

Kamal Kishore Sharma Thr. Father Keshav ... vs The State Of Madhya Pradesh on 15 July, 2021

Author: Sheel Nagu

Bench: Sheel Nagu

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W.P.No. 6716/2021

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

DIVISION BENCH

PRESENT

SHEEL NAGU & ANAND PATHAK, JJ.

(W.P.No. 6716/2021)

Kamal Kishore Sharma through
Father: Keshav Prasad Sharma
Versus
State of M.P. & Ors.

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Shri Vivek Mishra, learned counsel for the petitioner.

Shri MPS Raghuvanshi, learned Additional Advocate General
for respondents/State.

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ORDER

(Passed on this 15th Day of July, 2021) Sheel Nagu, J.

1. Instant petition has been preferred by the petitioner being crestfallen by the order dated 11th January, 2021 (Annexure P/1) passed by District Magistrate, District Morena as well as order dated 7th April, 2021 (Annexure P/1A) passed by the Additional Secretary, Home Department, Government of Madhya Pradesh, whereby, petitioner has been detained under National Security Act initially for three months and later for another three months till 12/07/2021.

2. It appears from the submissions that petitioner was implicated in a case regarding offence under Section 420, 272, 273 of IPC read with Sections 51, 57, 59 and 63 of Food Safety and Standards Act, 2006 and was allegedly found to be involved into preparation of synthetic milk consisting of Urea and other harmful chemicals and caused health hazard to the public at large. The sheet-anchor of

the arguments of petitioner is the ground that District Magistrate did not disclose the fact in the impugned order that petitioner was already in jail at the time of order of detention and his continuance would have prejudiced the interest of society. He relied upon the judgment of Apex Court in the case of Vijay Kumar Vs. State of Jammu & Kashmir & Ors. (1982) 2 SCC 43 and Division Bench decision of this Court in the case of Md. Vakil Vs. State of M.P. & Ors. 2014 (2) MPLJ 613 and order passed by Division Bench of this Court (Bench at Gwalior) in W.P.No. 19548/2020 dated 2/2/2021 (Awadhesh Sharma Vs. State of M.P. & Ors.). On this ground, petitioner seeks quashment of detention orders passed against him; whereby he has been detained at Central Jail, Gwalior.

3. Respondents filed reply and placed the record in original pertaining to the case and it is the submission of learned counsel for the respondents that on inspection by the Food Department, petitioner was found with 160 litres of adulterated milk and other chemicals like detergent, palm oil, refined oil etc. to prepare synthetic milk, which is otherwise hazardous and unsafe for human consumption, therefore, FIR was registered on 4/12/2020 and petitioner was arrested on 6/12/2020. Meanwhile, looking to his conduct and propensity to disturb even tempo of life and to cause prejudice to society at large, proceedings under National Security Act were initiated. From the record, it appears that District Magistrate was aware of the fact that petitioner was arrested by police, therefore, ground raised by petitioner lacks merits. Government Counsel prayed for dismissal of the petitioner.

4. Heard the rival submissions and perused the record submitted by respondents.

5. This is a case where petitioner is relying upon the alleged procedural irregularity crept into the impugned order whereby, according to petitioner, District Magistrate has not referred the factum of custody of petitioner and subsequent prejudice, if he is released on bail and therefore, caused illegality and on this basis seeks quashment of the order.

6. So far as, judgment of Apex Court in the case of Vijay Kumar (supra) is concerned, its ratio is that detaining authority must disclose awareness of the fact that the person against whom an order of preventive detention is being made, is already in jail, yet for compelling reasons preventive detention order needs to be made. Therefore, from the judgment passed by the Apex Court in the case of Vijay Kumar (supra) as well as in the case of Merugu Satyanarayana Vs. State of Andhra Pradesh & Others, (1982) 3 SCC 301, it appears that Apex Court has given guidance about awareness or subjective satisfaction arrived through such awareness about fact of confinement of person in jail against whom order of preventive detention is being made. It does not necessarily mean that impugned order should contain such fact in specific terms. Both these judgments of Apex Court echoed the same spirit.

7. However, Division Bench of this Court in the case of Md. Vakil (supra) gone little further by saying that the impugned order ought to disclose the fact that while passing the order, authority was aware of the fact that the detenu is already in custody. Even this Court in the case of Awadhesh Sharma (supra) also proceeded on the assumption that in the absence of recital in the order of detention, the detaining authority was knowing about the petitioner being already in custody and

yet required to be detained or else he may breach the public order, vitiates the order of preventive detention and suffers from non-application of mind.

8. So far as this case is concerned, on perusal of record, this Court finds that in the proceedings of preventive detention, initiated by the Police Authorities against the petitioner, statement of SHO, Police Station Ambah, District Morena namely Yogendra Singh Jadaun categorically referred the fact that a case has been registered against the petitioner on the grounds referred above and he has been arrested and confined at Sub-jail Ambah and if he is released on bail then he will again start the business of adulteration of milk and would cause health hazard to the public at large. This statement was made before the District Magistrate, District Morena (author of the detention order). Similarly, copy of FIR and all other documents were also placed before the District Magistrate for perusal.

9. In fact, the grounds of detention as referred to petitioner also included all such documents including the FIR registered against him. Even otherwise, the District Magistrate while referring the case to the State Government referred the statement of SHO, Police Station Ambah in categorical terms about his confinement in jail and his propensity to disturb even tempo of life by causing health hazard to the public at large, therefore, from the record, it appears that District Magistrate was well aware of the fact about petitioner's confinement and therefore, it is not the case that District Magistrate was oblivious to petitioner's confinement and future bright prospects of the petitioner being admitted to bail thereby regaining his personal liberty and indulging in acts prejudicial to public order.

10. If the spirit of judgment passed by Apex Court in the case of Vijay Kumar (supra) and Merugu Satyanarayana (supra) is seen then it appears that subjective satisfaction or awareness of the fact of confinement if considered or sensed by the District Magistrate through record then it passes the test of substantial compliance; whereas, Division Bench in the case of Md. Vakil (supra) and later on in the case of Awadhesh Sharma (supra) appeared to go bit further then while insisted upon writing this fact in the impugned order of detention.

11. Therefore, on close scrutiny of rival submissions and record, it appears that some deviation appears to have caused in the judgment passed by the Division Bench in the case of Md. Vakil (supra) and Awadhesh Sharma (supra) and thus they need to be reconciled with the spirit of order passed by Apex Court in the case of Vijay Kumar (supra) and Merugu Satyanarayana (supra).

12. Therefore, in the interest of justice and to iron out the creases created by Md. Vakil (supra) and Awadhesh Sharma (supra) in the fabric of judicial precedent on the point and to fall in line with the ratio laid down by Apex Court in Vijay Kumar (supra) & Merugu Satyanarayana (supra), this Court deems it fit to refer the matter to Hon'ble the Chief Justice for constitution of appropriate Bench for deciding the questions as proposed hereunder:-

(i) Whether, while preventively detaining a person already in custody the District Magistrate is obliged to expressly disclose in his detention order under Section 3 of National Security Act that this fact is within his knowledge and yet for existence of

extraordinary circumstances invoking Section 3 of National Security Act is imperative, or such knowledge can be deciphered and justified from the record while answering challenge to such an order in the court of law as held by Apex Court in Vijay Kumar (supra) and Merugu Satyanarayana (supra) ?

(ii) Ratio of judgments delivered by Apex Court in the case of Vijay Kumar (supra) and Merugu Satyanarayana (supra) nowhere lay down inclusion of recital in order of preventive detention, as regards the aforesaid knowledge and satisfaction of the District Magistrate. As such the decisions of this Court in Md. Wakil (supra) and Awdhesh Sharma (supra), appear to run contrary to the ratio of Apex Court in Vijay Kumar (supra) and Merugu Satyanarayana (supra) and thus are liable to be declared as such or not ?

13. Office is directed to place this order and record of this case before Hon'ble the Chief Justice for obtaining necessary orders for constitution of appropriate Bench to answer the reference in the interest of justice.

(Sheel Nagu)
Judge

jps/-
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