
(2015) 05 MP CK 0004
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6291 of 2015

Parvej

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 10, 3(2)

Citation : (2015) 05 MP CK 0004

Hon'ble Judges : A.M. Khanwilkar, C.J;K.K. Trivedi, J

Bench : Division Bench

Advocate : R.N. Tripathi, for the Appellant; A.P. Singh, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Heard counsel for the parties.

This petition, under Article 226 of the constitution of India, takes exception to the detention order dated 15.3.2015 - Annexure-P/1, issued in exercise of power u/s. 3(2) of the National Security Act, 1980. The detention order refers to the criminal antecedents of the petitioner and the subjective satisfaction of the detaining Authority for detaining the petitioner on that count as likely to indulge in offence of similar type, which may result in public order situation.

2. The first contention argued before us by the learned counsel for the petitioner is that the signature of the petitioner appearing on Annexure-R/3 at page 59, is a forged signature. This argument is on the assumption that since the signature of one Bhanu has been noticed on other documents which were served on the petitioner along with the grounds of detention. Similar signature is not found on the document at page 59 being order issued under the signature of District Magistrate, Seoni dated 15.3.2015. This ground, in our opinion, is completely unsubstantiated. In the first place, no such specific plea has been taken in the petition as filed. Secondly, it is founded on assumption that the signature of the

petitioner appearing in document at page 59 is a forged signature. In our view, however, the requirement of taking acknowledgment of service of order is to place on record the fact that copy of the order was duly served on the petitioner. The fact that the signature of Bhanu is not appearing on document at page 59, does not mean that the said signature of the petitioner is forged. On comparison of the signature found on document at page 59 with admitted signatures of the petitioner on other documents, which were served on the petitioner in the presence of Bhanu, being grounds of detention and accompanying document is no different. It is not possible to presume that the signature of the petitioner has been forged on document at page 59. In the petition, no assertion is made that the impugned detention order has never been served on the petitioner. On the other hand, the petitioner has annexed copy of detention order, at page 16 onwards, which means that it was duly served on the petitioner. In our opinion, the plea taken by the petitioner is founded on assumption. Notably, it is not the case of the petitioner that the copy of detention order was not served on him when he was detained as a consequence of that order, nor it is the case of the petitioner that the grounds of detention and the documents, on which reliance has been placed, were not supplied to the petitioner within the specified time.

3. The next argument canvassed by the petitioner is that the subjective satisfaction of the detaining Authority is vitiated because the detaining Authority was influenced by the underlined statement of fact noted in the recommendations made by the Superintendent of Police, which reads thus:

(emphasis supplied)

4. According to the petitioner, the detaining Authority should have proceeded against the Superintendent of Police for making such obnoxious statement in the official record. In the first place, no such statement is found in the detention order or the subjective satisfaction recorded by the detaining Authority. That is the core issue, which has to be analyzed in the present petition while questioning the detention order. It is not possible for us, even remotely, to hold that the subjective satisfaction of the detaining Authority was influenced by the highlighted portion in the communication. Further, the grievance of the petitioner about the contents of the communication being obnoxious also does not commend to us. The sentence, though avoidable, if read alongwith other portion can only be construed to mean that the recommending Authority expressed his concern about the public order situation because of communal disharmony and nothing more. We cannot read into that sentence anything more. In any case, it is not necessary for us to dilate on this matter any further, as the matter before us is about the justness and reasonableness of the subjective satisfaction recorded by the detaining authority, that having found to be without any infirmity, the contents of the subject communication will be no avail to the petitioner.

5. The next point urged before us is that the petitioner was produced before the Advisory Board on 29.4.2015, although he was detained on 15.3.2015. It was in

violation of the mandate of section 10 of the National Security Act. In the context of this grievance, we had issued notice to the Secretary of the Advisory Board, which according to the petitioner, was refused for reasons best known to the Secretary. The Secretary was obliged to receive the notice issued by this Court being respondent in the present writ petition.

6. Taking main ground of challenge to the detention order itself, it is founded on misinterpretation of section 10 of the Act. Section 10 mandates that the grounds on which the order has been made and representation made by the detenu if any, must be "placed" before the Advisory Board within three weeks from the detention of the detenu. No grievance has been made by the petitioner in this regard. The grievance is that the petitioner was "produced" before the Advisory Board after three weeks from the date of his detention. The fact that the petitioner was produced before the Advisory Board after three weeks cannot be said as infraction of section 10 of the Act as such. For, infraction of Section 10 of the Act the petitioner must substantiate that the grounds on which the order was passed and the representation if any made by the petitioner, was not placed before the Advisory Board within three weeks from the date of detention of the petitioner.

7. Coming to the question whether the Secretary of the Advisory Board was right in refusing to accept the notice issued by the Court, we have no hesitation in observing that the Secretary, Advisory Board has no privilege of not accepting Court notice, if issued by the High Court in connection with proceedings before the High Court, in which, he has been named as respondent. It appears that the Secretary of the Advisory Board was misinformed and ill-advised that the Court-notice should be served on the Home Department of the State Government and not the Advisory Board even though it was made party respondent in the writ petition. Therefore, if notice was addressed to the Secretary of the Advisory Board, there was no reason for the Secretary, Advisory Board to refuse to accept the notice. He could have accepted the notice or brought the correct position to the notice of the Court. The stand taken by the Secretary of the Advisory Board in refusing to accept the notice which it was admittedly attempted to be served on 12.5.2015, has been witnessed by two Advocates - as can be discerned from the notings on the notice (Hamdast document), which is ordered to be kept in sealed cover. We hope and trust that, in future, such occasion will be avoided by the Secretary of the Advisory Board. Copy of this order be brought to the notice of the Chairman of the Advisory Board for necessary action.

8. Next argument of the petitioner is that the subjective satisfaction to detain the petitioner has been arrived at on the basis of criminal case, which is per se false and frivolous case registered against the petitioner. It is submitted that going by the allegations in the First Information Report, it is impossible to countenance that the petitioner, who is a specially disabled person because of his left leg, was capable of committing the alleged offence as mentioned in the First Information Report. This argument cannot take the matter any further for the petitioner. The

fact as to whether the criminal case registered against the petitioner is false or vexatious, is a matter which will be considered during the trial of the said case. So long as the case is registered, the detaining Authority would be justified in referring to and relying upon that fact while arriving at the subjective satisfaction. In the present case, notably it is not only one criminal case registered against the petitioner. The detaining Authority has referred to other circumstances referred to in the grounds of detention. The fact that three cases pertain to Gambling Act are also mentioned, does not mean that the subjective satisfaction of the detaining Authority, is vitiated. For, there was other material before the detaining Authority, which is the basis of forming subjective satisfaction. The detaining Authority has referred to those circumstances and material in the grounds of detention, as can be discerned from the grounds of detention, for arriving at the subjective satisfaction. As a result, we are not impressed even with this argument of the petitioner.

9. Next argument is that the grounds of detention served on the petitioner merely refer to the list of witnesses as mentioned in enclosure No. 4. The version of the concerned witness was not made available to the petitioner. Even, this argument does not commend to us. List of witnesses is with regard to the witnesses in the criminal cases, which are yet to be tried and not in respect of other material. If the version of the witnesses was to be relied upon as other material, in that case, the petitioner could not have been justified in insisting for the contents of the said version. Nothing has been brought to our notice from the impugned order or the grounds of detention that the version of the witnesses referred to in enclosure No. 4 was the basis in forming the subjective satisfaction.

10. Taking overall view of the matter, therefore, no interference is warranted in the fact situation of the present case. Petition is dismissed accordingly.

11. We place on record the statement made by the counsel for the State that the impugned order has been later on affirmed by the State Government on 28.3.2015 and by Advisory Board on 8.5.2015.