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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 22nd OF APRIL, 2022

WRIT PETITION No. 4053 of 2022

Between:-

JAGDISH SALVI S/O BADRILAL SALVI,
AGED ABOUT 50 YEARS, OCCUPATION:
SERVICE, R/O VILLAGE AMLA, TEHSIL
BADNAGAR, UJJAIN (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ANUJ BHARGAVA, LEARNED COUNSEL)

AND

- THE STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY, FOOD
1. CIVIL SUPPLIES AND CONSUMER
PROTECTION DEPARTMENT, VALLABH
BHAWAN BHOPAL (MADHYA PRADESH)
2. DISTRICT MAGISTRATE/COLLECTOR,
UJJAIN (MADHYA PRADESH)
3. SUPERINTENDENT OF POLICE, DISTRICT
UJJAIN (MADHYA PRADESH)
STATION HOUSE OFFICER P.S.
4. BADNAGAR DIST UJJAIN (MADHYA
PRADESH)

.....RESPONDENTS

*(BY SHRI PUSHYAMITRA BHARGAV, ADDITIONAL ADVOCATE
GENERAL)*

JUSTICE VIVEK RUSIA passed the following:-

ORDER

The petitioner has filed the present petition being aggrieved
by the order dated 18.01.2022 passed by the respondent No.2 by

which his son Vijay Salvi S/o Jagdish Salvi has been detained under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 2000 (hereinafter referred to as " Black Marketing Act, 1980").

[1] In the present petition, the detenu Vijay Salvi S/o Jagdish Salvi at the relevant point of time, was working in Fair Price Shop, Amla. The present petition is filed through his father Jagdish Salvi.

[2] On 30.12.2021, police searched a loading vehicle bearing registration No.MP-13-GB-0179 and found bags of rice loaded in it. The driver was apprehended and interrogated. He disclosed that he was transporting rice bags from Government Fair Price Shop, Amla to Government Fair Price Shop, Arjunkhedi, Tehsil Badnagar, District Ujjain, on instructions of the Vijay Salvi (hereinafter referred to as " Detenu"). Junior Supply Officer has conducted an enquiry of Primary Agriculture Credit Co-operative Society, Amla, an allottee society under Madhya Pradesh Public Distribution System (Control) Order, 2015 (hereinafter referred to as " Distribution Order, 2015") and submitted a report dated 06.01.2022. On the basis of said report, the Collector (Food), directed for registration of FIR against the detenu and driver Gokul S/o Shri Kailash Rathore. The FIR was registered at crime No.12 of 2022 on 07.01.2022.

[3] A show-cause notice dated 13.01.2022 was also issued to the detenu under Clause 16 of the Distribution Order, 2015 because of the recovery of 66 bags of rice in vehicle No.MP-13-GB-0179. The detenu submitted a detailed reply to Sub Divisional Officer, Badnagar. Before the final order could be passed on show-cause notice, on the reply submitted by the detenu, he was served a

detention order dated 18.01.2022 ordering him to be detained and kept in Central Jail, Ujjain for a period of six months from the date of actual detention. Along with the copy of the order dated 18.01.2022, the grounds for detention were also supplied to the petitioner. The detenu was detained on 19.01.2022 and a detention order and grounds were served upon his father on 20.01.2022. The detenu submitted a detailed representation to (i) District Magistrate, Ujjain, (ii) Principal Secretary, Department of Food Civil Supplies and Consumer Protection Department, Vallbh Bhawan, Bhopal (iii) Secretary, Ministry of Home Affairs, Government of India, New Delhi & (iv) The Advisory Board on 27.01.2022. Hence, the present petition before this Court.

[4] After filing this petition, the State Government has approved the detention order by passing an order dated 28.01.2022, which the petitioner has challenged by way of amendment. During the pendency of this petition, the Advisory Board, Jabalpur (Madhya Pradesh) has given an opinion that there exists sufficient cause for the detention of detenu under the Black Marketing Act, 1980.

[5] *Inter alia*, the petitioner has assailed the impugned action on various grounds and placed reliance on various judgments passed by this Court as well as Apex Court.

[6] The respondents have filed the return justifying its action by submitting that the complete procedure has been followed while passing the detention order and no interference is called for.

[7] After the final argument, in this case, this Court has found that no order of confirmation has been issued by the State Government as required under Section 12(1) of Black Marketing Act, 1980, hence, vide order dated 06.04.2022, Additional Advocate

General was directed to address on this issue.

[8] Under Section 3(1) of the Black Marketing Act, 1980, the Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary empowered for the purpose of this section and any officer not below the rank of Secretary of State Government, if satisfied, with respect to any person that he is liable to be detained make an order directing that such person be detained. Under Section 3(2) of the Black Marketing Act, 1980, District Magistrate or Commissioner of Police, wherever they have been appointed may also, if satisfied as provided in sub-section (1), exercise the powers to pass an order of detention of any person and after passing such order under sub-section (2), he shall forthwith report the fact to the State Government with a ground on which the order has been made and no such order shall remain in force for more than twelve days from date of passing the order. Under sub-section (4), when an 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. Under Section 8 of the Black Marketing, Act, 1980 mandates, the disclosure of grounds of order of detention to the person affected within the period of 5 days and not later than ten days and shall afford an opportunity of making a representation against the order to the appropriate Government.

[9] Section 9 of the Black Marketing Act, 1980 provides constitution of Advisory Boards, which shall consists of three persons, out of which one is or has been judge of High Court to be a chairman. As per Section 10 of Black Marketing Act, 1980 in every

case where a detention order has been made under this Act, the appropriate Government, shall within three weeks from the date of detention of a person under the order, place it before the Advisory Board. Section 11 of the Black-Marketing Act, 1980, prescribes the procedure to be followed by the Advisory Boards. Section 12 of Black-Marketing Act, 1980, provides action upon the report of the Advisory Board. Under Section 12(1) of the Black Marketing Act, 1980, in any 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. Section 13 of the Black Marketing Act provides a maximum period of detention which shall be six months from the date of detention.

[10] In this case, the respondents have produced a copy of the order of detention passed under Section 3(2) of the Black Marketing Act, 1980. Section 3(2) nowhere provides that the District Magistrate shall prescribe the period of detention in the said order. The District Magistrate or Commissioner of Police as the case may be can only pass an order of detention and sent it to the appropriate Government for its approval.

[11] The Government grants approval under sub-section (4) of Section 3 of the Black Marketing Act and forwarded it to the Central Government together with all documents and grounds within seven days. Thereafter, it is mandatory for the Central and State governments to constitute an Advisory Board and place the matter before the Advisory Board. The role of the Advisory Board is only to give an opinion on whether the detention order is correct

or not. As to whether or not there is sufficient cause for the detention of the person concerned. After completing all these procedures, the confirmation by the appropriate Government is mandatory under Section 12 of the Black Marketing Act, 1980 and while confirming the order, the State Government shall fix the period of detention. Section 12(1) of the Black Marketing Act, 1980 also gives the power to continue the order of detention but the period shall not exceed six months. In the present case, the respondents have not filed any order to be passed under Section 12(1) of the Black Marketing Act by the State Government, therefore, there is no confirmation of detention by the respondent. Hence, the Detenue is liable to be released forthwith.

[12] Shri Pushyamitra Bhargav, Additional Advocate General has produced a copy of the order dated 16.08.2021 passed in W.P. No.11876/2021 and **W.P. No.11548** titled Bharat Singh Thakur Vs. State of M.P. and Ors. and Sudheer Soni @ Rahul Soni Vs. Union of India and Ors. passed by Division Bench of this Court whereby the Division Bench in the exercise of power as per Chapter 4, Rule 8 of the High Court of Madhya Pradesh Rules, 2008 has recommended for constitution of the Larger Bench to consider the following issues:

1. *Whether as per section 3(3) and (4) of the Black Marketing Act (or any other analogous provision of any other detention law) permits the District Magistrate/competent authority to detain the person beyond the period of three months in one go. In other words, whether section 3(3) and (4) aforesaid restricts the competent authority to pass the order of detention at the first instance only for a period of three months ?*
2. *In view of the above cleavage of opinion in the judgment of the Apex Court (one of which was followed by the Division Bench of this Court), which view shall be binding precedent for this Court ?*

[13] In addition to the aforesaid issues, we hereby find three more substantial questions of law for general importance to be considered by the Larger Bench.

(1) Whether District Magistrate/ Competent Authority can prescribe the period of detention while passing the order under Section 3 and 4 of Black Marketing Act, 1980 ?

(2) Whether the period of detention is liable to be prescribed by State Government under section 12(1) of Black Marketing Act, 1980 while confirming the order of detention ?

(3) In absence of passing of order for confirmation passed under Section 12(1) with specified period of detention, order of detention passed by the District Magistrate or competent authority can survive for more than 7 weeks as no time period is prescribed for giving an opinion by the Advisory Board under Section 11 of Black Marketing Act, 1980 and passing of order of confirmation under Section 12(1) of Black Marketing Act, 1980.

Also heard on the question of interim relief.

[14] The matter is being referred to a Larger Bench for consideration of issues involved in this writ petition. The petitioner has raised various grounds out of which some have been referred for consideration of a larger bench.

[15] As per the prevailing legal situation based on the judgment of the Apex Court in *Cherukuri Mani Vs. Chief Secretary, Government of Andhra Pradesh and Ors reported in (2015) 13 SCC 722*, which was consistently followed by various Division Benches of this Court, the detention order passed by District Magistrate at a stretch for a period of more than three months becomes illegal and void from its inception. The constitution of the larger bench and its decision may

take time. Considering a similar situation, the Principal Seat of this court in *Kamal Khare Vs. State of MP passed in WP Nos.22290/2020 on 18.02.2020 and Lalchand Dasani Vs. State of MP passed in WP No.1298/2021 on 09.02.2021* granted benefit of the interim release.

[16] The prayer is opposed by the learned AAG for the respondent/State by contending that in the case of *Kamal Khare* (supra), the applicant therein remained in custody for more than three months, whereas, in the present case, the applicant has not completed the said period.

[17] The basic reason, in our opinion for granting the benefit of interim release in this matter is that constitution of the larger bench may take time, and therefore, the detenu deserves interim release and there is no order of confirmation passed by the State Government under section 12(3) of the Act. Accordingly, it is directed that on furnishing a personal bond of **Rs.50,000/- (One Thousand)** with a solvent surety of the like amount to the satisfaction of the Principal Registrar of this Court, the detenu be released from the detention with the further direction to appear before the Registry of this Court on 26.05.2022 and on such subsequent dates, as may be fixed by the office in that behalf, till final disposal of the present writ petition.

[18] Let this matter be placed before the Hon'ble Chief Justice for constitution of the Larger Bench to consider the aforesaid questions along with W.P. No.11876/2021 and 11548/2021 for analogous hearing. The Registry of this Court is directed to place the matter before the Hon'ble Chief Justice forthwith so that these questions be answered at the earliest.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE