
(2013) 03 MP CK 0042
In the Madhya Pradesh High Court
Case No : Writ Petition 10825 of 2012

Bhaiya @ Bhaiyalal @ Arvind

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5), 226
National Security Act, 1980 — Section 12, 12(1), 14, 14(1), 3
Penal Code, 1860 (IPC) — Section 294, 323, 34, 506
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3

Citation : (2013) 2 JLJ 300 : (2013) 3 MPHT 495 : (2013) 2 MPLJ 605

Hon'ble Judges : Shantanu Kemkar, J; J.K. Maheshwari, J

Bench : Division Bench

Advocate : Ajay Bagadia, for the Appellant; M.S. Dwivedi, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.—Assailing the order dated 28-7-2012, Annexure P-3 passed by respondent No. 2 and the order dated 21-9-2010, Annexure P-7, passed by respondent No. 1 confirming the order of detention, this petition has been filed under Article 226 of the Constitution of India. It is the contention of the petitioner that on 24-7-2012, a first information report was lodged against him upon which an offence u/s 294, 323, 506 and 34 of Indian Penal Code was registered at about 22.50 hours. On the next date, i.e., 25-7-2012, five other reports of petty offences were registered in between 11.15 hours and 15 hours in one day. The Superintendent of Police relying upon F.I.Rs submitted a report before the District Magistrate on 27-7-2012. Thereupon the order of detention was passed on 28-7-2012 directing to keep the petitioner into custody in Central Jail, Rewa. The petitioner has submitted two representations through his mother. The first representation dated 8-8-2012 has been submitted to the detaining authority i.e. District Magistrate and another representation was submitted to

State Government on 9-8-2012. The representation submitted to the State Government was decided on 2-1-2013 without its communication, while the representation submitted to the District Magistrate remain undecided, though he is duty bound to decide such representation. In such circumstances, the right to approach the petitioner under Article 22(5) of the Constitution of India as well as section 14 of the National Security Act, 1980 (hereinafter referred to as Act) has violated by not deciding the same as expeditiously as possible with promptitude by the detaining authority as well as by the appropriate authority. However, this petition has been filed seeking quashment of the said orders.

2. The State Government has filed their reply on 8-2-2013, after availing three opportunities, wherein it is contended that various FIR in two days have been registered against the petitioner on account of his anti social activities of terrorizing the general public. It is denied that the said FIRs have been registered under the political pressure. The petitioner is an anti social activist who indulged in gundaim, loot, causes attempt to murder, theft in houses using dangerous weapons. However, the peoples of the locality were in terror by such act, therefore the officer competent, in exercise of the powers under sub section (2) of section 3 of the Act has rightly passed the order of detention on 28-7-2012, considering the memorandum of the Superintendent of Police submitted on 27-7-2012. It is submitted that the grounds of detention has been communicated vide Annexure R-2, intimation has been furnished to the Home Department, as per the document Annexure R-3, and immediately he was taken into custody on 28-7-2012. It is also submitted that as per the notification issued on 10th July, 2012, the District Magistrate, Indore is empowered to exercise the powers under sub section (2) of section 3 of the Act. It is also submitted that the department of Home has sent the approval on 13-8-2012 which was done on 8-8-2012, as per Annexure R-7. It was confirmed vide letter dated 21-9-2012 Annexure R-10, however, clarified that the period of detention of the petitioner shall be of 12 months upto 27-7-2013. It is also submitted that the representation of the petitioner was rejected vide order Annexure R-9 on 2-1-2013. In such circumstances, strict compliance of the provisions of the Act has been done by the State Government while passing the order, therefore, interference in this petition is not called for.

3. Learned counsel appearing on behalf of the petitioner placed reliance on a judgment of this Court passed in W.P. No. 9689/2012, Golu alias Anand vs. State of Madhya Pradesh and others decided on 13-2-2013. This Court has held that not deciding the representation expeditiously is fatal and on the said ground, the order of detention was quashed. It is submitted that the petitioner of the said case Golu @ Anand is an accused in the FIRs lodged against the petitioner. The order of his detention and of the petitioner have been passed on the same date by the same authority. In the case of Golu @ Anand, the representation was submitted on 1-10-2012 which was decided on 4-12-2012 and communicated on 24-1-2013. However, by filing the said writ petition, this Court held that there is unexplained delay which is fatal therefore, the order of detention was quashed.

In the case of the petitioner, after passing the order of detention on 28-7-2012, the representation has been submitted to the State Government on 9-8-2012, which was rejected on 2-1-2013. The copy of the same was filed along with the reply in the Court on 8-2-2013 without supplying the rejection order to the petitioner. However, the case of the petitioner is on better footing than the case of the Golu @ Anand therefore, on this ground, the order of detention of the petitioner may be set aside. It is submitted that not deciding the representation with promptitude by the authorities is not in consonance to law laid down by Hon"ble the Apex Court in the case of Gazi Khan alias; Chotia Vs. State of Rajasthan and another, . Reliance has also been placed on two Division Bench judgments of this Court in the case of Nirmaljeet Kaur Vs. State of M.P. and Another, and Alok Pratap Singh Vs. State of Madhya Pradesh and Another, . However, it is urged that the order of detention passed by the competent authority, the order of approval and confirmation passed by the State Government is not in conformity to law.

4. Per contra, learned Government Advocate appearing on behalf of the respondent/State referring the document Annexure R-2 contended that the grounds of detention were communicated on 28-7-2012 to the petitioner and the intimation of the order of detention was sent to the Principal Secretary, Home Department, Government of Madhya Pradesh, Vallabh Bhawan, Bhopal. The representation submitted by the petitioner has also been rejected by the State Government as per Annexure R-9 on 2-1-2013 and by passing the order Annexure R-10, the State Government in exercise of the powers under sub section 1 of section 12 of the Act has confirmed the detention order after recommendation of the advisory Board, on 21-9-2012, directing the detention of the petitioner for a period of one year upto 27-7-2013, therefore in such circumstances, the procedure as prescribed has been strictly observed, therefore, the order of detention, its approval and confirmation has rightly been passed which do not warrant any interference in this petition. Hence, prayed for dismissal of this petition.

5. After having heard the learned counsel appearing on behalf of the parties, it is seen that the order of detention has been passed on 28-7-2012, in exercise of powers conferred under sub-section (2) of section 3 of the Act by District Magistrate, Indore. In the said order, the period of detention has not been specified. The representation, Annexure P-5 has been submitted by the petitioner on 9-8-2012 to the Principal Secretary, Home Department, Government of Madhya Pradesh, Vallabh Bhawan, Bhopal-respondent No. 1 and the representation, Annexure P-6 has also been submitted to the detaining authority i.e. District Magistrate on 8-8-2012. It is not in dispute that the representation submitted to respondent No. 1 was rejected on 2-1-2013 after about four months and the copy of the said rejection order has not been communicated to the petitioner, which would reveal from the document itself, by which it is clear, that it was sent to the District Magistrate, Indore and not to the petitioner. In the reply filed by the respondent, reasons of such delay has not been explained. It

further appears that the representation submitted to the detaining authority has not been decided. As per section 8 of the Act, it is clear that on receiving the grounds of detention, an opportunity shall be afforded to the detainee with earliest opportunities of making representation against such order to the appropriate Government. As per section 14(1) of the Act, it is clear that the detention order passed may at any time be revoked or modified by the State Government, if the order is passed by its subordinate officer, the similar power has also been conferred to the Central Government. As per Article 22(5) of the Constitution of India, it is clear that if an order of preventive detention has been made against a person then the authority concerned shall as soon as possible may communicate it to such person, the grounds on which order has been passed and shall afford an opportunity at the earliest to make a representation against the order. In view of the foregoing, furnishing an earliest opportunity to represent and to decide it is a sine qua non in the matter of detention.

6. Hon"ble the Apex Court in the case of Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, , the aforesaid issue has been discussed in detail. It has been held that a person detained has right to make representation against the order of detention to the Advisory Board and also to the detaining authority, who has passed the order or to the State Government who is required to exercise the powers of approval as per sub-section (3) of section 3 and section 12 of the Act. It has been observed that the authority competent for revoking or modifying the order may give immediate relief to the detainee. It has been clarified that if such representation has been submitted, then it is the corresponding duty of the detaining authority as well as the State Government to consider and decide it at the earliest. In the case of Kundanbhai Shaikh Vs. Magistrate, Ahmedabad and others, Hon"ble the Supreme Court has held that to submit a representation against the order of detention is a Constitutional right as well as the statutory right of detainee. As per the provisions of the Act as well as Constitution, it is clear that earliest opportunity to make a representation is required to be afforded. However, it is implicit and corresponding duty of the authority to whom the representation is made to dispose of the said representation at the earliest or else the Constitutional and statutory obligation of affording earliest opportunity of making representation would lose its purpose and meaning. In such circumstances, it was directed by Hon"ble the Apex Court that the representation has to be disposed of at the earliest. If there is a delay in such disposal, reasons should be specifically explaining such delay, otherwise, it is fatal and affect the right of detainee.

7. In the said context, in view of the factual aspect discussed hereinabove, it is clear that the representation submitted to the detaining Authority on 8-8-2012 has not been decided and representation submitted to the State Government on 9-8-2012 has been decided on 2-1-2013, and copy of rejection order is filed along with the return on 8-2-2013 without intimation to the petitioner. The aforesaid delay has not been explained in the return. Thus, the case of the petitioner is on better footing than the case of Golu @ Anand (supra) referred

hereinabove, wherein the order of detention has been quashed on the same ground. In such circumstances, in the considered opinion of this Court, the delay has not been satisfactorily explained which is fatal and on the said ground, the order of detention is liable to be quashed.

8. In addition to the aforesaid, it is seen that in the order of detention of the District Magistrate dated 28-7-2012, the period of detention has not been specified. In the order of approval by the State Government also the period of detention has also not been specified. The period of detention of one year at the first time mentioned in the order of confirmation passed on 21-9-2012, Annexure P-7. In the said context, the provisions of sub-sections (2), (3) and (5) of section 3, as well as section 12 of the Act is relevant which are reproduced hereunder:--

3. Power to make orders detaining certain persons

(1).....

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.-- For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980, and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(5) When any order is made or approved by the State Government under this

section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

12. Action upon the report of the Advisory Board

(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith.

9. Bare reading of the aforesaid, it is apparent that the order of detention in writing can be passed within the local limits by the District Magistrate directing that the detenu for the specified period shall remain in detention. The said order shall be passed in exercise of the powers under sub-section (2) of section 3 of the Act. The proviso makes it clear that the period specified in an order made by the State Government under this sub-section shall not in the first instance exceed three months, but on having satisfied that detention is necessary then by extending it for the period from time to time by passing an order of three months may be extended at any one time. In the said context, as per order of the detaining authority dated 28-7-2012 and the order of approval communicated on 13-8-2012, Annexure R-7, it is clear that the approval is granted on 8-8-2012 and in both these orders, the period of detention has not been specified. The period of detention is only specified in the order of confirmation passed in exercise of the power as conferred u/s 12(1) of the Act, therefore, also at initial stage, when the petitioner was taken into custody, he was unaware regarding the period of his detention, therefore, compliance of sub-section (3) of section 3 and its proviso has not been made by the detaining authority or by the State Government. As per reading of the proviso of sub-section (3), it is made clear that initial period of detention shall be three months, which may be extended, but in case where the period of detention has not been specified in the order of detention, it would amount to non-compliance of the said provision. It is further seen from the record that the order passed by the detaining authority or by the State Government has not been communicated to the Central Government. Either in the order of detention or approval or confirmation of the petitioner, the copy has not been sent to the Central Government. No document showing compliance of section 3(5) of the Act has been filed. Though to show compliance it is the duty of the State Government to send the order of detention and the ground of detention to the Central Government within 7 days. In absence thereto, noncompliance of sub-section (5) of section 3 also appears on the face of record.

10. In this regard, guidance may be taken from a judgment of the Apex Court in the case of *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, wherein it has been observed that the law of detention should be strictly construed and confined to narrow limits in rare and exceptional cases and meticulous compliance and procedural safeguards should be made mandatory. It has been held that personal liberty protected under Article 21 is sacrosanct and so high in scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The procedural safeguards are required to be zealously watched and enforced by the Court and their rigour cannot be allowed or diluted on the basis of the nature of the alleged activities of the detainee.

11. In view of the discussion made hereinabove the respondent has decided the representation by inordinate delay without taking action with promptitude. It is further clear that the compliance of the provisions of sub-section (3) due to not specifying the period of detention and sub-section (5) of section 3 of the Act has not been made, though it is mandatory, therefore, considering the cumulative effect of the aforesaid, in our considered opinion, the order of detention passed by the detaining authority dated 28-7-2012, the order of approval dated 8-8-2012 and its communication dated 13-8-2012 and the order of confirmation dated 21-9-2012 are hereby quashed. As a result, the petition succeeds and is hereby allowed. It is directed that the petitioner be set at liberty, if not required in any other case. In the facts, parties to bear their own costs.

C.C. as per rules.