
(1988) 05 MP CK 0017

In the Madhya Pradesh High Court

Dilip Girja Shankar Pandey

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 07-05-1988

Acts Referred:

Constitution of India, 1950 — Article 21, 22
National Security Act, 1980 — Section 12, 13, 3

Citation : (1989) CriLJ 1379 : (1989) MPLJ 447

Hon'ble Judges : T.N. Singh, J;N.K. Singh, J

Bench : Division Bench

Judgement

T.N. Singh, J.

Detention of the petitioner is made in this case in exercise of powers u/s 3(3) of the National Security Act (for short, "the Act"), by District Magistrate, Bind. Unfortunately, in the detention order (Annexure R-1) dt. 7-9-1987 the detaining authority has referred to the provisions of Section 3(2) of the Act. True, for achieving the statutory objective of maintaining "public order" the District Magistrate has been duly authorised by the State Government and, in the instant case, he has passed the impugned order to achieve that objective. Whatever that may be, we are not in the least swayed by technical considerations, as there are substantial reasons to take the view that the continuing detention of the petitioner under the Act is illegal and unconstitutional.

A three-fold contention is forcefully urged by counsel appearing for the petitioner, and we are satisfied that the contentions pressed must prevail. It is first contended that although the detention order was passed on 7-9-1987, it is not disclosed in the return by the detaining authority as to when the detenu was taken into custody which was his bounden duty to do to satisfy this Court that the conspectus of the several safeguards envisaged under different sub-sections of Section 3 had not been infringed, Indeed an onerous constitutional burden in terms of Articles 21 and 22(5) has been saddled inexorably on the detaining authority to ensure due observance of the statutory procedure and also to satisfy

the Court that detenu's right reserved thereunder is not infringed in any manner. 2A. The constitutional imperative of communicating to the detenu the "grounds" as per Article 22(5) evidently implies that the duty in that regard must be carried out in strict compliance with the relevant statutory provision in respect of the time-scale of Section 3(4) as also other requirements. To discharge the constitutional burden it becomes foremost duty of the detaining authority to disclose in the Return itself, clearly and affirmatively, the date of detention and supply or communication of the "grounds" and to establish the facts pleaded to the satisfaction of the Court placing before the Court credible material. Failure to do so would impair the validity of the Return, and the defective Return would be fatal to continued detention of any person made under the Act. Support for this view we read in *Munna Tuin Vs. District Magistrate, Lucknow and Others*, wherein the detention made under the Act was set aside and the petitioner was released because Return filed by the detaining authority was found to be defective. Indeed, in that case the detaining authority did not file himself the affidavit sought by the Court to discharge his burden of non-communication of "grounds" in terms of Article 22(5) by not supplying some important documents considered by him along with the "grounds".

Secondly, it is submitted by Shri Rakesh Saxena, if there is anything on records to indicate the date of petitioner's apprehension, that cannot be any other date than 25-10-1987, inasmuch as petitioner's detention for a period of 12 months was confirmed up to 26-10-1988. Indeed, the order of confirmation "Annexure R-29, recites that petitioner's detention "shall continue till the expiry of 12 months from the date of his detention, that is, up to 26-10-1988." Thirdly, it is contended that there is total non-application of mind by the State Government in acting u/s 12 of the Act in continuing further petitioner's detention for the maximum period, without being sure of the date of petitioner's apprehension. It is manifestly clear that the date of actual apprehension of the petitioner was not clearly known to the concerned authority and no mention of that date is, therefore, made in the order (Annexure R-29), while the mandatory provisions of Sections 12 and 13 envisage that the maximum period of detention cannot be more than 12 months "from the date of detention".

In so far as the first two contentions are concerned, for the legal submission in relation thereto reliance is placed by the counsel on a division Bench decision of the Gauhati High Court, to which one of us was a party (Dr. T. N. Singh, J), in the case of *Prabin Kumar Gogoi Vs. Deputy Secy. to the Govt. of Assam and Others*, . In that case, the Division Bench referred to the decisions in the case of *Sk. Nizamuddin Vs. State of West Bengal*, and *Sk. Serajul Vs. State of West Bengal*, to take the view that when there is inordinate delay in apprehending the detenu after passing the order of detention, it becomes the bounden duty of the detaining authority to satisfy the Court about the necessity for detention subsisting on the date of apprehension of the petitioner,

In the instant case, if we accept the factual position that the detention order

against the petitioner was passed on 7-9-1987 and that he was taken into custody on 25-10-1987, we have to insist on the detaining authority to satisfy us that on the date when the petitioner was apprehended there was necessity subsisting to detain him on that date and, indeed also, why he could not be apprehended earlier to be detained in terms of the detention order passed on 7-9-1987 so as to prevent him from indulging in prejudicial activities. We are in complete agreement with the view expressed in *Prabin Kumar Gogol* (supra) that an order of detention under the Act cannot be used as a warrant of arrest to detain any person any time the authority chooses to do so without being satisfied as to the "necessity" to do so on the date of apprehending the person to be detained by him under the Act, This requirement flows directly from the constitutional mandate of "fair procedure" envisaged under Article 21, which obligates the Court to insist on the genuineness of the "necessity" of preventive detention being established not only on the date of passing of the order of detention but also on the date when the order is enforced. In the instant case, the detaining authority has failed to discharge his constitutional burden, inasmuch as no, explanation is forthcoming as to why the petitioner was apprehended on 25-10-1987 though the detention order was passed against him long ago, on 7-9-1987. The continued detention of the petitioner in the absence of the requisite explanation must be held unconstitutional and void.

In Court today Shri R.A. Roman, appearing for the State, after shuffling his own records, made the submission that though the date of detention is not disclosed anywhere in the return or in any paper filed in this Court or served on the detenu, petitioner was, or in any case be deemed to have been, taken into custody on the date of passing of the order of detention itself. However, in matters concerning personal liberty of a citizen, we do not think if we can entertain the plea taken today in the course of arguments, when it was the bounden duty of the State, as we have earlier held, to disclose the material fact in the return itself, duly supported by credible material. There can be no room for any presumption which renders nugatory any constitutional burden.

For the third contention, the plea aforesaid taken in this Court by Shri Roman furnishes, rather, the reasonable basis. Indeed, if it is accepted that the petitioner was detained not on 25-10-1987 but on 7-9-1987 then he could, not have been detained beyond 7-10-1987, as the maximum period would expire on that date and it would not expire on 25-10-1987. Unfortunately, in this case the position which is established beyond any pale of controversy is that the continued detention of petitioner was made up to 26-10-1988 by the confirming authority, purporting to act under Sections 12 and 13 of the Act. The confirmation order (Annexure R-29) must also sink irretrievably. Statutory power is meant to be exercised reasonably and responsibly, and when liberty of a citizen is in jeopardy, no casual or cavalier approach is tolerated. The Court is constitutionally obligated to insist on meticulous and strict compliance of the statutory requirements in such cases, as held in *Rattan Singh Vs. State of Punjab and Others*, by their Lordships of the Supreme Court, A Division Bench of this

Court in *Bharat and etc. Vs. District Magistrate and Others*, has Categorically held that the confirming authority cannot act mechanically u/s 12 and, as such, if there is no due application of mind to the most material fact of the date of detention, then there can be no escape from the conclusion that the detaining authority has acted mechanically. May we add that Section 13 reinforces the rigors of the mandate of Section 12 by fixing the maximum period with reference to the date of detention with the object of allowing the detenu to challenge his detention beyond the period prescribed, in violation of the provisions of Section 13 or even of Article 22(1) of the Constitution.

We have no hesitation to hold in the facts and circumstances of the case that the several breaches of important statutory safeguards have rendered the continued detention of the petitioner illegal and unconstitutional. We, accordingly, direct that the petitioner shall be set at liberty forthwith if not wanted in any other case. The petition is allowed and the continued detention of the petitioner is quashed.

The question of contempt, for which the Superintendent of Police has been asked to show cause and for whom Shri N. P. Dwivedi appears, is kept open to be decided with other cases. Indeed, the question has a common complexion in all the cases in which NSA detenus (including the petitioner) were produced in this Court in handcuffs in violation of the direction made in that regard.