

**HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

:DIVISION BENCH:

BEFORE: SHEEL NAGU AND ANAND PATHAK, JJ.

WRIT PETITION No.3886/2021

**Ashok Kanjar
Versus
State of Madhya Pradesh and others**

Shri Prem Singh Gurjar, learned counsel for the petitioner.
Shri D.D. Bansal, learned Government Advocate for the
respondents/State.

ORDER
(Passed on 22nd day of April, 2021)

Per Justice Anand Pathak, J.:

1. Present petition is under Article 226 of the Constitution of India in the nature of certiorari taking exception to the order dated 21-01-2021 passed by the Collector/District Magistrate, Shivpuri (Annexure P/1) whereby provision of Section 3(2)(3) of the National Security Act, 1980 (hereinafter referred to as 'the Act') has been invoked and petitioner has been directed to be detained for 3 months at Circle Jail Shivpuri.
2. Precisely stated facts of the case are that petitioner is resident of Tahsil Karera District Shivpuri and is living within the territorial jurisdiction of this Court. It appears from the

pleadings that for last almost 17 years petitioner faced different criminal cases/charge-sheeted for alleged commission of different offences, particulars of which are placed with the petition and on the basis of those cases as well as apprehension of the authorities that petitioner may commit breach of public order, proceedings were initiated under the Act against the petitioner which culminated into passing of impugned order dated 21-01-2021 by the District Magistrate, District Shivpuri.

3. From the pleadings, it appears that on 18-01-2021 a case was registered against the petitioner vide Crime No.39/2021 at Police Station Karera District Shivpuri for the alleged offence under Section 34(2) of the M.P. Excise Act in which it was found that at his place of residence petitioner was involved in manufacturing of adulterated liquor using urea and other adulterated ingredients to manufacture adulterated country made liquor for consumption in the vicinity. Since petitioner had chequered history of 12 cases, therefore, SHO, Police Station Karera District Shivpuri (respondent No.4 herein) prepared a detailed note of the activities of the petitioner and his conduct and vide recommendation dated 21-01-2021 recommended to Superintendent of Police, Shivpuri (respondent No.3 herein) to invoke the provisions of Section 3 of the Act since the petitioner is having criminal history of around 12 cases and is a threat to Public Order. On such recommendation, respondent No.3

initiated the proceedings against the petitioner under the provisions of the Act and list of 12 cases and discussion regarding his activities amounting to threat to public order was recommended to District Magistrate, Shivpuri on 21-01-2021 itself. District Magistrate, Shivpuri (respondent No.2 herein) after considering the fact situation, recommendations, conduct of petitioner and the statement of prosecution witness (Dr. Narayan Singh Kushwah Medical Officer, Community Health Center, Karera) passed the impugned order of detention in exercise of power under Section 3(3) of the Act. Being crestfallen by the said order of detention, petitioner has preferred this petition.

4. It is the submission of learned counsel for the petitioner that order of detention is being passed on the basis of old and stale cases in which petitioner has already been acquitted way back and these stale cases are not at all sufficient to invoke the provisions of the Act. He referred different orders passed in this regard by the trial Courts in which after trials, he has been acquitted. Although in some cases, prosecution could not prove the case beyond reasonable doubt. He referred order of acquittal passed in two cases; one is vide Crime No.256/2009 Police Station Karera for offence under Sections 148, 326, 326 read with Section 149, 323 (two counts), 336 of IPC and another is of Crime No.122/12 Police Station Karera under Section 34(2)

of M.P. Excise Act. Except these two cases no other order of acquittal has been placed.

5. It is further submitted by learned counsel for the petitioner that petitioner is suffering from liver and kidney problem and undergoing treatment for considerable period of time and his treatment is going on at Agra (U.P.), therefore, petitioner deserves sympathetic consideration. He raised the point in respect of non grant of opportunity of hearing. He also relied upon the judgment passed by this Court on **02-02-2021 in the case of Awadhesh Sharma Vs. State of Madhya Pradesh and others in Writ Petition No.19548/2020** and seeks parity.
6. According to learned counsel for the petitioner, compliance of Sections 3(5) and 8 of the Act has not been made. Therefore, impugned order deserves to be set aside.
7. Learned counsel for the respondents/State vehemently opposed the prayer and submitted that petitioner is a habitual offender and since year 2004 he is involved in manufacturing, storage and sale of illicit and adulterated country made liquor. He referred 12 criminal cases registered against him in which list as provided by the Government Counsel is as under:

S.No.	Crime Number	Details of offences
1	50/2004	342, 323, 294, 506-B of IPC
2	345/2004	49-A of M.P. Excise Act
3	142/2008	323, 294, 506, 34 of IPC
4	294/2008	324, 323, 336, 147, 148, 149, 325 of IPC
5	256/2009	323, 324, 294, 506-B of IPC

6	122/2012	34(2) of M.P. Excise Act
7	241/2017	307, 341, 323, 294, 147, 148 of IPC
8	243/2017	34(2) of M.P. Excise Act
9	504/2019	323, 294, 506 of IPC
10	266/2020	34(2) of M.P. Excise Act
11	39/2021	34(2) of M.P. Excise Act
12	17/2020	110 of Cr.P.C.

8. On the basis of above chart which is placed by the petitioner also and described by the respondents as Annexure R/1, Government Counsel submits that except four cases viz. Crime No.345/2004 registered at Police Station Karera under Section 49-A of M.P. Excise Act, Crime No.142/2008 at Police Station Karera under Section 323, 294, 506/34, Crime No.256/2009 at Police Station Karera under Sections 324, 323, 336, 343, 148, 149 of IPC and Crime No.122/12 at Police Station Karera under Section 34(2) of M.P. Excise Act which appear to be resulted into acquittal, all other cases are still pending and he is threat to the public order to the extent that he is involved in grabbing Government land and establishing a manufacturing unit of illicit liquor over it. He is so emboldened by his criminal acts which went unpunished that he printed his visiting cards also in which he mentioned his profession as Manufacturer of Country Made Liquor and it was a matter of public attention also because this fact got published in news papers of the vicinity. All these documents are on record.

9. Therefore, submission of learned counsel is that the criminal

history of petitioner and impact of his conduct over the public at large has debilitating effect and witnesses do not come forward to depose against him because of his fear and terror. When last case was registered against him on 18-01-2021 vide Crime No.39/2021 at Police Station Karera District Shivpuri for the offence under Section 34(2) of the M.P. Excise Act, 190 liters country made liquor (कच्ची शराब) and one bag of urea and 4000 liters Lahan (adulterated raw material prepared from rotten shoes, wood stock and other non edible material) were seized from his manufacturing unit which were destroyed.

10. Dr. Ritesh Yadav MD Medicine Medical College Shivpuri opined that if liquor is manufactured from urea then it causes damage to kidney and lever because during preparation of country made liquor, urea with alcohol makes Methyl Alcohol which is like poison and because of this poisonous substance (appearing as alcohol), people at times lose their eye sights and some times even life. Dr. Devendra Khare from Community Health Center, Karera District Shivpuri also opined about the harmful impact of country made liquor with such adulterated material and because of low price it is being consumed regularly by many poor persons. Recently many such persons lost their lives in Morena and other neighbouring districts of Shivpuri. Since petitioner runs Reign of Terror, therefore, people are afraid of making complaints. Not only this, Government land

worth Rs.3 crores has also been retrieved back by the Police from the possession of petitioner when raided the said place from where petitioner used to operate for manufacturing illicit and adulterated country made liquor. He does not have any licence as such to manufacture the said liquor.

11. It is further submitted that looking to long criminal history spread over such long period of 17 years are sufficient enough to proceed against him. He also referred the fact that because of strong action taken by administration/police against him sent a right signal in the society and people have appreciated the act. He referred one such letter of City Corporator of the area who appreciated the action.
12. Relying upon the different statements recorded in the present case and judgments in the case of **Khurvesh alias Pappu alias Pahalwan Vs. State and another, ILR (2010) (II) Delhi 550** as well as in the case of **Narendra Kumar Vs. Union of India (UOI), 2002 STPL 12860 Delhi**, Division Bench of Allahabad High Court in the case of **Noor Mohammad Vs. State of U.P. and another, 1982 STPL 4030 Allahabad** and Division Bench of Rajasthan High Court in the matter of **Subhan Mohammad Vs. State of Rajasthan and another, 1988 STPL 5970 Rajasthan**, he prayed for dismissal of writ petition.
13. Heard learned counsel for the parties and perused the record.
14. Instant case is in respect of National Security Act and its

different fallouts and factual contours attract reconciliation between “Public Order” and “Personal Liberty”.

15. So far as question regarding breach of public order or threat to public peace is concerned, this aspect also is very subjective and differs from case to case. In **Ashok Kumar vs. Delhi Administration and others, (1982) 2 SCC 403**, the Apex Court held that preventive detention is devised to afford protection to society. It was observed that preventive measures, even if they involve some restraint and hardship upon some individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. The Executive is empowered to take recourse to its power of its preventive detention in those cases where the Court is genuinely satisfied that no prosecution could possibly succeed against the detenu because he is a dangerous person who has over-awed witnesses or against him no one is prepared to depose.

16. The Court also made a distinction between the concepts of “Public Order” and “Law and Order” in the following words: -

"13. The true distinction between the areas of 'public order' and 'law and order' lies not in the nature or quality of the Act, but in the degree and extent of its reach upon society. The distinction between the two concepts of 'law and order' and 'public order' is a fine one but this does not mean that there can be no overlapping. 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 touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. That test is clearly fulfilled in the facts and circumstances of the present case.”

17. The Supreme Court in the context of preventive detention also highlighted the distinction between “Public Order”, “Security of State” and “Law and Order” in the case of **Commissioner of Police and Ors. Vs. C. Anita, (2004) 7 SCC 467** in following words:

"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. *"Public order" is what the French call 'ordre publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? (See Kanu Biswas v. State of West Bengal(1972) 3 SCC 831).*

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. (See Dr. Ram Manohar Lohia (Dr.) v. State of Bihar (1966) 1 SCR 709; 1966 CrL.LJ 608)

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 v. The State of West Bengal(1972) 3 SCC 845: AIR1972SC1749; Pushkar Mukherjee v. State of West Bengal(1969) 1 SCC 10;

Arun Ghosh v. State of West Bengal(1970) 1 SCC 98;
Nagendra Nath Mondal v. State of West
Bengal(1972) 1 SCC 498J.”

18. An act, affecting public order, may have ramifications over law and order and security of the State at the same time {**See: Kishori Mohan Bahra Vs. State of West Bengal, (1972) 3 SCC 845, Pushkar Mukherji Vs. State of West Bengal, (1969) 1 SCC 10, Arun Ghosh Vs. State of West Bengal, (1970) 1 SCC 98, Nagendra Nath Mondal Vs. State of West Bengal, (1972) 1 SCC 498**}.
19. Some Crimes give Psychic Gains whereas some Crimes give Monetary Gains. If Cultural Norms affect the law, the law likewise affects cultural norms. Therefore, expressive function of punishment or deterrent of punishment is the law's capacity to send a message of condemnation about a particular criminal act. When a criminal mind while committing crime or expresses his intention to commit crime, sends a message to the world about the value of victim then conversely punishment or preventive measure (like the present one) sends a reciprocal message to the accused in a kind of dialogue with the crime. Therefore, in the considered opinion of this Court, expressive function of punishment or preventive measure like detention under NSA are both retributive and utilitarian. Retributive punishment/preventive measures give even if not proportional to the physical/psychic harm done to a victim even then it gives

a chance to the perpetrator to purge his misdeeds and act as deterrent to other probable perpetrators. Similarly utilitarian function of punishment/preventive measure has the power to change social norms and behaviour via the messages it expresses and may help in reduction of crime.

- 20.** In India where we witness high rate of crime against victims especially against weaker sections and females originates from the confidence of perpetrators that they would go unpunished because of lacuna in Investigation, Prosecution and Adjudication and therefore, this tendency prompts them to commit more severe offences and create an atmosphere of fear and terror. Conduct of petitioner reflects such attitude.
- 21.** Crime and Disorder are strongly interrelated, therefore, Broken Windows Theory, a Criminological Theory although moves in respect of Police and law enforcement but has material bearing in the realm of prosecution, adjudication and specially for preventive measures like NSA also. According to this theory, targeting minor disorder is expected to reduce occurrence of more serious crime. Idea behind is can be summarized in an expression that if a window in a building is broken and left unrepaired, all of the windows will soon be broken. On this analogy also, if preventive measure is taken by the police against a miscreant like in the present case then it is for the purpose of sending a message to the person concerned as well as

other probable perpetrators. Since, in the present case petitioner has chequered history of all types of crime, therefore, whole proceeding against the petitioner deserves to be seen from that vantage point also.

22. While dealing with liberty of an individual vis a vis collective interest of the community, observation of Apex Court in the case of **Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and others, (1987) 2 SCC 684** is worth consideration when Apex Court observed as under:

“Liberty is to be secured through process of law, which is administered keeping in mind the interest of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case.”

23. This observation is being reiterated by the Apex Court in the case of **Ramgovind Upadhyay Vs. Sudarshan Singh, (2002) 3 SCC 598**. Although above referred observation and reiteration were in respect of bail but certainly sends a message for reconciliation between “Personal Liberty” vis-a-vis “Public Peace” and “Public Order”. Said reconciliation is need of the hour otherwise Public Order, Social Peace and Development of the area would be sacrificed at the altar of Lawlessness,

Misgovernance and Private Retribution.

24. All these aspects have been dealt with in detail by this Court recently in the case of **Kalla alias Surendra Jat Vs. State of Madhya Pradesh passed in Writ Petition No.4499/2021.**
25. If the above referred legal principles/guidance are tested on the anvil of present set of facts then it appears that petitioner appears to be a habitual offender and his criminal activities and attitude spans around two decades. Not only this, he is involved in serious offences like Section 307 of IPC also. Although petitioner has referred the fact that in four cases he has been acquitted but he placed only two acquittal orders on record; first is for offence registered at Crime No.256/2009 at Police Station Karera (Vide Annexure P/4) whereby acquittal has been recorded vide order dated 28-11-2011 (under Section 232 of Cr.P.C.) and another is acquittal order dated 12-07-2018 of crime No.122/2012 under Section 34(2) of M.P. Excise Act where he was charge-sheeted for preparation of 800 liters of country made liquor (कच्ची देशी शराब). In both these cases even police witnesses did not turn up to depose before the Court and therefore, benefit of doubt was given to the petitioner.
26. It is to be noted that still 3 cases under M.P. Excise Act for preparing adulterated country made liquor are pending and not to forget that offence under Sections 307, 341, 323, 294, 147, 148 of IPC vide crime No.241/2017 and other similar nature of

cases, in respect of offences under Sections 325, 323, 324 read with Sections 147, 148 and 149 of IPC are still pending.

27. It is to be further noted that at times a person who is caught with illicit liquor (without permit, licence etc.) and tried for the said offence then it is a case of law and order only but when a person like petitioner who is constantly involved for last 17 years in preparation and manufacturing of adulterated country made liquor, that too prepared from adulterants like urea and Lahan (लहान) which is prepared through rotten shoes, rotten woods and other waste material and in a way it is like giving poison to the consumer and when despite repeated efforts, he does not mend his ways and continues to be involved in such activities and he is emboldened to such extent where he causes printing of his visiting cards (along with his photograph pasted over it), showing himself as the trader of country made liquor (कच्ची शराब) then all these facts and circumstances demonstrate his audacity to run the Reign of Terror and therefore, it becomes a case of public order and social peace. It would not be out of place to mention here that petitioner is involved in Trade of Fear to continue with his criminal endeavours including act of encroachment upon Government land and keep manufacturing illicit liquor, an act which causes pilferage to State exchequer and also leads to Hooch tragedy, causing social tension, law and order problem and even promoting other social evils. Where

these tragedies and evils become predominant there the area becomes vulnerable for public order and community peace.

- 28.** Audacity of such desperado becomes contagious. Such type of criminal elements inspire and encourage other small time miscreants to take law and order in their hands at the cost of public order and social peace and such audacity is a recipe for emergence of criminal gangs and mafias, therefore, nipping in the bud of these criminal elements becomes imperative for the police and administration. Therefore, such large scale production of illicit liquor with the help of urea and Lahan as raw material to make such adulterated liquor for unjust profit leads to big social tension and public order.
- 29.** Perusal of record, specially the recommendation of SHO Police Station Karera made to the Superintendent of Police, Shivpuri and thereafter Superintendent of Police, Shivpuri made a detailed report to the District Magistrate, Shivpuri are very elaborate and takes into account all necessary contours of the facts which are required to be placed before the competent authority to arrive to a decision and opinion of doctors have also been taken who have specifically mentioned the debilitating effect of manufacturing of adulterated country made liquor with the help of urea and Lahan. Therefore, detailed discussion and proper consideration of information and documents have been made.

30. Immediate precipitation of event was his involvement in offence under Section 34(2) of the M.P. Excise Act wherein 190 liters country made liquor (कच्ची देशी शराब), 4000 liters Lahan, one bag of urea all were found over the manufacturing unit raided by the police and interestingly said unit was installed over Government land (land worth Rs.3 crores) which was encroached by the petitioner. Audacity of a miscreant needs to fall in line for betterment of public order and social peace.
31. Long trail of criminal cases of different nature certainly suggests that they cannot be motivated at the instance of police authorities or at the instance of some vested interest. These are the instances/discredit points which are being acquired by the petitioner because of his misdeeds, misdemeanors and criminal bend of mind. Therefore, different nature of cases registered and tried against the petitioner even through resulted into acquittal cannot be taken lightly. Hon'ble Supreme Court in the case of **Debu Mahto Vs. State of West Bengal, AIR 1974 SC 816** has held as under:

“...The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. But whatever it be, it must be of such a nature that an inference can reasonably be drawn from it that

the person concerned would be likely to repeat such acts so as to warrant his detention. It may be easier to draw such an inference where there is a series of acts evincing a course of conduct but even if there is a single act, such an inference may justifiably be drawn in a given case.”

- 32.** So far as procedural aspect is concerned, compliance of different provisions of the Act have been followed. Impugned order has been passed on 21-01-2021 and on 22-01-2021 petitioner was taken into custody. On same day, his arrest was intimated to his wife and grounds were served and read over to him on 22-01-2021 itself. From the record, it is clear that District Magistrate, Shivpuri without any delay reported the fact/matter to the State Government (on same day) and State Government had to approve the said order within 12 days (or 15 days as the case may be) and State Government approved the same within 12 days.
- 33.** It further appears from the submission of Government Counsel that on the same day after approval (i.e. 30-01-2021) State Government has referred the matter to the Central Government for approval as per Section 3(5) of the Act. As per the pleadings/submission of Government Counsel, Advisory Board has confirmed the detention order, therefore, no procedural lacuna exists in the case in hand and authorities have followed the due procedure in accordance with law.
- 34.** Cumulatively, from the material placed by SHO, Police Station

Karera before the Superintendent of Police, Shivpuri along with statements of doctors and the report of Superintendent of Police, Shivpuri placed before the District Magistrate, Shivpuri and thereafter the contents of impugned order all establish that proper consideration of facts and circumstances of the case as well as import of National Security Act have been rightly considered by the authorities and thereafter impugned detention order has been passed.

35. Conclusively, petition preferred by the petitioner fails and order of detention dated 21-01-2021 passed by District Magistrate, Shivpuri is hereby affirmed.
36. Petition sans merits and is hereby dismissed. No order as to costs.
37. Copy of this order be sent to District Magistrate, Shivpuri for information and compliance.

(Sheel Nagu)
Judge
22/04/2021

(Anand Pathak)
Judge
22/04/2021