

(2019) 11 MP CK 0057

In the Madhya Pradesh High Court

Case No : Writ Petition No. 23109 Of 2019

Ashish Pandey

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 06-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 22(4), 226
National Security Act, 1980 — Section 3, 3(3), 3(5), 13
Indian Penal Code, 1860 — Section 420
Code Of Criminal Procedure, 1973 — Section 438
Trade And Merchandise Marks Act, 1958 — Section 70A, 79

Citation : (2019) 11 MP CK 0057

Hon'ble Judges : Sujoy Paul, J;Anjuli Palo, J

Bench : Division Bench

Advocate : Naman Nagrath, Avnesh Shrivastava, Sourabh Sundar, H.K. Upadhayay

Final Decision : Allowed

Judgement

1. At the outset, learned senior counsel for the petitioner submits that the petitioner is not claiming any relief against the respondent No.2 and is not pressing his relief mentioned in Para 7(iii), (iv) and (v) of the writ petition.
2. With consent of the parties, matter is finally heard.
3. This petition filed under Article 226 of the Constitution takes exception to the order dated 25.10.2019 whereby the District Magistrate in exercise of power under Section 3 of the National Security Act, 1980 (hereinafter referred to as "NSA Act") has passed an order of detention of petitioner for an indefinite period.
4. Shri Nagrath, learned senior counsel for the petitioner submits that a plain reading of detention order shows that for twin reasons the powers are invoked by learned District Magistrate. Firstly, for an incident of the year 2011 when allegedly two incidents of food adulteration had taken place, out of which the petitioner has already been acquitted in one case and in the second case, the

prosecution witness is not entering appearance before the competent Court because of which the matter has been delayed. This became the first reason after about eight to nine years to invoke the powers under Section 3 of NSA Act. Secondly, on 04.08.2019, an inspection of petitioner's ice-cream factory situated at Katni had taken place in which as per the allegations, certain packets of ice-cream were found with the level of "Sanchi". On the basis of which the offences under Section 420 of IPC were alleged against the petitioner and FIR was registered on 05.08.2019 (Annexure-P/2). In turn, the petitioner preferred an application under Section 438 Cr.P.C. before the Court below. The Court below while granting anticipatory bail, recorded that at best offences under Sections 70-A and 79 of the Trade and Merchandise Marks Act, 1958 could have been alleged against the petitioner. By a detailed order, the petitioner was given anticipatory bail on 09.08.2019.

5. Learned senior counsel for the petitioner further submits that soon after receiving the information that the petitioner has been given anticipatory bail by the Court below, the petitioner's factory was sealed by the Department of Food. Aggrieved, the petitioner filed Cr.R. No.93/2019 before the IIIrd Additional Sessions Judge, Katni. The said Court vide order dated 21.10.2019 directed for unsealing of the factory. When petitioner remained present for the purpose of formality of unsealing the factory, he was taken into custody and was informed that the impugned order has been passed.

6. The impugned order is presently called in question on singular legal issue and it is urged that there are other legal points on which the impugned order can be called in question for which he reserves his liberty to raise those points if occasion arises in future. It is contended that in view of settled legal position as per two Division Bench orders passed by this Court [W.P. No.2695/2019 (Akash Yadav Vs. State of M.P. and others) and W.P. No.19820/2019 (Rajesh Gupta Vs. State of M.P.) decided on 12.04.2019 and 16.10.2019 respectively], the detention order cannot sustain judicial scrutiny because it is passed without proper application of mind and without specifying the period of detention which is a statutory mandate under the NSA Act.

7. The prayer is opposed by Shri Sourabh Sundar, learned Govt. Advocate and Shri H.K. Upadhayay, learned counsel for the respondent No.3 on the basis of the return.

8. No other point is raised by learned counsel for the parties.

9. Indisputably, the impugned order of detention dated 25.10.2019 does not specify any period of detention. As rightly pointed out by learned senior counsel for the petitioner, the point involved is no more res integra. The Division Bench in Akash Yadav (supra) has held as under:

"29: Now in the facts of the case and also looking to the stand taken by the respondent/State in their return, the justification of the action taken following the procedure prescribed is required to be examined in the case at hand. In the

present case, the order has been passed by the District Magistrate on 7.9.2018 on the pretext of affecting public order on account of registration of various cases alleging commission of offence against individuals from the year 2011 to 2018. Nothing is brought on record in the return how his activity would be prejudicial to the public order. It is not said, on which date the matter was reported to the State Government by the District Magistrate. The affirmation/approval order is passed by the State Government on 19.9.2018 not within the period of 12 days, therefore, the compliance of sub-section (4) of Section 3 *ibid* is beyond the prescribed time limit of 12 days. Thus due to non affirmation of the order within 12 days by the State Government, the order of District Magistrate stands vitiated.

30: On perusal of the order passed by the District Magistrate dated 7.9.2018, the period, to which the detention was directed, has not been specified in the order, though as per the report of the SHO and the Superintendent of Police, Chhatarpur, the cause relates to the jurisdiction affecting the local limits of the area of the District by the petitioner, however, in exercise of power under sub-section (3) of Section 3 of the NSA Act, such an order can be passed by the District Magistrate for a period not longer than 3 months, subject to approval by the State Government for the said period otherwise the order of District Magistrate and the order of affirmation/approval of the State Government without specifying the period, vitiates it as per proviso to sub-section (3) of Section 3 of the NSA Act and Article 22(4) of the Constitution of India and the interpretation of law made hereinabove in the light of the judgments of the Supreme Court in the case of Cherukuri Mani W/o Narendra (*supra*) and the judgments of the Division Bench of this Court in the cases of Bhaiya @ Bhaiya Lal @ Arvind and Pradeep (*supra*).

31 : In the present case, nothing has been brought on record that compliance of sub-section (5) of Section 3 of NSA Act, has been made by the State Government submitting a report to the Central Government together with the grounds on which the order has been made with particulars which are having bearing and necessary in the opinion of the State. The non-compliance of sub-section (5) of Section 3 *ibid* is mandatory, therefore, also the order stands vitiated."

[Emphasis Supplied]

10. This principle is recently followed by another coordinate Bench on 16.10.2019 in Rajesh Gupta (*supra*), the relevant portion is as under:

"The legality of the aforesaid order has been challenged on ground *inter alia* that in the aforesaid order, no specific period of detention has been prescribed, which is mandatory, as the person cannot be detained for indefinite period. As per Article 22(4) of the Constitution of India, the initial detention period cannot be more than three months and as per section 13 of the National Security Act, after approval of the Advisory Board, the State Govt. can extend the period of detention for a maximum period of 12 months from the date of detention.

In the present case, the Advisory Board has not examined the matter as the petitioner has not been arrested and detained. Hence, the order has been approved by the State Govt. vide annexure R/6; but, in this order also, no specific period of detention has been prescribed which is also mandatory. Apart from it, after such approval the matter has not been reported to the Central Govt. which ought to have been done within seven days.

In view of the circumstances, neither the District Magistrate, Raisen nor the State Govt. has applied its mind at the time of passing of the orders and approval of the same. The orders have been passed mechanically without following the mandatory provisions of the law. It is bounden duty of the Authority concern to follow the mandatory provisions and observe the constitutional safeguards contemplated under Article 22(4) of the Constitution of India before passing the impugned order curtailing personal liberty of a person. Therefore, such orders cannot be allowed to stand. (See Law laid down by the Division Bench of this court in the case of Akash Yadav Vs. State of M.P. in W.P.No.2695/2019 decided on 12.4.2019, after considering the relevant judgments of the Apex Court).

In view of the aforesaid reasons, the impugned orders have been passed without application of mind, in a mechanical manner, which is illegal and contrary to law and as such unsustainable and deserves to be set aside."

[Emphasis Supplied]

11. Learned counsel for the respondents are unable to show any other provision which permits the District Magistrate to pass order of detention without specifying the period of detention. We are bound by the order passed by the Co-ordinate Bench.

12. Resultantly, the impugned order dated 25.10.2019 (Annexure-P/8) is set aside. Petition is allowed. This order shall be complied with forthwith. It is made clear that this Court has not expressed any opinion on the merits of the case relating to said FIR.

C.C. today.