

Sulabh Sharma @ Amar Chaubey vs The State Of Madhya Pradesh on 17 March, 2021

Equivalent citations: AIRONLINE 2021 MP 139

Author: Sheel Nagu

Bench: Sheel Nagu

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The High Court of Madhya Pradesh

WP.3633.2021

[Sulabh Sharma @ Amar Chaubey Vs. State of M.P. & Ors.]

Gwalior dated 17.03.2021

Shri Ankur Maheshwari, learned counsel for the petitioner.

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

Learned counsel for the rival parties are heard.

1. Present petition filed u/Art.226 of the Constitution of India assails the order of preventive detention passed by the District Magistrate, Guna (M.P.) on 28.01.2021 vide P-1 detaining the petitioner for a period of three months by invoking the provisions of Sec.3(3) of the National Security Act ("NSA" for brevity).

2. Learned counsel for the petitioner Shri Ankur Maheshwari has raised the following grounds in support of the aforesaid challenge to the impugned order:

(i) Violation of Sec.3(4) and Sec.3(5) of NSA.

(ii) Violation of Section 8 of NSA in as much as non-
communication of grounds of detention.

(iii) Petitioner has no criminal antecedents except Crime

No.1235/2020 alleging offences punishable u/Ss.272, 273, 420 IPC and u/Ss.26, 55, 56 of Food Safety & Standards Act, 2006 which is insufficient to sustain an order of preventive detention.

(iv) Report of chemical analyst revealed that only edible oil was found to be unsafe for human consumption.

3. Bare facts attending the instant case reveal that petitioner deals in business of snacks (Namkeen) at Guna for which he obtained licence under 2 WP.3633.2021 the Food Safety and Standards Act, 2006 for running such business. On receiving complaint, the SDM along with food squad under "Food Adulteration Removal Drive" reached the spot on 20.11.2020 where factory premises was found to be locked. When no response could be gathered having several attempts made, on the directions of SDM the factory premises was unlocked. When enquired, it was informed by the persons in the vicinity that factory belongs to Choubey Food Products owned by Amar Choubey. When factory premises was inspected, food stuffs and raw material lying thereat were prima facie found to be substandard, misbranded and not according to the provisions of FSSAI. Samples taken were sent for analysis. On that basis, FIR dated 21.11.2020 bearing Crime No.1235/2020 was registered at Police Station Guna, District Guna (M.P.) against the petitioner alleging offences punishable u/Ss.272, 273, 420 IPC and u/Ss.26, 55, 56 of Food Safety & Standards Act, 2006. Apprehending arrest, bail application u/S.438 Cr.P.C. was preferred by petitioner which was allowed vide order dated 04.01.2021 in Mrcr.52591/2020. The impugned order of preventive detention was passed on 28.01.2021. The District Magistrate, Guna on 30.01.2021 supplied the grounds for detention and supportive material to the petitioner. On 01.02.2021, the District Magistrate forwarded the impugned order along with grounds of detention and supportive material to the State for approval. The State vide order dated 08.02.2021 (Annexure R/1) affirmed the impugned order on 08.02.2021. On 08.02.2021 itself the State forwarded the impugned order along with grounds and the supportive relevant material to the Central Government.

4. Petitioner has challenged the impugned order of preventive detention on the ground that reasons for passing the impugned order do not pass the 3 WP.3633.2021 test of breach of public order but this Court refrains from going into the said ground of merits since the petition deserves to be allowed for the reasons infra.

5. The concept of preventive detention is not punitive. Its purpose is to prevent the breach of public order or its likelihood in future. Thus, by its very nature, power of preventive detention is exercised to prevent and not to punish. In the present case, indisputably, apprehending arrest the petitioner preferred an application u/S.438 Cr.P.C. which was allowed vide order dated 04.01.2021 in Mrcr.52591/2020 as he had no criminal antecedents with him.

6. Further, the order of preventive detention passed by the District Magistrate Guna on 28/1/2021 was forwarded to the Central Govt by letter dated 8/2/2021 i.e. after 10 days of passing of the order which breaches the maximum limit of 5 days prescribed in Sec. 8 of NSA in ordinary circumstances. No explanation has been pointed out either in the impugned order or in the reply to this petition to enable the respondents to take advantage of extended period of 10 days provided in Sec. 8 of the NSA. Thus, the impugned order stands vitiated by violation of the mandatory provision u/Sec. 8 of the NSA. In this connection Constitution Bench decision of Apex court in "A.K.Roi Vs. Union of India & Another (AIR 1982 SC 710)", can be profitably referred to wherein in para 76 it is held thus:-

"76. The objection of the petitioners against the provision contained in S.8 (1) is that it unreasonably allows the detaining authority to furnish the grounds of detention to the detinue as late as five days and in exceptional cases 10 days after the date of detention. This argument overlooks that the primary requirement of S.8 (1) is that the authority making the order of detention shall communicate the grounds of detention to the detinue "as soon as may be". The normal rule therefore is that the grounds of detention must be communicated to the detinue without avoidable 4 WP.3633.2021 delay. It is only in order to meet the practical exigencies of administrative affairs that the detaining authority is permitted to communicate the grounds of detention not later than five days ordinarily, and not later than 10 days if there are exceptional circumstances. If there are any such circumstances, the detaining authority is required by S.8 (1) to record its reason in writing. We do not think that this provision is open to any objection."

7. More so, the impugned order further stands vitiated in law due to violation of mandatory procedure laid down u/S.3(4). For ready reference and convenience Sec.3(4) of NSA is reproduced below:

"3. Power to make orders detaining certain persons.--

(1)	XX	XX	XX
(2)	XX	XX	XX
(3)	XX	XX	XX

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detentions, this sub- section shall apply subject to the modification, that, for the words "twelve days", the words "fifteen days" shall be substituted."

7.1 The aforesaid provision requires the District Magistrate to forthwith report the fact of having passed the order of preventive detention to the State Government together with the supportive grounds and such other particulars which have bearing on the matter.

7.2 The expression ".....he shall forthwith report the fact to the State Government....." found in Sec.3(4) obviously means that forwarding of the report to the State Government by District Magistrate has to be immediate and any delay in this regard unless explained satisfactorily vitiates the order of preventive detention. The Apex Court in one of its recent decisions had 5 WP.3633.2021

an occasion to interpret the aforesaid expression "forthwith" in "Hetchin Haokip Vs. State of Manipur and others [(2018) 9 SCC 562]" relevant portion of which is reproduced below:

"15. The expression "forthwith" under Section 3(4), must be interpreted to mean within reasonable time and without any undue delay. This would not mean that the detaining authority has a period of twelve days to submit the report (with grounds) to the State Government from the date of detention. The detaining authority must furnish the report at the earliest possible. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to unavoidable circumstances beyond the control of the authority and not because of administrative laxity.

16. In the present case, the District Magistrate submitted the report to the State Government on the fifth day (17.7.2017), after the date of the detention order (12.7.2017). The reason for the delay of five days is neither mentioned in the State Government's order confirming the detention order, nor in the impugned judgment. It was for the District Magistrate to establish that he had valid and justifiable reasons for submitting the report five days after passing the order of detention. As the decision in Keshav Nikanth Joglekar Vs. Commnr. of Police, 1956 SCR 653: AIR 1957 SC 28, holds, the issue is whether the report was sent at the earliest time possible or whether the delay in sending the report could have been avoided. Moreover, as the decision in Salim Vs. State of W.B., (1975) 1 SCC 653: 1975 SCC (Cri) 290, holds, there should be no laxity in reporting the detention to the Government. Whether there were administrative exigencies which justify the delay in sending the report must be explained by the detaining authority. In the present case, as we shall explain, this was a matter specifically placed in issue before the High Court. The District Magistrate offered no explanation. This would vitiate the order of detention."

7.3 In the instant case, the State in its affidavit has disclosed that after passing of the order of preventive detention on 28.01.2021 the case was forwarded by the District Magistrate to the State Government u/S.3(4) on 01.02.2021 i.e. after four days. Neither in the order impugned nor in the reply filed by the State there is any explanation for not forwarding the case to the State Government earlier. The delay of four days has not been explained by the official respondents.

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8. The law of preventive detention is an exception to the fundamental right to personal liberty u/Art.21 of the Constitution and therefore has to be strictly construed. Any aberration by the Competent Authority in complying with the statutory procedure laid down under the NSA is not only to be frowned upon but interfered with by the superior court.

9. In view of above discussion, this Court has no manner of doubt that the order of preventive detention Annexure P-1 is vitiated due to non-application of mind and in particular breach of mandatory statutory procedure contained u/Ss.3(4) and 8 of NSA.

10. Consequently, present petition stands allowed with the following directions:

(i) The impugned order (Annexure P-1) dated 28/01/2021 passed by District Magistrate, Guna (M.P.) is quashed.

(ii) Since the due process of law under NSA has not been followed by State resulting into deprivation of fundamental right of personal liberty to the petitioner, respondent No.2-District Magistrate Guna is liable to be fastened with cost of this litigation which is quantified at Rs.10,000/- (Rs.Ten Thousand) which shall be paid to petitioner by District Magistrate, Guna within a period of 30 (Thirty) days from today by way of digital transfer in the account of petitioner and receipt thereof shall be filed in the Registry, failing which matter shall be put up by the Registry in "Direction Matters".

(Sheel Nagu)
Judge

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DHARK

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