

(2024) 06 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 5277 of 2024

Mohammed Shahid Abdulkadar Sabugar Thro Imam
Zaikirhusen Mohmedusman

APPELLANT

Vs

District Magistrate & Ors

RESPONDENT

Date of Decision : 18-06-2024

Acts Referred:

Constitution of India, 1950 — Section Articles 22(5), 226
Prevention of the Black Marketing and Maintenance of Supplies of Essential
Commodities Act, 1980 — Section 3(1), 3(2)(b)

Citation : (2024) 06 GUJ CK 0040

Hon'ble Judges : Ilesh J. Vora, J;Vimal K. Vyas, J

Bench : Division Bench

Advocate : Ashish M Dagli, Harsheel D Shukla

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. By this petition under Article 226 of the Constitution of India, petitioner – Mohammed Shahid Abdulkadar Sabugar has challenged the order dated 01.03.2024 passed by the 1st respondent – District Magistrate, Himmatnagar directing him to be detained under the provisions of the Prevention of the Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as “the said Act” for short).

2. The said order has been passed in purported exercise of powers conferred by sub-section (1) read with sub-clause (b) of sub-section (2) of Section 3 of the said Act.

3. Brief facts giving rise to file the petition are that on 08.10.2023, the District Supply Officer, Himmatnagar received a telephonic message that the huge quantity of fortified rice was illegally transported in a vehicle No. GJ-09-AU-1512 and the same was to be delivered at the factory of Son Agro Foods, Ilol,

Himmatnagar. The team of responsible officer, intercepted the vehicle and also raided the factory premises and found that the huge quantity of government fortified rice to be distributed by the Public Distribution System purchased by the firm illegally for personal gain. In such set of circumstances, the offence under the provisions of The Essential Commodities Act, 1955 came to be registered on 20.11.2023 with Himmatnagar Rural Police Station against the petitioner and others. The District Magistrate, Himmatnagar, considering the material facts placed before him, satisfied that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the commodity, it is necessary to preventively detain the petitioner under the said Act and accordingly, the order impugned dated 01.03.2024 came to be passed. The petitioner was supplied with all the documents, relied by the detaining authority and informed him the grounds on which the order has been made.

4. The order impugned has been challenged by the petitioner on the following grounds:

(A) The raid as alleged at the place of business was conducted on 08.10.2023. The FIR for the commission of the offence under the Essential Commodities Act came to be filed on 20.11.2023 and order of detention was made on 01.03.2024 i.e. it was made 4 months and 15 days thereafter. It is not in dispute that after the inspection and raid carried out and registration of the FIR, no any fresh complaint or any incident of black-marketing against the petitioner reported in the interregnum, thus, therefore, the conclusion of the detaining authority that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies of commodities essential to the commodity has no rationality and therefore, delay in passing the order of detention snapping the live and proximate link between the prejudicial activities and purpose of detention and failure on the part of the authority in explaining such delay in any manner vitiate the entire proceedings (*Susantakumar Banik Vs. State of Tripura* (Criminal Appeal no.1708/2022), decided by the Supreme Court on 30.09.2022).

(B) There has been delay in disposal of representation made to the Central Government as well as State Government. It is the constitution right to detinue to make a representation at the earliest opportunity guaranteed by Article 22(5) of the Constitution of India. In the affidavit filed by the District Magistrate, there is absolutely no explanation for the inordinate delay in considering the representation and non-consideration of the representation has violated Article 22(5) of the Constitution of India, and thereby, the detention has become illegal. On this point, counsel has placed reliance on the decision of the Apex Court in the case of *Rupesh Kantilal Savla Vs. State of Gujarat*, 2000 SCC (Cri.) 1203 and *K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India*, 2000 SCC (Cri.) 1203.

(C) That the detaining authority mechanically without applying his mind to the

aspect whether the petitioner would indulge in future in prejudicial activities as there is no material to this effect available at the time of arriving to the subjective satisfaction by the detaining authority.

(D) That it is the fundamental right of the detainee under Article 22(5) to make representation. Referring to the copies of the documents relied upon by the detaining authority while passing the order, it was submitted that some of the copies are illegible and blurred, as a result the petitioner could not make a proper representation and therefore, it amounts to violation of Article 22(5) of the Constitution of India. In support of the submissions, learned counsel has pressed into service the judgment of the Supreme Court in the State of Manipur Vs. Buyamaum Abdul Hanan and another (2022 LiveLaw Supreme Court 862) to contend that by supplying the illegible copies of the documents, the petitioner could not make effective representation and denial thereof renders the order of detention illegal.

(E) That there is a breach of statutory provision as the State Government failed to report the Central Government within seven days from the date of detention.

(F) That the detaining authority has not considered the alternative efficacious remedy which has rendered the impugned order illegal.

5. Mr. Ashish Dagli, learned counsel appearing for and on behalf of the petitioner, reiterating the aforesaid contentions urged that the detaining authority has failed to substantiate that the alleged activities, adversely affects or likely to affect the maintenance of supplies of the commodities essential to the community and thus, therefore, the order is required to be quashed on the ground as urged in para-4 of this order.

6. On the other hand, reiterating the contents of the affidavit of the District Magistrate, Himmatnagar, learned State counsel Mr. L.B. Dabhi would urge that, the petitioner is associated with the firm M/s. Sun Agro Foods and was involved in day to day affairs of the business and therefore he was aware about the illegal purchase and sales of fortified rice and has committed an offence under the provisions of Essential Commodities Act. The expert report would be indicative of the fact that, the rice seized from the factory as well as the vehicle in question is fortified rice to be distributed through PDS system by the Government which is evident of the fact that the petitioner is involved in the black marketing of fortified rice which meant for the beneficiaries of the scheme of the Central Government and after registration of the FIR, it seems imperative to take preventive action against the detainee to restrain him in prejudicial activities for future also. He would further urge that, subjective satisfaction of the detaining authority as regards the factual existence of the conditions on which the order of detention was made, the Court cannot consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. On the contention of non-supply of legible copies to the detainee, learned State counsel submits that, the documents referred as illegible are not vital documents and

therefore, there is no violation of Article 22(5) of the Constitution of India. So far as the delay in initiation of proceedings is concerned, it was contended that, there is no hard and fast rule as to what is the length of time which should be regarded sufficient to snap the nexus between the incident and the order of detention. Thus, in the instant case, the detention cannot be invalidated because there was a delay of four months and fifteen days in passing the order.

7. The principal argument on which the order impugned is challenged is that, the District Magistrate failed to supply with legible copies of the documents relied by him while passing the order of detention, as a result, there is a clear violation of Article 22(5) of the Constitution of India. On perusal of the records, we found that, page nos. 323, 383, 385, 406, 477, 485, 495, 503, 555 are totally illegible documents and it seems that some of the documents are also blurred and it could not be readable.

This aspect when pointed out to the State counsel, he could not explain properly about the said documents. The said documents as referred above were being taken into consideration by the Detaining Authority while passing the order. In such circumstances, we are of the considered view that, the valuable right of the detainee to make representation as guaranteed by Article 22(5) of the Constitution of India, has been infringed as on account of non-supply of the legible copy of the documents, his right to make effective representation for revocation of the order has been adversely affected. Recently, in the case of *State of Manipur vs. Buyamayum Abdul Hanan* (2022 Livelaw SC) 862, on the identical issue, the Supreme Court has quashed the detention order. In the said case, the Apex Court held that right to make representation is a fundamental right and non-supply of the legible copy of the documents relied upon by the authorities in passing the order of detention is in violation of Article 22(5) of the Constitution. The Supreme Court in the said judgment while referring the earlier judgment rendered in the case of *Ramchandra A. Kamat vs. Union of India* (1980) 2 SCC 270 has held as follows:

"6. The right to make a representation is a fundamental right. The representation thus made should be considered expeditiously by the Government. In order to make an effective representation, the detainee is entitled to obtain information relating to the grounds of detention. When the grounds of detention are served on the detainee he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. The detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds of detention and would be ordinarily available with him -when copies of such documents are asked for by the detenu the detaining authority should be in a position to supply them with reasonable expedition. What is reasonable expedition will depend on the facts of each case."

8. In light of the settled position of law and applying it to the facts of present

case, we find that, the detenue by supplying illegible documents relied by the detaining authority while passing the order, the detenue was thus clearly denied the opportunity of making a representation and it is in clear contravention of the right guaranteed under Article 22(5) of the Constitution of India. The procedural requirements of Article 22(5) are mandatory in character and non-compliance of even one of the requirements would render the order of detention illegal. Thus, therefore, the respondents failed to satisfy this Court that the detention was legal and in conformity with the mandatory provisions of the Act but also strictly in accordance with the constitutional safeguards embodied in the Article 22(5) of the Constitution of India.

9. The next contention raised is that, there is a delay in passing the order of detention. The raid was conducted on 08.10.2023 at the factory premises and based on the inquiry, the FIR came to be lodged on 20.11.2023 for the alleged commission of the offence under the Essential Commodities Act and thereafter, i.e. on 01.03.2022, the detention order was passed. The District Magistrate who has passed the order failed to explain this aspect of delay in his affidavit and therefore, the subjective satisfaction arrived at by the detaining authority that after the FIR, the activities of the petitioner affect or likely to affect the maintenance of supplies of communities essential to the community, would seems to be without application of mind as in absence of any grounds or material in the interregnum period, the conclusion of the authority that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies of commodities essential to the community has no rationality.

10. The third contention raised is that, the State Government failed to send entire records to the Central Government within 7 days and therefore, the order impugned is liable to set aside. Upon perusal of records as well as contents of the affidavit of the detaining authority, there is no any explanation on behalf of the authority that the State Government has intimated the Central Government within stipulated time about passing of the order along with entire particulars.

11. The fourth contention raised is that, the decision of disposal of the representation either by the State or Central Government has not been conveyed to the petitioner. It is the trite law that, the representation should be expeditiously considered and disposed of with a sense of urgency and without further delay. Any unexplained delay in the disposal of the representation could be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the record produced, we find that, no acceptable explanation has been offered for the decision taken on the representation and on which date it was conveyed.

12. In light of the above discussions, we have no hesitation in quashing the order of detention on the ground as discussed above, as the detention order has become illegal for violation of Article 22(5) of the Constitution of India and accordingly, the order of detention dated 01.03.2023 is hereby quashed. We

direct the detenue to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Modification of Judgment dtd. ORDER DATED: 18/06/2024 in R/SCA/5277/2024

Ilesh J. Vora, J

Perused the office submission.

Due to typographical error, in last para of the judgment, the date of order of detention is typed as 01.03.2023, instead of 01.03.2024.

Accordingly, in last para, the order of detention be read as 01.03.2024.

Registry is directed to issue writ accordingly.

Office note is disposed of accordingly.