

(2014) 02 MP CK 0093
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4866 of 2013

Maikal @ Shahid

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 110 41(2)
Explosives Act, 1884 — Section 3 4 5
National Security Act, 1980 — Section 12 14 3 3(2) 3(3)
Penal Code, 1860 (IPC) — Section 323 324 327 504 506

Citation : (2014) 3 JLJ 387 : (2015) 1 MPLJ 89

Hon'ble Judges : S.K. Gangele, J;D.K. Paliwal, J

Bench : Division Bench

Advocate : B.S. Bhadoriya, for the Appellant; Vivek Khedkar, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

D.K. Paliwal, J.—This petition has been filed by the petitioner for quashing the order of detention Annexure P/3 passed by District Magistrate, Gwalior on 27.04.2013 U/s 3(2) of National Security Act 1980, (hereinafter referred to as the Act), whereby the petitioner has been taken into custody and detained and the order passed by the State of M.P. (Annexure P/1) approving the detention order passed by the District Magistrate, Gwalior. Factual matrix in brief is that the District Magistrate, Gwalior has passed the order on 27.04.2013 (Annexure P/3) in exercise of powers u/s 3(2) of the National Security Act, 1980 detaining the petitioner for one year. The order passed by the District Magistrate has been approved by the State Government vide order dated 1.07.2013 (Annexure P/1). The order of detention is based on the ground referred to in order Annexure P/3 that the petitioner is engaged in criminal activities including operation of Satta. It is further mentioned that twenty six cases under the Public Gambling Act, five cases under various sections of IPC viz. 323, 324, 504, 506, 327 of IPC, one case under Sections 3 4, 5 of the Explosives Act, two cases of externment and seven

cases under Sections 41(2), 110 of Cr.P.C., Section 4 of the Satta Adhiniyam etc. have been registered against the petitioner. It is further stated that due to the engagement of the petitioner in criminal activities, there is likelihood of breach of peace. Even after taking preventive action against the petitioner, no improvement has been shown in the criminal activities of the petitioner, therefore, there is no alternative, except to take action u/s 3(2) of the National Security Act, 1980 for preventing the criminal activities of the petitioner. The aforesaid order has been passed on the recommendation of the Superintendent of Police, Gwalior and after recording statement of witnesses, petitioner was directed to be detained for one year from the date of order. The petitioner was also informed to make representation against the detention order to the State Secretary (Home Department) Government of Madhya Pradesh vide order dated 1.07.2013 has confirmed the order of detention dated 27.04.2013 by passing the order Annexure P/1 u/s 12 of the National Security Act, 1980. Being aggrieved the petitioner has filed this petition.

2. Learned counsel for the petitioner has submitted that the impugned order is arbitrary, illegal and contrary to law. It is further submitted that the petitioner has not been apprised to make representation before the Central Government thus the right of petitioner has adversely been affected. It is further submitted that in most of the criminal cases registered against the petitioner the petitioner has been acquitted. There is no allegation against the petitioner that petitioner is engaged in criminal activities. Hence, the impugned order deserves to be set aside.

3. The learned Government Advocate for the State supported the impugned order.

4. We have considered the submission of the learned counsel for the parties and perused the record. From the record it appears that the petitioner has not been informed that the petitioner has right to make representation before the Central Government. Section 14 of the National Security Act, 1980 provides as under:

14. Revocation of detention orders.--(1) Without prejudice to the provisions of Section 21 of the Central Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified,-

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (3) of section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The expiry or revocation of a detention order (hereafter in this sub section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984] bar the making of another detention order (hereafter in this subsection referred to as the subsequent

detention order) u/s 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.

5. The plain reading of aforequoted provision makes it clear that the detention order can be revoked by the State Government as well as by the Central Government. Therefore the detenu must be apprised of his right to submit representation before the State Government as well as Central Government. At this juncture it is also relevant to quote section 8 of the Act which reads as under:--

8. Grounds of order of detention to be disclosed to persons affected by the order.--(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

6. Thus section 8 of the Act further strengthens the position that detenu be apprised of his right to make representation before the State government as well as before the Central Government.

7. The Hon'ble Apex Court in the case of Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, , has considered this aspect and observed after taking into account several judgments earlier passed on the point as under:--

14. Article 22(5) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority that has made the order of detention or the order for continuance of such detention, which is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to revoke the order for detention and thereby give relief to the person detained. The right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation.

8. In the instant case the order passed by the District Magistrate does not

disclose that the detenue was apprised of his right to make his representation also to the Central Government. The order passed by the District Magistrate reveals that detaining authority mentioned only that against the detention order detenu has right to file his representation before the Secretary, Home Department, Govt. of M.P. nowhere the detenu was apprised of his right to submit his representation before the Central Government, who also has power as per the provisions of Section 14 of the act.

9. Taking into consideration that the Central Government is also authorized to revoke the detention at any time, the detention order passed by the District Magistrate u/s 3(2) of the act read with section 3(3) of the Act does not reveal that detenu was apprised of his right to make representation before the Central Government we are of the considered opinion that mandatory provision has not been complied with while passing the order Annexure P/1.

10. In view of the aforesaid discussion, it is not necessary to consider other ground raised by the petitioner because the impugned order deserves to be quashed solely on the ground that the petitioner was not apprised of his right to make his representation also to the Central Government. In view of aforesaid discussion this petition succeeds. The further detention of the detenu in pursuance to the order Annexure P/1 dated 1.07.2013 passed by the Secretary, Home Department, Government of M.P. and order Annexure P/3 dated 27.04.2013 passed by the District Magistrate, Gwalior are hereby quashed. It is directed that detenu be released forthwith from the custody, if not required in connection with any other offence.

The petition is disposed of accordingly.