined in Articles 19 and 21 of the Constitution of India. It is trite that personal liberty protected under Article 21 of the Constitution of India is so sacrosanct and so high on the scale of Constitution values that it casts an obligation on the detaining authority to show that the order of preventive detention it has passed meticulously accord with the procedure established by law. Individual liberty is a cherished right which is one of the most valuable fundamental rights guaranteed by our Constitution to the citizens of the country. Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to procedure established. Therefore, in the scheme of the Constitution, utmost importance has been given to life and personal liberty of the individual. In the matter of preventive detention there is deprivation of liberty, therefore, safeguards provided by Article 22 of the Constitution of the India have to be scrupulously adhered to."

8. The record of the present case reflects that from the house of the petitioner, one aluminium pot with 20 kg of Ghee was seized. The police had also seized some packets of half of Kg Ghee and 500 ml of essence, total value of the seized item was about Rs.11,500/- only. The seizure was from the residential house. No person has been found to be carrying out the manufacturing activity of the so-called artificial ghee. There is also no material to show that the petitioner was involved in any systematic activity of manufacturing of ghee. The petitioner does not have any criminal past. At the most, it can be a case of violation of the provisions of FSSA for which he is already prosecuted. Nothing has been shown to point out that the alleged activity of the petitioner has disturbed the even tempo of life or had caused any problem of public order. The petitioner has already remained in detention for about five months. Though the single act can be found the basis of passing the order of detention but the authorities are required to be satisfied that single act is of such a gravity and potentiality that it could effect the public order but nothing of such kind has been pointed out in the

present case.

9. Keeping in view the above analysis, we are of the opinion that in the facts of this case, the District Magistrate is not justified in invoking the provisions of NSA and therefore impugned detention order dated 13.01.2021 cannot be sustained and is hereby set aside.

10. Writ Petition is allowed accordingly. No costs.

(PRAKASH SHRIVASTAVA)
JUDGE

(AKHIL KUMAR SRIVAS
JUDGE

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