High Court of Madhya Pradesh, Jabalpur
Bench at Indore, Indore

Writ Petition No.8123/2020
Indore, Dated 30.06.2020

Mr. Lucky Jain, learned counsel for the petitioner.

Mr. Shrey Raj Saxena, learned Deputy Advocate General for the respondent / State of Madhya Pradesh.

Final arguments heard.

Order passed separately signed and dated.

(S.C. Sharma)
Judge

(S.K. Awasthi)
Judge

rcp

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

D.B.: Hon'ble Shri S.C. Sharma &
Hon'ble Shri S.K. Awasthi, JJ.

Writ Petition No.8123/2020

Laxman Singh s/o Rupa Ji Parihar

Versus

State of Madhya Pradesh & another

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Mr. Lucky Jain, learned learned counsel for the petitioner.
Mr. Shrey Raj Saxena, learned Deputy Advocate General for the respondent / State of Madhya Pradesh.

* * * * *

O R D E R

(Passed on this 30th day of June, 2020)

Per S.C. Sharma, J.

The petitioner before this Court has filed this present petition being aggrieved by order dated 07.05.2020 (Annexure P/1) passed by the District Magistrate, District Dewas (MP) in exercise of powers conferred under the provisions of National Security Act, 1980.

2. The petitioner's contention is that on the date the detention order was passed, the petitioner was already in judicial custody in connection with Crime No.139/2020 and Crime No.33/2020 registered at Police Station, Bagli, District Dewas (MP) and the Detaining Authority, at the time of passing of the detention order, was not aware of the fact that the detenu is in jail. It has been stated that the order passed by the District Magistrate is contrary to the law laid down by the Supreme Court from time to time. The petitioner has stated that the petitioner is engaged in various

social activities. He is holding the post of State Joint Secretary in *Manav Utthan Samiti*, which is an all India registered voluntary non-profit social welfare and charitable organization. The petitioner has further stated that there is a land dispute in the village where the petitioner is residing and there are claims and counterclaims in respect of title of the land. It has been stated that one Khuman Singh s/o Govind was claiming title over the land belonging to Temple of Lord Shri Ram, situated at village Sabliyapur, Tahsil Bagli, District Dewas (MP). The Police has registered three First Information Reports against the present petitioner and based upon the FIRs, which are for commission of offence punishable under Sections 294, 323 and 506 of the Indian Penal Code, 1860, an order under the provisions of National Security Act, 1980 has been slapped upon the petitioner. It has also been stated that the petitioner is in judicial custody since 04.05.2020 and the factum of his judicial custody has not been taken into account by the District Magistrate. It has also been argued that based upon cases of minor / trivial nature, an order of NSA has been slapped upon the petitioner.

3. The petitioner has placed reliance upon the following judgments: -

A. **Kamini Yadav** v. **State of Madhya Pradesh & others**, decided on **04.02.2019** in **Writ Petition No.25986/2018 Jabalpur Bench**, reported in **MANU/MP/0036/2019**;

B. **Neelam Yadav** v. **State of Madhya Pradesh & others**, decided on **04.02.2019** in **Writ Petition No.26052/2018 Jabalpur Bench**, reported in **MANU/MP/0037/2019**;

C. **Khurshid** v. **State of Madhya Pradesh & others**, decided on **29.06.2016** in **Writ Petition No.3793/2016 Gwalior Bench**, reported in **MANU/MP/0516/2016 = 2016 (3) MPLJ 454**;

D. **Chhenu** v. **State of Madhya Pradesh & others**, decided on **02.07.2010** in **Writ Petition No.5601/2010 Indore Bench**, reported in **MANU/MP/0478/2010 = 2010 (4) MPLJ 253**;

E. **Naimuddin** v. **State of Madhya Pradesh & others**, decided on **16.03.2004** in **Writ Petition No.1309/2003 Indore Bench**, reported in **MANU/MP/0070/2004 = 2004 (2) MPLJ 548**;

F. **Ajay Dhakad** v. **State of Madhya Pradesh & others**, decided on **11.08.1989** in **Miscellaneous Petition No.141/1989 Gwalior Bench**, reported in **MANU/MP/0195/1989 = 1990 MPLJ 196;**

G. **Akash Yadav** v. **State of Madhya Pradesh & others**, decided on **12.04.2019** in **Writ Petition No.2695/2019 Jabalpur Bench**.

4. A reply has been filed in the matter and it has been argued by learned Deputy Advocate General on behalf of the respondent / State Government that based upon the report of the Superintendent of Police, action was initiated

against the petitioner and keeping in view the statutory provisions as contained under National Security Act, 1980, the order of detention has been passed. It has been argued that the petitioner has become a threat to law and order in the locality, and therefore, the District Magistrate was left with no other choice but to pass an order of detention under the provisions of National Security Act, 1980. It has also been argued that the District Magistrate has taken into account the fact that the petitioner is in jail while passing the impugned order, and therefore, no case is made out for interference.

5. We have heard learned counsel for the parties at length and perused the record of the case.

6. Statutory provisions governing the field as contained under Section 3 (2) of the National Security Act, 1980 reads, as under: -

> "3. Power to make orders detaining certain persons.—
> (1) The Central Government or the State Government may,
> (a) …..
> (b) …..
> (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 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."

7. The District Magistrate in exercise of powers conferred under the National Security Act, 1980 has passed the following detention order: -

"चूंकि मैं डॉ. श्रीकांत पाण्डेय जिला दण्डाधिकारी जिला देवास को यह समाधान हो गया है कि अनावेदक लक्ष्मण पिता रूपाजी परिहार, जाति सीर्वी, उम्र 53 साल, निवासी – सावल्यापुरा, थाना बागली जिला देवास को लोक व्यवस्था के अनुरक्षण के प्रतिकूल किसी भी रीति से कार्य करने से रोकने के अभिप्रयास से उसे राष्ट्रीय सुरक्षा अधिनियम, 1980 की धारा 3 की उपधारा (2) के तहत् निरूद्ध करना आवश्यक है।

अतएव राष्ट्रीय सुरक्षा अधिनियम, 1980 की धारा 3 (2) तथा मध्यप्रदेश शासन, गृह (सी अनुभाग) विभाग, भोपाल के आदेश क्रमांक एफ–31–05/1998/टी.सी.–1, दिनांक 15 मार्च 2020 से प्रदान शक्तियों को उपयोग में लाते हुए मै डॉ. श्रीकांत पाण्डेय, जिला दण्डाधिकारी जिला देवास यह आदेश देता हूं **कि अनावेदक लक्ष्मण पिता रूपाजी परिहार, जाति सीर्वी उम्र 53 साल, निवासी सोबल्यापुरा थाना बागली जिला देवास को निरोध दिनांक से तीन माह तक की अवधि हेतु निरूद्ध किया जाकर केन्द्रीय जेल भेरूगढ़, उज्जैन में रखा जावे।**
यह निरूद्ध आदेश आज दिनांक 07 मई 2020 को मेरे हस्ताक्षण तथा न्यायालय की पद मुद्रा से जारी किया गया ।

(डॉ. श्रीकान्त पाण्डेय)
जिला दण्डाधिकारी
जिला देवास"

8. The order certainly does not reveal that the District Magistrate has taken into account the fact that the petitioner is already in jail. The other important aspect of

the case which is required to be considered is the nature of the criminal cases registered against the present petitioner. The details of the cases registered against the petitioner are as under: -

"आपराधिक रिकार्ड

आरोपी लक्ष्मण, पिता रूपा जी परिहार, उम्र 53 साल,
निवासी–साबल्यापुरा जिला देवास म.प्र.

क्र.	नाम आरोपी	अपराध क्र.	धारा	चालान क्र.	फौ.मु.न.	रिमार्क	वर्तमान स्थिति
1	लक्ष्मण पिता रूपाजी परिहार उम्र 53 साल निवासी साबल्यापुर्रा	53 / 05	294, 506 भा. द.वि. व 3(1) 10 एससी / एसटी एक्ट	29 / 05	369 / 28.03.05	थाना उदय नगर	निराकृत
2		277 / 05	506, 507, 379 भा.द.वि.	239 / 30.11.07	834 / 6.12.07	थाना उदय नगर	निराकृत
3		154 / 05	294, 323, 506 भा.द.वि.	192 / 29.10.13	1174 / 17.12.13	थाना उदय नगर	निराकृत
4		33 / 09. 02.2020	294, 323, 506 भा.द.वि. व 3(1) द व्ही एससी / एसटी एक्ट	विवेचना जारी		थाना बागली	लंबित
5		45 / 17. 02.2020	323, 294, 506, 34 भा.द. वि.	विवेचना जारी		थाना बागली	लंबित
6		139 / 02 .05.2020	147, 148, 353, 332, 333, 336, 506, 188, 269, 270 भा. द.वि. वृद्धि धारा 307 भा. द.वि.	विवेचना जारी		थाना बागली	लंबित
7		141 / 03 .05.2020	294, 323, 506 भा.द.वि.	विवेचना जारी		थाना बागली	

प्रतिबंधात्कम

क्र.	थाना	प्रतिबंधात्मक कार्यवाही	धारा	फौमुनं.
1	बागली	54 / 09.02.2020	107, 116(2) जाफौ.	निरंक
2		01 / 07.03.2020	110 जाफौ.	निरंक

9. Perusal of criminal record of the petitioner makes it very clear that three cases which were registered in the year 2005 have already been decided. Three cases (out of total seven cases) registered against the petitioner are for commission of offences punishable under Sections 294, 323 and 506 of Indian Penal Code, 1860. The case reflected at Item No.6 registered against the petitioner is for commission of offences punishable under Sections 147, 148, 353, 332, 333, 336, 506, 188, 269 and 270 of the Indian Penal Code, 1860; and later on offence under Section 307 of IPC has also been added. Meaning thereby, most of the cases have been registered against the petitioner within 2-3 months for offence punishable under Sections 294, 323 and 506 of Indian Penal Code, 1860.

10. A Division Bench of this Court in the case of **Kamini Yadav** v. **State of Madhya Pradesh & others** (supra) has held in paragraphs No.18 and 24, as under: -

> "18. The aforesaid quoted portion of the order shows that the detaining authority did not took the notice of the fact that the detenu is already in custody. We have minutely perused the impugned order dated 11.10.2018 passed by District Magistrate. In the said impugned order, it is not mention that the accused was in jail at the time of passing of the said order. It is not reflected from the said order that the detaining authority was aware of the fact that the accused was in jail at the time of

> passing of the said order. No any such material has been produced before this Court to establish such facts. Therefore, the impugned order clearly indicates the non application of mind by the detaining authority in respect of the possibility of the release of the Petitioner. Since, the detaining authority was not made aware of the fact that the accused was in custody in relation to the investigation in two criminal cases, therefore, the detaining authority had no occasion to apply his mind in respect of possibility of the accused being released on bail and the probability of his involvement in such activities after release on bail. It is not clear from the order passed by the detaining authority that it was in the notice of the authority that the detenu was already in jail since 30.08.2018 otherwise the authority will not mention in para-3 that "this order will be valid for a period of upcoming 03 (three) months from the date of actual detention". Before about 40 days back, the detenu was in custody, therefore, the satisfaction of the authority was required and should be mentioned in the order passed, but the authority passed the order in mechanical way by using a set proforma. Order did not fulfill the requirement of the law and the principle laid down by the Hon'ble Supreme Court and the High Court.
>
> 24. In view of the foregoing discussion we allow this writ petition and quash the detention order dated 11.10.2018 and direct that the detenu Suraj Yadav @ Sonu be released immediately from the custody, if he is not required in any other case. Order accordingly."

11. In the aforesaid case in similar circumstances, as the fact of detention in some other criminal case, was not taken into account by the District Magistrate, the order passed under the provisions of the aforesaid Act was set aside.

12. In the case of **Neelam Yadav** v. **State of Madhya Pradesh & others** (supra), Division Bench of this Court has held in paragraphs No.18 and 24, as under: -

> "18. The aforesaid quoted portion of the order shows that the detaining authority did not took the notice of the fact that the detenu is already in custody. We have minutely perused the impugned order dated 11.10.2018 passed by District Magistrate. In the said impugned order, it is not mention that the accused was in jail at the time of passing of the said order. It is not reflected from the said order that the detaining authority was aware of the fact that the accused was in jail at the time of passing of the said order. No any such material has been produced before this Court to establish such facts. Therefore, the impugned order clearly indicates the non application of mind by the detaining authority in respect of the possibility of the release of the Petitioner. Since, the detaining authority was not made aware of the fact that the accused was in custody in relation to the investigation in two criminal cases, therefore, the detaining authority had no occasion to apply his mind in respect of possibility of the accused being released on bail and the probability of his involvement in such activities after release on bail. It is not clear from the order passed by the detaining authority that it was in the notice of the authority that the detenu was already in jail since 30.08.2018 otherwise the authority will not mention in para-3 that "this order will be valid for a period of upcoming 03 (three) months from the date of actual detention". Before about 40 days back, the detenu was in custody, therefore, the satisfaction of the authority was required and should be mentioned in the order passed, but the authority passed the order in mechanical way by using a set proforma. Order did not fulfill the requirement of the law and the principle laid down by the Hon'ble Supreme Court and the High Court.
>
> 24. In view of the foregoing discussion we allow this writ petition and quash the detention order dated 11.10.2018 and direct that the detenu Krishna @ Kanhaiya Yadav be released immediately from the custody, if he is not required in any other case. Order accordingly. "

13. Keeping in view the aforesaid judgment and keeping in view the fact that cases of 2005, which have

already been decided, from the year 2005 to 2019 there is not a single criminal case registered against the petitioner and the cases which have been registered against the petitioner in the year 2020 are mostly for commission of offence punishable under Sections 294, 323 and 506 of Indian Penal Code, 1860, this Court is of the opinion that the District Magistrate has slapped the order of detention upon the petitioner with total non-application of mind. In the case of **Khurshid** v. **State of Madhya Pradesh & others** (supra), a co-ordinate bench of this Court in paragraph No.5 has held, as under: -

> "5. Admittedly, at the time when the order of detention was passed, petitioner was in judicial custody. The Supreme Court in the case of **Rekha** Vs. **State of Tamilnadu through Secretary to Government and Anr.**, **(2011) 5 SCC 244** while taking note of the decision in the case of **Union of India** Vs. **Paul Manickam**, **(2003) 8 SCC 342** has held that the detaining authority in a case of a detenu, who is already in jail, has to form an opinion that in case the detenu files an application for bail, there is likelihood of detenu's being released on bail and taking into account his antecedents, he must be detained in order to prevent him to indulge in prejudicial activities which are detrimental to public order. Similar view has been taken by the Supreme Court in the case of **Huidrom Konungjo Singh** Vs . **State of Manipur & Or.**, **AIR 2012 SC 2002**. In the instant case, admittedly, the petitioner has not filed any application for bail and in the order of detention, there is no whisper that there is likelihood of petitioner being released on bail. Thus, the order of detention is vitiated in law on this count also."

Keeping in view the aforesaid, in the present case also, the petitioner has not filed any bail application in respect of

one of the criminal case and he is in jail, and therefore, it is really strange to believe that a person, who is in detention, is going to cause law and order problem and even though he is in jail, his activities are going to be detrimental to the public order.

14. This Court in the case of **Chhenu @ Yunus** v. **State of Madhya Pradesh & others** (supra) has held in paragraphs No.6 to 12, as under: -

> "6. Sub-section (2) of Section 3 of the Act confers power to make an order of detention with a view to preventing any person 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, etc. In this case, the Detaining Authority has made the order on being satisfied that it is necessary to detain the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. A preventive action postulates that if preventive step is not taken the person sought to be prevented may indulge in any activity prejudicial to the maintenance of public order. In other words, unless the activity is interdicted by a preventive detention order the activity which is being indulged in is likely to be repeated. This is the postulate of the section. And this undoubtedly transpires from the language employed in subsection (2) which says that the detention order can be made with a view to, preventing the person sought to be detained from acting in an manner prejudicial to the maintenance of public order. Now, if it is shown that the man sought to be prevented by a preventive order is already effectively prevented, the power under sub-section (2) of Section 3, if exercised, would imply that one who is already prevented is sought to be further prevented which is not the mandate of the section. An order for preventive detention is made on the subjective satisfaction of the Detaining Authority. The Detaining Authority before exercising the power of preventive detention would take into consideration the past conduct or antecedent history of the person and as a matter of fact it is largely from the prior events showing, the

tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. If the subjective satisfaction of the Detaining Authority leads to this conclusion it can put an end to the activity by making a preventive detention order. In **Rameshwar Shaw** Vs. **District Magistrate, Burdwan**, **AIR 1964 SC 334**, the Constitution Bench considered the question : "Can a person in jail custody be served with an order of detention whilst he is in such custody ?" In this context, the Bench held that as an abstract proposition of law, there may not be any doubt that Section 3 (1) (a) does not preclude the Authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ. It was observed thus :-

> "Whether the detention of the said person would be necessary after he is released from jail, and if the authority is bonafide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released."

7. Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.

8. Same view has been reiterated in subsequent decisions of the Supreme Court. [See : **Sanjay Kumar Agarwal** Vs. **Union of India**, **(1990) 3 SCC 309**, **N. Meera Rani** Vs. **Government of Tamil Nadu**, **(1989) 4 SCC 418**, **Dharmendra Suganchand Chelawat** Vs. **Union of India**, **AIR 1990 SC 1196**, **Kamarunnissa** Vs. **Union of India**, **AIR 1991 SC 1640** and **Abdul Sathar Ibrahim Manik** Vs. **Union of India**, **(1992) 1 SCC 1**, **Veeramani** Vs. **State of Tamil Nadu**, **JT 1994 (1) SC 350**.]

9. From the catena of decisions of Supreme Court it is clear that even in the case of a person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody : if he has reason to believe on the basis of

the reliable material that there is a possibility of his being released on bail and that on being so released, the detenu would in all probabilities indulge in prejudicial activities and if the authority passes an order after recording his satisfaction the same cannot be struck down.

10. But in the instant case, what we have to mainly see is whether there was awareness in the mind of the Detaining Authority that the detenu is in custody and that he has reason to believe that he is likely to be released.

11. In **Vijay Kumar** Vs. **State of J and K**, **(1982) 2 SCC 43**, at Page 48, it has been held as under :-

> "Preventive detention is resorted to, to thwart future action. If the detenu is already in jail charged with a serious offence, he is thereby prevented from the acting in a manner prejudicial to the security of the State. May be, in a given case, there yet may be the need to order preventive detention of a person already in jail. But in such a situation the Detaining Authority must disclose awareness of the fact that the person against whom an order of preventive detention is being made is to the knowledge of the authority already in jail and yet for compelling reasons a preventive detention order needs to be made."

Same view has been reiterated by the Supreme Court in **Nerugu Satyanarayana** Vs. **State of Andhra Pradesh**, **AIR 1982 Supreme Court 1543**, on which reliance was placed by the Counsel for the petitioner.

12. The impugned detention order does not give the slightest indication that the Detaining Authority was aware that the detenu was already in jail and yet on the material placed before him he was satisfied that a detention order ought to be made. There is nothing in the order to show that to the knowledge of the Detaining Authority the detenu was already in jail before the date on which he passed the order and that such detention in the opinion of the Detaining Authority was not sufficient to prevent the detenu from acting in a manner prejudicial to the security of the State, and, therefore,

> power under Section 3 (2) of the Act is required to be exercised. The reply and affidavit of the District Magistrate does not throw any light on the vexed question whether the Detaining Authority was aware of the fact that the detenu on being suspected of having committed a serious offence, was already in jail. There is nothing to indicate the awareness of the Detaining Authority that detenu was already in jail and yet the impugned order was made. This, in our opinion, clearly exhibits non-application of mind and would result in invalidation of the order."

In the aforesaid case, it has been held that the order of detention can be passed validly by the Competent Authority, if the Competent Authority is aware of the fact that the detenu is really in custody. The order passed by the Competent Authority in the present case does not reveal that the District Magistrate was aware of the fact that the detenu is in jail.

15. In the case of **Naimuddin** v. **State of Madhya Pradesh & others** (supra) this Court in paragraphs No.3, 4 and 9 has held, as under: -

> "3. It is thus submitted that the subjective satisfaction of the detaining authority was vitiated on the ground that he has not referred to a vital fact that the detenu was in police custody on the date of his subjective satisfaction and there was a possibility of his release on bail which would have prejudicially affected the maintenance of public order. It is also submitted that since the detenu/petitioner was in custody in connection with a serious offence and there was no obvious reason or material to show that he would have been released on bail, the impugned order was passed without application of mind. This is also a case of the petitioner that once the detenu was on police remand in police custody, it was necessary to record cogent reasons before passing detention order u/S. 3(2) of the Act.

4. This is also a contention of the petitioner that the offence in question at the most would have resulted in a law and order problem and not in the breach of "Public Order". During the course of arguments, learned counsel for the petitioner cited a decision of Hon'ble the Apex Court reported in **1995 Cri LJ 2657** (**Surya Prakash Sharma** v. **State of U. P.**). In that case, the detaining authority was though aware of the fact that the detenu was already in custody of the time of passing of detention order but there were no cogent materials on the basis of which the authority was satisfied that the detenu might indulge in serious offences causing threat to public order if he was released on bail. Hence the order of detention was held liable to be quashed. The counsel also cited another decision of Hon'ble the Apex Court in **Tarannum** v. **Union of India**, reported in **1998 (1) MPWN page 229 (Note 159) : (1998 Cri LJ 1414)**. The Hon'ble Court held that commissions of offences resulting in law and order problem cannot be treated as "public order" for detention. Yet another Judgment of Hon'ble the Apex Court was cited on the point that the detention order would be vitiated if the subjective satisfaction of the detaining authority is reached without taking into account the fact that the detenu was already in jail. This judgment is reported in **1982 Cri LJ 2354 : (AIR 1982 SC 1539)** (**Biru Mahato** v. **District Magistrate, Dhanbad**).

9. Thus, it is crucially important to note that had the factum of the petitioner being in custody been in the notice of the detaining authority, probably he would not have passed the detention order as conceivably offences being serious in nature there was no logical and real possibility that the petitioner would have been admitted to bail. Hon'ble the Apex Court in the case of **Union of India** v. **Paul Manickam** (**(2003) 8 SCC 342 : (2003 Cri LJ 4561)** (para 14)) has reiterated the guidelines as laid down in Kamarunnissa case **(1991) 1 SCC 128 : (1991 Cri LJ 2058)**, that the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. Further the detaining authority must have a reason to believe on the basis of reliable material placed before him that there is a real possibility of his release on bail and that on being released he would in all probability indulge in prejudicial activities. The

> impugned order, therefore, appears to suffer from an abyss of defects beyond replenishment. We have carefully analyzed the events and visited the circumstances and also gleaned the ratio from judgments as referred to in Para 4 herein above, we find that the impugned order for the preceding discussions appears to suffer from adversity of diversity of infirmities including non application of mind, and death of material to show awareness about the petitioner being in custody, on the date of passing the order leading to vitiation of the subjective satisfaction of the detaining authority. Hence, this detention order cannot endure. Resultantly, the detention orders dated 20.03.2003 (P-4 and P-5) and the order of confirmation (P-6) dated 29.04.2003, as prayed for in Para 7 (A) of the petition are hereby quashed. The petitioner is, accordingly, directed to be released forthwith if not required in any case. In the premises, this writ petition is hereby allowed with no orders as to costs."

In the light of the aforesaid, the order of detention is bad in law.

16. In the case of **Ajay Dhakad** v. **State of Madhya Pradesh & others**, **1990 MPLJ 196**, the Full Bench has set aside the order of detention on the ground that the Competent Authority was not aware of the fact that the detenu was already in confinement.

17. Keeping in view the totality of the circumstances, this Court is of the opinion that detention order dated 07.05.2020 (Annexure P/1) passed by the District Magistrate, Dewas (MP) deserves to be set aside; and is accordingly set aside. The petitioner be released forthwith, if he is not required in any criminal case.

(S.C. Sharma)
Judge

(S.K. Awasthi)
Judge

Pithawe RC