
(2022) 04 MP CK 0090
In the Madhya Pradesh High Court
Case No : Writ Petition No. 9761 Of 2022

Gajra

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 27-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 —
Section 3

Citation : (2022) 04 MP CK 0090

Hon'ble Judges : Vivek Rusia, J; Amar Nath (Kesharwani), J

Bench : Division Bench

Advocate : Asif Ahmed Khan, Bhaskar Agrawal

Final Decision : Allowed

Judgement

The petitioner has filed the present petition against the detention order dated 10.03.2022 passed by the District Magistrate, Alirajpur in exercise of power conferred under the National Securities Act.

The petitioner has been informed that he has right to submit representation to the State Government, Central Government and is also having right to appear before the Advisory Board.

At the very outset, learned Government Advocate for the respondent / State submits that apart from the aforesaid directions, the detenu ought to have been informed his right to submit an objection before the District Magistrate itself and if such a right has not been given then that vitiates the entire proceedings / order.

A similar issue came up before Full Bench of this Court in the case of Kamal Khare v/s The State of Madhya Pradesh reported in 2021 (2) M.P.L.J. 554. The relevant paragraphs of the aforesaid judgment are reproduced below:-

"33. In view of the above, the Constitution Bench of the Supreme Court in Kamlesh Kumar Ishwardas Patel (supra) analyzed the effect of not informing the

detenu of his right to make a representation to the detaining authority itself in paragraph No.47 of the report and held that this results in denial of his right under Article 22(5) of the Constitution of India, which renders the detention illegal. The relevant paragraph No.47 is reproduced hereunder:-

"47. In both the appeals the orders of detention were made under Section 3 of the PIT NDPS Act by the officer specially empowered by the Central Government to make such an order. In the grounds of detention the detenu was only informed that he can make a representation to the Central Government or the Advisory Board. The detenu was not informed that he can make a representation to the officer who had made the order of detention. As a result the detenu could not make a representation to the officer who made the order of detention. The Madras High Court, by the judgments under appeal dated 18-11-1994 and 17.1.1994, allowed the writ petitions filed by the detenus and has set aside the order of detention on the view that the failure on the part of the detaining authority to inform the detenu that he has a right to make a representation to the detaining authority himself has resulted in denial of the constitutional right guaranteed under Article 22(5) of the Constitution. In view of our answer to the common question posed the said decisions of the Madras High Court setting aside the order of detention of the detenus must be upheld and these appeals are liable to be dismissed."

34. This issue again came up for consideration before the Supreme Court later in Santosh Shankar Acharya (supra), in the context of order of preventive detention passed under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug- ffenders and dangerous Persons Act, 1981. Following the ratio of the Constitution Bench in Kamlesh Kumar Ishwardas Patel (supra), it was held that the detaining authority i.e. the District Magistrate or the Commissioner of Police, is obliged to communicate to the detenu about detenu's right to make representation to him until detention order passed by him is approved by the State Government within 12 days and noncommunication thereof would vitiate the detention order."

In view of the above law laid down by the Full Bench of this Court, the detention order dated 10.03.2022 passed by the District Magistrate, Alirajpur is unsustainable and accordingly quashed. The law will take its own recourse.

With the aforesaid, the Writ Petition stands allowed.

Certified copy, as per rules.