

The High Court Of Madhya Pradesh, Bench At Indore

Case No.	W.P. No.9785/2021
Parties Name	<i>Kamleshwar Dixit</i> vs. <i>State of M.P. and others</i>
Date of Judgment	20/07/2021
Bench Constituted	<u>Division Bench:</u> Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	Shri C.P. Purohit, learned counsel for the petitioner. Shri Vivek Dalal, learned Additional Advocate General for the respondent/State.
Law laid down	1) Section 3- NSA Act, 1980- The facts situation and “pressures of the day” are relevant factors for examining the validity of a detention order. In a pandemic like situation, one incident of black marketing of an essential drug can be sufficient to invoke the detention law – 2) Detention order – Indisputably, para 4 of the detention order is erroneously pasted from elsewhere. There is no basis of the said para – The Doctrine of Severability was applied and it was found that deletion of para 4 will not cause any dent on the remaining part of the order. Thus, the detention order was not interfered with. 3) Doctrine of Severability- After excision of invalid part of the order, the remaining part is complete and sufficient to attract section 3 of the NSA Act. Hence, interference was declined.

Significant paragraph numbers	14 & 19.
--------------------------------------	----------

ORDER
(20 .07.2021)

Sujoy Paul, J:-

1. This petition filed under article 226 of the Constitution of India assails the order of District Magistrate, Gwalior dated 14.05.2021 (Annexure P/1), whereby the petitioner is detained in exercise of power under section 3(2) of National Security Act, 1980 (NSA Act).

2. In nutshell, the contention of the petitioner as projected by the counsel is that the petitioner is an advocate practicing at Seoni and Indore. The petitioner was called by the Special Task Force, Chindwara from where he was taken by the said force to Gwalior. A false case is lodged against the petitioner at Gwalior. The petitioner purchased Remdesivir injections for treatment of his father-in-law. Later on, his father-in-law died because of Corona. The CT scan report, death certificate and medical documents are filed as Annexure P/2 and 3.

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated. Para 4 of the impugned order shows that the same is passed without application of mind. The reasons assigned in para 4 are without any basis. The report of Superintendent of Police does not contain any such reason, which became basis for detention as per para 4 of the detention order dated 14.05.2021.

4. It is further contended by the learned counsel for the petitioner that as per recent judgment of this Court in the case of *Yatindra Verma Vs. State of MP and Others passed in WP No.9792/2021 dated 24.06.2021*, the petitioner is similarly situated in as much as the petitioner therein was a social worker/politician, whereas, in the instant case, the petitioner is a practicing advocate. Hence, detention of petitioner is bad in law.

5. Learned Additional Advocate General supported the impugned

order and contended that indisputably para 4 of the impugned order dated 14.05.2021 is erroneous and is erroneously pasted. As per the return, STF Police Station, Gwalior got information regarding black marketing of Remdesivir injections. In turn, the petitioner was arrested and 5 Remdesivir injections were recovered from him. An FIR in crime no.16/2020 under section 420, 188 of the IPC, 3/7 of the Essential Commodities Act and 3 of the Pandemic Act was duly registered at Police Station STF on 08.05.2021. Further investigation is going on.

6. As per the report of Superintendent of Police, Gwalior, the District Magistrate took necessary steps and invoked NSA Act against the petitioner. During the pandemic era, there was severe scarcity of the said injection and the petitioner's conduct became a threat to the maintenance of 'public order'. Hence, the impugned order was passed. The ground of detention and intimation regarding detention order was duly served on the petitioner on 14.05.2021 (Annexure R/3). Reliance is placed on the order passed by this Court in *WP No.4499/2021 (Kalla @ Surendra Jat Vs. State of MP and others) decided on 09.04.2021*.

7. No other point is pressed by the learned counsel for the parties.

8. During the course of hearing, on a specific question raised from the bench, learned counsel for the petitioner fairly admitted that he erroneously stated that the medical documents filed by him are related to the father-in-law of the petitioner. Para 5.4 of the petitioner shows that the petitioner is unmarried. In reply to another question from the bench, learned counsel for the petitioner fairly submitted that his contention is that article 22 of the Constitution of India is infringed because the petitioner is an advocate and he cannot be detained in this manner under the NSA Act. To this extent, he placed reliance on the judgment of this Court in the case of **Yatindra Verma** (supra).

9. The respondents by filing additional counter affidavit, clearly

averred that the stand of the petitioner that he was called by the STF, Chhindwara from where he was taken by the said force to Gwalior is factually incorrect. The petitioner has been arrested at Gwalior itself.

10. Indisputably, para 4 of the impugned order dated 14.05.2021 has no foundation/basis. As per learned counsel for the respondent/State, para 4 is pasted from some other document because of a typographic error. The contention is correct because if the order of detention passed by the District Magistrate is read in juxtaposition to the Superintendent of Police's report, it will be clear like noon day that there is no foundation on the strength of which finding of para 4 could have been recorded. Thus, finding of para 4 is an example of cut/paste syndrome and non application of mind.

11. The ancillary question is whether because of this erroneous finding mentioned in para 4 above, the entire order dated 14.05.2021 needs to be axed. A careful reading of para 3 and 5 shows that the main reason to detain the petitioner is that 5 Remdesivir injections were found in unauthorized possession of the petitioner. The order passed under the NSA is preventive and not punitive in nature. This Court is not obliged to give any finding on the correctness of the allegations against the petitioner because trial against him is pending and any such finding may have an impact on the trial. In **Yatindra Verma** (supra), this Court held that activity like black marketing the Remdesivir injections has an adverse impact on "public order" and for this reason section 3(2) of the NSA Act can very well be invoked. If para 3 of the detention order is conjointly read with the S.P's report, it will be clear that the findings are similar and the main reason of detention is black marketing and possession of 5 Remdesivir injections.

12. Reverting back to the ancillary question aforesaid, the interesting conundrum is whether the entire order dated 14.05.2021 is liable to be jettisoned if part of it is found to be erroneous or without

basis.

13. This point is no more *res-integra*. The Apex Court laid down the Doctrine of Severability on the anvil of which the impugned order can be tested. In **1960 2 SCR 146 (Y.Mahaboob Sheriff Vs. Mysore State Transport Authority)**, the Apex Court held that it is open to sever the illegal part of the order from the part which is legal. This principle was followed in **1966 2 SCR 204 (R. Jeevarantnam Vs. State of Madras)**. It was held that two parts of composite order are separable. The first part of the order operates as a dismissal of the appellants as from October 17, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service. The same principle was followed in **(1976) 2 SCC 495 (State of Mysore Vs. K. Chandrasekhara Adiga)**. It was clearly held that where valid and invalid portion of the order are severable, the test is whether after excision of the invalid part, the rest remains viable and self-contained. The deletion cannot render rest of the order illegal or ineffective if it can survive independently and found to be valid. In **2014 (12) SCC 106 (State Bank of Patiala Vs. Ram Niwas Bansal)**, it was again held that two parts of the order are clearly severable assuming that second part of the order is invalid. There is no reason that the first part of the order should not be given the fullest effect. Reliance can be placed on another judgment of Apex Court in the case of **Gujarat Mineral Development Corporation Vs. P.H Brahmhatt reported in 1974 (3) SCC 601**. Pertinently, Allahabad High Court in **Gajendra Prasad Saxena, VS. State of UP reported in 2015 SCC OnLine ALL 8706** applied the Doctrine of “Partial Quashing” and opined that the principle of unconstitution provision of a statue being severed and struck down leaving other parts untouched is well known. The said

principle of severability has been extended to administrative orders also.

14. If the Doctrine of Severability is applied on the impugned order, it will be clear that even if para 4 is deleted or treated as invalid, the contents of rest of the order will be sufficient to uphold the action under the NSA. In other words, if para 4 of order is treated as invalid portion of order, after excision of this invalid part, the remaining part is found to be self-contained and can be a reason to uphold the invocation of power under section 3(2) of the NSA. Thus, two parts of the order are severable. The invalid para 4 will not eclipse the entire order dated 14.05.2021.

15. Thus, we are not inclined to set aside the order dated 14.05.2021, merely because para 4 of the said order is perverse and without any basis. The judgment of this Court in **Yatindra Verma** (supra) was pressed into service by contending that the petitioner therein was a social worker, whereas, the petitioner herein is an Advocate. Thus, they are similarly situated. We do not see any merit in this contention. Interference in **Yatindra Verma** (supra) was not made because of social status of the petitioner. Whether a detenu was a social worker or an Advocate is insignificant if his conduct is a threat to “public order”.

16. The Supreme Court answered an interesting and challenging conundrum relating to maintaining balance between the liberty and license in most appropriate words in certain judgments which are as under:-

“K.K. Methew, J. in 1975 (Supp.) SCC 1 (Smt. Indira Nehru Gandhi vs. Raj Narain) stated that the major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence; and the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these means in the ever shifting tangle of

human affairs.” (para 318)

(Emphasis supplied)

17. Justice *M.N. Venkatchaliah* in (1989) 1 SCC 374 (*Ayya @ Ayub vs. State of UP and Anr*) held as under:-

“.....the actual manner of administration of the law of preventive detention is of utmost importance. **The law has to be justified by the genius of its administration so as to strike the right balance between individual-liberty on the one hand and the needs of an orderly society on the other. But the realities of executive excesses in the actual enforcement of the law have put the courts on the alert, ever-ready to intervene and confine the power within strict limits of the law both substantive and procedural. The paradigms and value judgments of the maintenance of a right balance are not static but vary according as the "pressures of the day" and according as the intensity of the imperatives that justify both the need for and the extent of the curtailment to be individual liberty.** Adjustments and readjustments are constantly to be made and reviewed. No law is an end in itself. The "inn that shelters for the night is not journey's end and the law, like the traveller, must be ready for the morrow." (para 14)

(Emphasis supplied)

18. Justice *Savyasachi Mukherjee* in (1986) 4 SCC 407 (*Raj Kumar Singh vs. State of Bihar*) held as under:-

“Preventive detention as reiterated as hard law and must be applied with circumspection rationally, reasonably and on relevant materials. Hard and ugly facts make application of harsh laws imperative.”

(para 22)

(Emphasis supplied)

19. The second wave of Covid-19 was very fatal and there was severe scarcity of Remdesivir injections, oxygen, beds, hospital facilities, medicines etc in most of the major towns of the province. This grave situation of pandemic, threatened the humanity after almost 100 years from the previous pandemic of Spanish Flu, which broke out in 1918-1920. In the days of extreme crisis, a single act of

black marketing of an essential drug like Remdesivir is sufficient to detain a person under the NSA Act. This court has already taken this view in **Yatindra Verma** (supra). In another case, **WP No.11008/2021 (Ram Avtar Vs State of MP)**, this Court opined as under :-

16) The last submission was that petitioners did not have any past record. This aspect was also dealt with in explicit manner in the case of **Manikant Asati** (supra). In para 8 & 9 of said order, this Court made it clear that in an extraordinary crisis like Covid-19 pandemic, a singular act of blackmarketing can attract the Blackmarketing Act for the purpose of detention. The pandemic of this magnitude came in 2019 after more than 100 years from the previous pandemic of Spanish Flu which threatened the humanity in the year 1918. Thus, question of availability of any past record in a case of this nature is insignificant. Hence, this point raised by petitioners also cannot cut any ice. In **Ayya Ayub** (supra), the Apex Court visualised the requirement of maintenance of a right balance and opined that principles relating to said balance are not static but vary according to the **pressures of the day** and according to the intensity of imperatives that justify both the need for and the extent of curtailment of the individual liberty. The impugned order of detention takes into account *pressures of the day* and assigns justifiable reasons for detaining the corpus. In this factual backdrop, we find no reason to interfere in the matter.”

Emphasis Supplied

20. The petitioner has failed to establish any flaw in the decision making process pursuant to which the impugned order dated 14.05.2021 is passed. In absence thereof, no case is made out for interference.

21. The petition fails and is hereby **dismissed**.

(SUJOY PAUL)
J U D G E

(ANIL VERMA)
J U D G E

sourabh