

(2012) 12 MP CK 0110
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5382 of 2012

Shakila Bano

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Constitution of India, 1950 — Article 22, 226
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 8
National Security Act, 1980 — Section 10, 12(1), 3, 3(2)
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3, 8

Citation : (2013) CriLJ 2275 : (2013) 1 MPLJ 359

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

Bench : Division Bench

Advocate : S.S. Rajput, for the Appellant; Vivek Khedkar, Dy. Advocate General assisted by Bhagwan Pandey, Government Advocate, for the Respondent

Judgement

G.D. Saxena, J.—By means of this petition preferred under Article 226 of the Constitution of India, the petitioner who is the wife of Babu Singh Sikarwar has impugned the order dated 5th April, 2012 passed by Under Secretary Home Department to the State of M.P. Bhopal u/s 12(1) of the National Security Act, 1980 whereby the order passed by the District Magistrate Guna dated 22nd February, 2012, has been made absolute with extension of period from the order of detention till 21st February, 2013. The prejudicial activities of the detenu as contained in the grounds of detention in brief are as under:

The Superintendent of Police Guna by his letter dated 17th February, 2012 addressing to the District Magistrate Guna informed that the petitioner Smt. Shakila Bano, wife of Babu Singh Sikarwar, resident of village Jogi Mohalla, Old Cant Guna, at present residing at Bone Mill Guna is involved in seven criminal cases relating to selling business and possession of contra-band article "Smack" (a preparation from opium) under NDPS Act 1984 and she has also connection with the; criminals of the area and involved in several criminal

activities. It is stated that the activities of the petitioner adversely affect the community at large. Despite taking several preventive measurements under law, the activities of the petitioner could not be controlled. Therefore, under the facts and circumstances, the preventive detention order u/s 3(2) of the Act is sought to be issued against the petitioner. The Criminal antecedents of petitioner are as follows:--

- (1) Crime No. 460/2006 for offence u/s 8 /21 NDPS Act.
- (2) Crime No. 461/2006 for offence u/s 8 /21 NDPS Act.
- (3) Crime No. 148/2007 for offence u/s 8 /21 NDPS Act.
- (4) Crime No. 438/2009 for offence u/s 8 /21 NDPS Act.
- (5) Crime No. 227/2010 for offence u/s 8 /21 NDPS Act.
- (6) Crime No. 92/2011 for offence u/s 8 /21 NDPS Act.
- (7) Crime No. 06/2012 for offence u/s 8 /21 NDPS Act.

2. In the light of the said factual matrix, the detaining authority after considering the material placed before him by the S.P. Guna and recording statement of witness, concluded that if not prevented, the detenu would continue indulging in illicit traffic in narcotic drugs and psychotropic substances and consequently in operative paragraph recorded the subjective satisfaction that there was compelling necessity, in view of the likelihood of her being granted bail and of her indulging in illicit traffic in narcotic drugs, as evident from the trend of her activities, to detain her under the PIT NDPS Act, 1988, with a view to prevent her from engaging herself in procurement, storage and abetting in buying and selling of narcotic drugs. A perusal of the grounds of the order also shows that the detenu has been apprised of her right to make the requisite legal representation to the State Government and the Advisory Board.

3. Learned counsel for the petitioner strenuously urged that the impugned detention order merits to be quashed in view of grounds, namely, 6.1 to 6.8 of the petition. The short and long of the said grounds is that there was no rationale to "preventively detain her and the detention order instead of being preventive has thus become punitive. The burden of song in the said grounds is also to the effect that the subjective satisfaction of the detaining authority that the detenu on being released on bail is likely to revert to prejudicial activities is not founded on cogent material. He invited our attention, in particular to the impugned order wherein it was observed that there was material on record that the "detention order appears to have been made merely on the ground that the detenu is trying to come out on bail and there is enough possibility of her being bailed out" but in spite of that, according to him, in several cases it is held by the Apex Court and this Court that the detention of the detenu under the National Security Act could not be sustained. In support of his submissions, learned counsel for the petitioner placed reliance on the decisions in the cases of Chhenu alias Yunus Vs.

State of M.P. and Another, , Sanjay Yadav and Another Vs. State of Madhya Pradesh and Another, and Bhagwan Singh @ Choti vs. State of M.P., 2012(III) MPWN 37.

4. On the other hand, the learned Dy. Advocate General appearing for the respondents/State contended that the detenu is a large scale habitual drug trafficker and consequently it is imperative to detain her in order to prevent her from indulging in drug trafficking. He submits that if released on bail, the detenu would revert to illicit drug traffic and considering the gravity of the allegations, her antecedents and propensity, it is necessary to detain her. He also averred that it is wrong to say that there was no apprehension that the detenu would indulge in drug trafficking.

5. We have reflected over the grounds canvassed by the learned counsel for the petitioner and the decision cited by him and also the reply furnished by the learned Dy. Advocate General appearing on behalf of the respondents/State. We regret that we do not find any merit in petitioner's contentions.

6. Before considering the sweep and effect of the relevant provisions contemplated under the Act, it would be profitable to reproduce the same with its explanation:

3. Power to make orders detaining certain persons. -

(1) The Central Government or the State Government may, --

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or

(b) if satisfied with respect of. any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for. his expulsion from India, it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation. -- For the purposes of this subsection, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of

1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provide that where u/s 8 the grounds of detention are communicated by the officer making an order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

7. The ingredients of section 3 of the National Security Act, 1980 are as follows:--

The Central Government or the State Government may, (I) (a) if satisfied with respect to any person (i) that with a view to preventing him from acting in any manner prejudicial to the defence of India or of the security of India, (b) the relations of India with foreign powers, (ii) the relations of India with foreign powers, (iii) with respect of any foreigner that with a view to regulating his continued presence in India (a) that with a view to regulating his continued presence in India (b) with a view to making arrangements for his expulsion from India, it is necessary so to do, (c) make an order directing that such person be detained.

(II) if satisfied with respect to any person (i) with a view to preventing him from acting in any manner prejudicial to the security of the State (ii) from acting in

any manner prejudicial to the maintenance of public order (iii) from acting in any manner prejudicial to the maintenance of supplies and services essential to the community (iv) it is necessary so to do, make an order directing that such person be detained.

(III) If, having regard to the circumstances prevailing (II) likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, (III) the State Government is satisfied that (I) it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, (ii) such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), Exercise the powers conferred, by the said sub-section: (iii) Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, (iv) exceed three months, (v) but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

8. At this stage, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 with its preamble and relevant sections appears necessary to be going through.

Preamble

The Central government to control the illicit traffic in narcotic drugs and psychotropic substances trafficking poses a serious threat to the health and welfare of the people and the activities of persons engaged in such illicit traffic have a deleterious effect on the national economy and having regard to the persons by whom and the manner in which such activities are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to the illicit traffic in narcotic drugs and psychotropic substances, such activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities to provide for the detention of persons concerned in any manner therewith enacted the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

2. Definitions. -- In this Act, unless the context otherwise requires,

(a) "appropriate Government" means, as respects a detention order made by the Central Government or by an officer of the Central Government, or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government, or a person detained under such order, the State Government;

(b)..... -

(c) "detention order" means an order made u/s 3;

(d)(e)"illicit traffic" in relation to narcotic drugs and psychotropic substances,

means -

(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or trans-shipment, of narcotic drugs or psychotropic substances;

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those provided in sub-clauses (i) to (iii); or

3. Power to make orders detaining certain persons. -- (1) The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purpose of this section by that Government or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from, engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

4. Execution of detention orders. -- A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

6. Grounds of detention severable. -- Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly -

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are --

(i) vague,

(ii) non-existent,

(iii) not-relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever, and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and make the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said subsection (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

7. Detention orders not to be invalid or inoperative on certain grounds.-- No detention order shall be invalid or inoperative merely by reason -

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention; or

(b) that the place of detention of such person is outside the said limits.

9. Advisory Boards. -- For the purposes of sub-clause (a) of clause (4) and sub-clause (c) of clause (7) of Article 22 of the Constitution,

(a) the Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards each of which shall consist of a Chairman, and two other persons possessing the qualifications specified in sub-clause (a) of clause (4) of Article 22 of the Constitution;

(b) save as otherwise provided in section 10, the appropriate Government shall, within five weeks from the date of detention of a person under a detention order, make a reference in respect thereof to the Advisory Board constituted under clause (a) to enable the Advisory Board to make the report under sub-clause (a) of clause (4) of Article 22 of the Constitution;

(c) the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the, person concerned, and if, in any particular case, it considers it essential, so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned;

(d) when there is a difference of opinion among the members forming the Advisory Board the opinion of the majority of such members shall be deemed to be the opinion of the Board;

(e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected

with the reference to the Advisory Board and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

9. We would now like to refer to following decisions which are a complete answer to petitioner's submission.

10. In the State of U.P. and Another Vs. Sanjai Pratap Gupta @ Pappu and Others, the Hon"ble Apex Court held:

7. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order. "Public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo, of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of law and order" and "public order" is one of the degree and extent of the reach of the act in question on society.. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed"? This question has to be faced in every case on its facts.

8. XXX.....XXX.....XXX....XXX

9. Public order" is synonymous with public safety and tranquility: It is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State. Public order if disturbed, must lead to public disorder. Every" breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end

small disturbances and at the other the most serious and cataclysmic happenings.

10. "Public Order", "law and order" and the "security of the State" fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act for instance, affecting public order may have an impact that it would affect both public order and the security of the State. [See Kishori Mohan Bera Vs. The State of West Bengal, ; Pushkar Mukherjee and Others Vs. The State of West Bengal, Arun Ghosh Vs. State of West Bengal, Nagendra Nath Mondal Vs. The State of West Bengal,

11. The distinction between law and order" and "public order" has been pointed out succinctly in Arun Ghosh's case (supra). According to that decision the true distinction between the areas of "law and order" and "public order" is "one of degree and extent of the reach of the act in question upon society". The Court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different.

12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder.

15 A bare perusal of the quoted portion from the grounds of detention makes it clear that two aspects i.e. one relating to criminal background of antecedents and other relating to a particular incident were treated separately. This becomes apparently clear because the detaining authority in the backdrop of the criminal antecedents referred to the particular act. Therefore, one was the general background and the other was the particular incident. They are clearly separable.

18. The residual question to be considered is whether the detenu has to go back to detention, after it is held that the judgment of the High Court is not sustainable. There cannot be any strait-jacket formula for dealing with such cases. It would depend upon circumstances of each case. For determining the question as to whether the detenu has to go back to detention, the factual position has to be analysed. It has to be seen whether the effect of the previous acts was continuing or likely to recur. When background facts of present case are considered it is evident that the time-gap is not very wide and for considerable length of time the matter is pending in this Court and the detenu had taken nearly three months to file his counter to the SLP filed. Judged from these angles it is clear that the live link is not snapped and the apprehension of the detaining authority about the detenu's prejudicial activities cannot be faulted. The impugned judgment of the High Court is set aside. The detenu shall surrender forthwith for serving the remainder or the period of detention. The appeal is allowed to the aforesaid extent.

11. We would now like to advert to the decision of the Apex Court rendered in the case of Smt. Azra Fatima Vs. Union of India (UOI) and Others, which is very relevant for the disposal of this petition. There is a reference in para 5 that in view of the decision of the Apex Court in the case of N. Meera Rani, it was a judgment on the peculiar facts of the case, and should not be construed as laying down a general proposition of law.

12. The said decision also pertains to a preventive detention under PIT NDPS Act. Submissions identical to those canvassed by learned counsel were canvassed before the Apex Court, as is evident from a perusal of para 3 of the said decision. To borrow the exact words of the Apex Court from para 3 what was contended from the side of the petitioner before it was:

With regard to the first contention it was submitted by the learned counsel that the detenu was already in custody and his bail application had also been rejected and there was no likelihood of the detenu being released on bail in respect of the alleged offence under the Act where the minimum sentence of imprisonment was ten years. It was submitted that the mere possibility of his release on bail was not enough for preventive detention unless there was material to justify the apprehension that the detention would be necessary in order to prevent him from engaging in illicit traffic in narcotic drugs and psychotropic substances, in case of his release on bail. A mere possibility of release on bail and a bald statement that the detenu would repeat his criminal activities was alone not sufficient to sustain the order of detention. It was further contended that the detaining authority did not apply its mind to this aspect of the matter, that the detenu was already in custody and his bail application having been rejected there was no possibility of his being released on bail in a serious offence under the Act.

13. The Apex Court after referring to the cases cited before it by counsel for the petitioner, in para 13 observed that the detaining authority was fully aware that the detenu's bail application had been rejected but the antecedents of the

detenu indicated that he was initiated in drug trafficking in 1984 and from very humble beginnings, within a short span started buying and selling Narcotic Drugs and amassed huge movable and immovable properties. After taking these circumstances into consideration, coupled with the fact that heroin and mandrax tablets worth Rs. 1,13,42,000/- were seized from the ownership and possession of detenu and he was using three vehicles for transportation of these narcotic drugs, Hon"ble Supreme Court thus in the said para observed:

The detaining authority after taking into consideration the above materials placed before him, arrived at the conclusion that the detenu being in judicial custody may under the normal law of the land be granted bail and be in a position to continue to pursue his nefarious activities. The detaining authority in these circumstances considered it accessory to invoke the law of preventive detention under the Act to prevent the detenu from indulging in his prejudicial activities in future. In these circumstances it cannot be said that the order of detention was illegal on the ground that it was passed while the detenu was already in custody.

14. In the present case a perusal of the grounds of detention shows that the detenu was involved in drug selling and was earning a phenomenal amount through it. The grounds also leave no iota of doubt that though the detenu was in judicial custody but there was a likelihood of her being granted bail and if the detenu is released on bail she would revert to her prejudicial activities of dealing in illicit drug traffic. It is on the basis of the enormity of the allegations levelled against the detenu in the grounds of detention that the detaining authority has reached on the said conclusion. The subjective satisfaction of the detaining authority is thus based on very cogent material. Here, as is apparent from a perusal of the grounds of detention, there is enough material to indicate that the detenu if released on bail is most likely to revert to the business of illicit dealing in narcotic drugs. Hence the decisions cited by the learned counsel for the petitioners are distinguishable.

15. In short we are implicitly satisfied that the impugned detention order cannot be faulted and all the pre-requisites as to when a detention order should be made against a person who is in custody have been satisfied. The detaining authority in the grounds of detention has recorded his awareness:-- (i) that the detenu was in custody; (ii) there was possibility of the detenu being released on bail; (iii) that the antecedents of the detenu indicate that once on bail there was a strong possibility of her reverting to prejudicial activities of dealing in traffic of drugs; and (iv) that therefore her detention under the PITNDPS Act was imperative in law.

16. We feel that the impugned detention order clamped against the detenu is wholly justified and suffers from no vice or infirmity. In the result this petition is dismissed and rule is discharged.