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WP-20071-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&amp;

HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA

ON THE 6<sup>th</sup> OF SEPTEMBER, 2024WRIT PETITION No. 20071 of 2024*AKBAR @ LALA S/O RAEES BOSE THROUGH NAZMA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Mitesh Jain - advocate for the petitioner.

Shri Bhuwan Gautam, learned counsel for the respondents.

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ORDER

*Per. Justice Vijay Kumar Shukla*

The present petition is filed under Article 226 of the Constitution of India in the nature of habeas corpus challenging the orders dated 20.03.2024 (Annexure P/1) passed by District Magistrate, Indore and also the order dated 09.07.2024 (Annexure P/2) passed by the District Magistrate, Indore.

2. The present petition is filed by the detenu through the mother challenging the aforesaid orders by order dated 20.03.2024, the respondent No.2 has passed an order of detention under Section 3(2) of National Security Act, 1980 (hereinafter referred as **the Act**) and also the order dated 09.07.2024 whereby the period of detention has been extended for further period of three months from 12.07.2024 till 12.10.2024 by the respondent No.1. The detention order Annexure P/1 is challenged mainly on three



grounds:-

(i) That, the period of detention is not mentioned in the impugned order, therefore, the detention is illegal as required under Section 3 of the Act.

(ii) The provisions of Section 8 has not been complied with as the petitioner has not been afforded opportunity to make a representation against the order to the appropriate government.

(iii) The provisions of Section 10 of the Act has not been complied with as the detention order has not been placed before the advisory board constituted under Section 9 within a period of three weeks from the date of detention of person.

3. Per contra, Counsel for the State supported the impugned order and argued that the impugned orders are passed as per the provisions of the Act and there is no illegality in the same.

4. After hearing learned counsel for the parties, it is apposite to consider the grounds raised by the counsel for the petitioner one by one. The first point raised that in the impugned order, the period of detention is not mentioned and, therefore, the impugned order is illegal. In support of his submissions, he has placed reliance on the judgment passed by the Division Bench in the case of *Siddharth Jain vs. State of MP & Ors. (W.P. No.18047/2019) decided on 24.09.2019*. The Division Bench relying on the judgment passed by the Apex Court in the case of *Commissioner of Police and Anr. vs. Gurubux Anandram Bhiryani, 1998 SCC (Cri) 914* and also the order dated 28.03.2019 passed in the case of *Satyanarayan @ Narayan*



*Luniha vs. State of MP & Anr. (W.P. No.3154/2019)* held that if no period of detention is mentioned and the detention is for indefinite period in the order is illegal.

5. In regard to the aforesaid counsel for the State submitted that mere non-mentioning of the period of detention in the order would not render the order of detention is illegal. The minimum and maximum period under Section 3 of the Act would apply by implication. In support of his submissions, he has placed reliance on the judgment passed by the Apex Court in the case of *T. Devaki vs. Government of Tamil Nadu, 1990 (2) SCC 456* and also the order passed by the Division Bench in *State of M.P. vs. Sahil Khan, 2019 SCC OnLine MP 6715*.

6. In order to appreciate the rival submissions in regard to the ground No.1 regarding non-mentioning of period in the detention order, it is appropriate to reproduce the relevant part of Section 3 of the Act:-

**"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, or the security of India, or

(b) if satisfied with respect to 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 sub-section, "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 Blackmarketing 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."

7. Considering the provisions of Section 3 of the Act, in the case of *Siddharth Jain* (supra) relying the judgment of *Gurbux Anandram Bhiryani* (supra) it was held that if no period of detention is mentioned in the detention order and the same is for indefinite period, the order of detention is illegal. The judgment passed in *Gurbux Anandram Bhiryani* (supra) has been overruled in the case of *T. Devaki* (supra) and again in the case of *Secretary to Government of Tamil Nadu Public (Law and Order) Revenue Department & Anr. vs. Kamala & Anr., 2018(5) SCC 322*. The relevant para of the judgment in the case of *T. Devaki* (supra) reproduced as under:-

11. Mr. R.K. Garg placed strong reliance on the decision of this



Court in Gurbux Bhiryani's case (supra) to support his submission. In that case the detenu had been detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act 55 of 1981. The High Court quashed the detention order on the ground that the detenu had been released in criminal prosecution under Section 8(c) read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and he had been released on bail, but that fact had not been placed before the detaining authority. On appeal by special leave a Division Bench of this Court consisting of two Judges., dismissed the appeal without going into the merits of the case on the sole ground that the detention order was bad as the period of detention was not specified in the detention order. The Court observed as under:

"The order is bad on another ground, namely, the period of detention has not been indicated by the detaining authority. The scheme of this Act differs from the provisions contained in similar Acts by not prescribing a period of detention but as Section 3 of the Act indicates, there is an initial period of detention which can extend upto three months and that can be extended for periods of three months at a time. It was open to the detaining authority to detain the detenu even for a period of lesser duration than three months. That necessitated the period of detention to be specified and unless that was indicated in the order, the order would also be vitiated. In scores of decisions this Court has been emphasising the necessity of strict compliance with the requirements of the preventive detention law; yet authorities on whom the power is conferred have not been complying with the requirements and even if there be merit to support the order of detention, the procedural defects lead to quashing thereof as a result of which the purpose of the Act is frustrated and the suffering in the community does not abate."

With great respect we do not agree with the view expressed by the learned Judges.

12. Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-offenders Act, 1981 is identical in terms to Section 3 of the Tamil Nadu Act. Section



3 of Maharashtra Act does not require the State Government, District Magistrate or a Commissioner of Police to specify period of detention in the order made by them for detaining any person with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. Section 3(1) which confers power on the State Government to make order directing detention of a person, does not require the State Government to specify the period of detention. Similarly, sub-sections (2) or (3) of Section 3 do not require the District Magistrate or the Commissioner of Police to specify period of detention while exercising their powers under sub-section (1) of Section 3. The observations made in Gurbux Bhiryani's case that the scheme of the Maharashtra Act was different from the provisions contained in other similar Acts and that Section 3 of the Act contemplated initial period of detention for three months at a time are not correct. The scheme as contained in other Acts providing for the detention of a person without trial, is similar. In this connection we have scrutinised, the Preventive Detention Act, 1950, the Maintenance of Internal Security Act, COFEPOSA Act, National Security Act but in none of these Acts the detaining authority is required to specify the period of detention while making the order of detention against a person. 13. This Court has consistently taken the view that an order of detention is not rendered illegal merely because it does not specify the period of detention. A Constitution Bench of this Court in Ujagar Singh v. The State of Punjab, [1952] 3 SCR 756 while considering validity of detention order made under Section 3 of the Preventive Detention Act 1950 held that non-specification of any definite period in a detention order made under Section 3 of the Act was not a material omission rendering the order invalid. In Suna Ullah Butt v. State of Jammu & Kashmir, [1973] 1 SCR 870 validity of detention order made under Jammu and Kashmir Preventive Detention Act 1964 was under challenge on the ground that the State Government while confirming the detention order under Section 12 of the Act had failed to specify the period of detention. The Court held that since the State Government had power to revoke or modify the detention order at any time before the completion of the maximum period prescribed under the Act, it was not necessary for the State Government to specify the period of detention. In Suresh Bhojraj Chelani v. State of Maharashtra, [1983] 1 SCC 382 while considering the validity of the detention order made under Section 3(1) of the Conservation of Foreign Exchange and Prevention of



Smuggling Activities Act, 1974 this Court rejected similar submission made on behalf of the detenu that order of detention was vitiated as the Government had failed to mention the period of detention while confirming the order of detention. The Court held that the COFEPOSA Act did not require the detaining authority to mention the period of detention in the order of detention. When no period is mentioned in an order, the implication is that the detention is for the maximum period prescribed under the Act. 14. In *A.K. Roy V. Union of India & Ors.*, [1982] 1 SCC 271 a Constitution Bench of this Court considered the validity of the National Security Act (65 of 1980), Chandrachud, CJ (as he then was) speaking for the Bench rejected the arguments made on behalf of the petitioner that the absence of provision requiring the detaining authority to provide for maximum period of detention was illegal. The learned Chief Justice, observed: "There is no substance in this grievance because, any law of preventive detention has to provide for the maximum period of detention, just as any punitive law like the Penal Code has to provide for the maximum sentence which can be imposed for any offence. We should have thought that it would have been wrong to fix a minimum period of detention, regardless of the nature and seriousness of the grounds of detention. The fact that a person can be detained for the maximum period of 12 months does not place upon the detaining authority the obligation to direct that he shall be detained for the maximum period. The detaining authority can always exercise its discretion regarding the length of the period of detention. It must also be mentioned that, under the proviso to Section 13, the appropriate Government has the power to revoke or modify the order of detention at any earlier point of time." On the basis of the above observations validity of a detention order passed under Section 3 of the National Security Act was challenged before this Court in *Ashok Kumar v. Delhi Administration & Ors.*, [1982] 2 SCC 403 on the ground that the Commissioner of Police, as well as the Administrator of Delhi Administration who confirmed the detention order failed to specify the period of detention while making the order of detention. A three 'Judge's Bench of this Court rejected the detention and upheld the validity of the detention order. A.P. Sen, J. observed:

"It is plain from a reading of Section 3 of the Act that there is no obvious fallacy underlying the submission



that the detaining authority had the duty to specify the period of detention. It will be noticed that subsection (1) of Section 3 stops with the words "make an order directing that such person be detained", and does not go further and pre- scribe that the detaining authority shall also specify the period of detention. Otherwise, there should have been the following words added at the end of this sub-section "and shall specify the period of such detention". What is true of subsection (1) of Section 3 is also true of sub-section (2) thereof. It is not permissible for the courts, by a process of judicial construction, to alter or vary the terms of a Section. Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case i.e. the nature of the prejudicial activity complained of. It is not that the period of detention must in all circumstances extended to the maximum period of 12 months as laid down in Section 13 of the Act."

15. It is thus clear that the view taken in Gurbux Bhiryani's case on the interpretation of Section 3 of the Maharashtra Act is incorrect. This Court has while considering the question of the validity of the detention order made under different Acts, consistently taken the view that it is not necessary for the detaining authority or the State Government to specify the period of detention in the order. In the absence of any period being specified in the order the detenu is required to be under detention for the maximum period prescribed under the Act, but it is always open to the State Government to modify or revoke the order even before the completion of the maximum period of detention. We are, therefore, of the opinion that the impugned order of detention is not rendered illegal on account of the detaining authority's failure to specify period of detention in the order."

8 . Relying the aforesaid judgments of the Supreme Court, the Division Bench in the case of Sahil Khan (supra) held that non-mentioning of period of detention would not render the same illegal and the judgment passed in the writ petition was recalled and the order of detention was





upheld. In view of the aforesaid enunciation of law, the argument of counsel for the petitioner that the order of detention is illegal for not mentioning the period is repelled/rejected. It is further held that by implication the minimum and maximum period has to be read in the order of detention as per Section 3 of the Act, however the detention order cannot be beyond the maximum period prescribed under the Act.

9. Counsel for the petitioner argued that the provisions of Section 8 of the Act has not been complied with as he has not been given opportunity of making representation against the order to the appropriate government. In support of his submissions, he has placed reliance on the judgment passed by this Court in the case of *Maikal @ Shahid vs. State of MP & Ors. 2014(3) JJJ 387* and also the judgment passed by the Apex Court in the case of *Kamleshkumar Ishwardas Patel vs. Union of India & Ors. (1995) 4 SCC 51* wherein it has been held that the detenu must be apprised of his right to submit representation before the State Government as well as the Central Government.

10. Counsel for the respondent submits that in the impugned order itself it was mentioned that the petitioner has a right to represent and support his case in front of Collector, Indore, Secretary Department of Home, Government of India, New Delhi, Secretary, Government of Madhya Pradesh, Home Department, Bhopal and Advisory Board. It is further argued that the said order of detention was served to the petitioner in hindi also.

11. Counsel for the petitioner does not dispute the aforesaid fact that the detention order was served to him mentioning his right to make



representation against order of detention. Thus, this Court does not find that there is any violation of Section 8 of the Act. In the case of *Amin Mohammed Qureshi vs. Commissioner of Police, Greater Bombay (1994) 2 SCC 355*, it has been held that the detaining authority is not obliged to tell the detenu that he can make a representation against the detention order. In the detention order itself, it was mentioned that the petitioner has a right to make the representation before the authorities and it is not in dispute that the order of detention was served on the petitioner in hindi language also which he understands in view of the aforesaid, the provisions of Section 8 are complied with and the order of detention cannot be hold illegal and invalid on the said ground.

12. The next submission of the learned counsel for the petitioner is that the respondents have not followed the provisions of Section 10 of the Act as the reference was not made within three weeks from the date of detention of the petitioner before the Advisory Board constituted under Section 9.

13. In compliance to the order of this Court, counsel for the State produced the copy of the letter dated 19.04.2024 written by the Additional Secretary, Government of M.P., Home Department to the Deputy Registrar-cum-Secretary to the Chairman of the Advisory Board.

14. Counsel for the petitioner submits that as per the provisions of Section 10, it is not in dispute that the aforesaid letter of reference was issued within the period of three weeks from the date of detention of the petitioner as the petitioner was detained on 13.04.2024 and the reference was made on



19.04.2024, however, it is argued that as per the provisions of Section 10, the matter has to be placed before the Advisory Board and mere sending the case to the Board is not the compliance of the aforesaid provisions. This Court does not find any merit in the aforesaid contention. The word place cannot be interpreted to mean that the Board has to consider and decide the case within three weeks. The provision of Section 10 cannot be read in isolation. It has to be read along with Section 11, 12 & 13 of the Act which prescribes procedure of the Advisory Board. On harmonious consideration of the provisions of Section 10, 11, 12 & 13 of the Act. The Court is of the view that no period is prescribed under the Act to take a decision on the reference within 3 weeks by the Board. However, under Section 13, the maximum period of detention is prescribed which is 12 months from the date of detention, therefore, the entire procedure has to be completed before maximum period of 12 months.

15. In view of the aforesaid, this Court does not find any illegality in the detention order. The period of three months has to be read in the detention order by implication in view of judgments of the Supreme Court in the case of *T. Devaki* (supra) and *Secretary to Government of Tamil Nadu Public (Law and Order) Revenue Department* (supra). The State Government has extended the period for three months from 12.07.2024 till 12.10.2024 which is not beyond 12 months which is maximum period of detention under the Act. Thus, there is no illegality in the order dated 20.03.2024 (Annexure P/1) passed by District Magistrate, Indore and also the order dated 09.07.2024 (Annexure P/2) passed by the District Magistrate, Indore in



which the reasons has been assigned for extending the detention period for further period of three months.

16. With regard to the scope of jurisdiction Hon'ble Apex Court in the case of *Deepak Bajaj Vs. State of Maharashtra and another, (2008) 16 SCC 14* has cautioned the High Courts regarding scope of jurisdiction and scope of High Court to grant relief in such matters. According to Apex Court; scope is very narrow and limited and subjective satisfaction of the detaining authority cannot be looked by the High Court as appellate authority. In the said case, the Apex Court reiterated the observation made by the Apex Court in the case of *State of Bihar Vs. Rambalak Singh Balak, AIR 1967 SC 1441* as well as *Khudiram Das Vs. State of West Bengal, (1975) 2 SCC 81* .

17. In view of the aforesaid, the petition sans merit and is hereby dismissed.

(VIJAY KUMAR SHUKLA)  
JUDGE

(DUPPALA VENKATA RAMANA)  
JUDGE