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Writ Petition No.13234/2020, 13235/2020,
13679/2020 and 13682/2020

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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Writ Petition No.13234/2020
(Tanveer Patel Vs. State of M. P. and Others)

Writ Petition No.13235/2020
(Aftab Patel Vs. State of M. P. and Others)

Writ Petition No.13679/2020
(Dilshad Patel Vs. State of M. P. and Others)

Writ Petition No.13682/2020
(Dilshad Patel Vs. State of M. P. and Others)

Indore, dated 15/09/2020

Shri Anand Mohan Mathur, learned Senior Counsel with Shri Abhinav Dhanodkar, learned counsel for the petitioner(s).

Shri Pushyamitra Bhargava, learned Additional Advocate General for the respondent / State.

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No.13234/2020 are narrated hereunder.

02- The present petition has been filed by Tanveer Patel, whose father Usman Patel is in jail on account of detention order dated 31/08/2020 passed by District Magistrate, Indore. The petitioner's contention is that his father was arrested on 31/08/2020 and he has been sent to Indore Central Jail. His father has been informed about the ground of detention on 31/08/2020 itself and the order of detention has also been served to the petitioner's father on 31/08/2020.

03- Learned Senior Counsel has argued before this Court that in the detention order old and stale cases have been referred and there is no

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case after 2007 registered against the petitioner's father.

04- Reliance has been placed upon a judgment delivered in the case of **Yumman Ongbi Lembi Leima Vs. State of Manipur and Others** reported in **2012 (2) SCC 176**. Learned Senior Counsel has also placed reliance upon a judgment delivered in the case of **Lahu Shrirang Gatkhal Vs. State of Maharashtra and Others** reported in **(2017) 13 SCC 519**. It has also been argued that the order of detention does not mention the period i.e. whether it is for six months or for three months and in absence of a mention about the period of detention the order is bad in law.

05- It has also been argued that order of detention has not been confirmed till date by State of Madhya Pradesh and therefore, keeping in view Section 3(4) of National Security Act, 1980 the order of detention has come to an end.

06- On the other hand, Shri Pushyamitra Bhargava, learned Additional Advocate General for the respondent / State has vehemently argued before this Court that the petitioner's father has been detained keeping in view the statutory provisions as contained under the National Security Act, 1980. He was involved in unlawful / criminal activities since 2005 and on 30/08/2020 while taking out a procession on the eve of *Muharram*, he collected crowd and the crowd went along with the *Taziyas* and in those circumstances, as the crowd was collected by the petitioner's father, he created a very dangerous situation to public law and order keeping in view Covid-19 Pandemic.

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07- He has vehemently argued before this Court that old cases can be looked into and even a singular act can attract the National Security Act, 1980. Heavy reliance has been placed upon a judgment delivered in the case of **State of U. P. and Another Vs. Sanjai Pratap Gupta @ Pappu and Others** reported in **(2004) 8 SCC 591**. It has also been argued that mere non-mention of the period in the detention order will not invalidate the detention order keeping in view the judgment delivered in the case of **Secretary, to Government of Tamil Nadu Public (Law and Order) Revenue Department and Another Vs. Kamala and Another** reported in **(2018) 5 SCC 322**.

08- Heard learned counsel for the parties at length and perused the record.

09- The undisputed facts reveal that the petitioner's father Usman Patel as reflected from the report of the Superintendent of Police was involved in criminal case in the year 2005 i.e. Crime No.526/2005 for offences under Section 147, 294, 323 and 506 of the Indian Penal Code, 1860. The other case against him is in respect of incident dated 13/03/2006, at Crime No.83/2006 for offences under Section 307, 336, 506, 427, 147, 148 and 149 of the Indian Penal Code, 1860 and the third case is in respect of incident dated 30/08/2020, at Crime No.782/2020 for offences under Section 188, 269 and 270 of the Indian Penal Code, 1860.

10- Thus, the report of the Superintendent of Police reflects that only

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three cases have been registered against the petitioner's father and one of the case is for violating the prohibitory order issued by the District Magistrate under Section 144 of the Code of Criminal Procedure, 1973 i.e. Crime No.782/2020.

11- Learned Senior Counsel has argued before this Court that the petitioner's father was elected representative and permission was granted to display the *Taziyas* on the occasion of *Muharram* and he was certainly part of the procession, however, it was not the petitioner's father who collected the crowd. People on their own joined the procession. The order passed by the District Magistrate refers to the incident dated 30/08/2020 and the same reads as under:-

“अनावेदक के इन्दौर शहर में स्वच्छन्द विचरण से शहर एवं थाना क्षेत्र की फिजा खराब हो रही है। सम्पूर्ण भारत में कोरोना महामारी से तेजी से संक्रमण फैल रहा है। संक्रमण से आम नागरिकों के बचाव के उपायों हेतु तथा स्वास्थ्य हित को बनाए रखने हेतु जिला दण्डाधिकारी इन्दौर द्वारा समय समय पर निर्देश जारी किए हैं। इन निर्देशों का पालन कराए जाने हेतु पुलिस प्रशासन की पूरी टीम पूरी मुस्तैदी से लगी हुई है। वर्तमान समय में हिन्दु मुस्लिम समुदाय धार्मिक त्यौहार चल रहे हैं। प्रतिवर्ष इस समय सम्पूर्ण शहर में जगह-जगह हिन्दू व मुस्लिम समुदाय के लोगों द्वारा बड़े उत्साह से मोहर्रम के ताजिये व गणेश प्रतिमाएँ स्थापित की जाकर पूजा उपासना की जाती है। किन्तु इस वर्ष कोरोना संक्रमण के कारण आमजनों के स्वास्थ्य हित की रक्षा हेतु जिला दण्डाधिकारी इन्दौर द्वारा समस्त समुदाय के लोगों पर मूर्ति, झोंकी, ताजिये तथा जुलूस रैली पर प्रतिबंध लगाया जाकर समस्त शहरवासियों व आमजनों से अपने अपने घरों में पूजा उपासना की अपेक्षा की जाकर निर्देश जारी किए गए हैं तथा पालन कराने हेतु निर्देशित किया गया है। आवजूद इसके अनावेदक द्वारा प्रतिबंधात्मक आदेश की धज्जियाँ उड़ाते हुए मुस्लिम समाज के लोगों को उकसाकर बड़े ताजिये का निर्माण कराया तथा दिनांक 30-8-2020 को ताजियों को जुलूस के रूप में भारी भीड़ के साथ रोड़ पर बिना अनुमति निकालने हेतु उत्साहित किया। अनावेदक के उक्त प्रकार के उकसावे से प्रभावित होकर मुस्लिम वर्ग का समुदाय एक धड़े में एकत्रित हो गया तथा

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जगह जगह से घरों में निर्माण किए ताजियों को जुलूस के रूप में भीड़ के साथ लेकर सोशल डिस्टेंसिंग का उल्लंघन कर विसर्जन किए जाने हेतु सड़कों पर आ गया।

अनावेदक के उक्त कारनामों को भी शहर के प्रमुख अखबारों व प्रिंट मीडिया में प्रकाशित किए जाने से आमजनों में भारी आक्रोश व्याप्त है। अनावेदक के उक्त कृत्य पर थाना खजराना इन्दौर पर अपराध धारा 188, 26 भादवि के तहत पंजीबद्ध किया गया। अनावेदक के इस कृत्य से समुदाय विशेष के लोगों में भय व्याप्त हुआ तथा शासन प्रशासन का मखौल उड़ा रहे है।

घटना की प्रतिक्रिया उग्र रूप में सामने आई है। विभिन्न समाचार-पत्रों में प्रमुखता से इसका उल्लेख किया गया है। दैनिक नईदुनिया, इन्दौर दिनांक 31-8-2020 में शीर्षक 'फैली ताजिये निकालने की अफवाह, सड़कों पर उमड़ी भीड़,' दैनिक नईदुनिया, इन्दौर दिनांक 31-8-2020 में शीर्षक खजराना क्षेत्र में निकले ताजिये, पूर्व पार्श्व सहित 13 पर केस, दैनिक भास्कर, इन्दौर दिनांक 31 अगस्त 2020 में शीर्षक 'यह देख कौन कहेगा रविवार को लॉकडाउन था', पिपुल्स समाचार इन्दौर दिनांक 31-8-2020 में 'ताजिए निकलने की अफवाह फैली पुलिस ने की सख्ती', पत्रिका इन्दौर दिनांक 31-8-2020 में शीर्षक 'अफवाह के कारण घरों से निकलने लोग, बैरिकेडिंग कर पुलिस ने रास्ते रोके, किया पैदल मार्च', प्रजातंत्र दिनांक 31-8-2020 में शीर्षक 'उन्होंने तो कानून को जूता दिखा दिया, अब कानून की बारी' में तो यह तक उल्लेख कर दिया गया कि असल में यही वो घटनाएँ है, जिनमें बारूद होता है। आज नियंत्रण नहीं किया तो कल इसे रोक पाने का ख्वाब भी मत देखिए। पुलिस प्रशासन को अब अपने डंडे बाहर निकालने चाहिए और कानून का मजाक उड़ाने वाली सभी पोंद को ढूँढ-ढूँढकर सौ-सौ डंडे लगाने चाहिए और गिनने दस-दस चाहिये।"

The order passed by the District Magistrate reflects that on account of violation of prohibitory order passed by District Magistrate under Section 144 of the Code of Criminal Procedure, 1973, the petitioner's father has allegedly committed offences under Section 188, 269 and 270 of the Indian Penal Code, 1860 and the reaction which was published in various news papers reflects that there is a great protest in the society on account of the procession. This Court really fails to understand as to how merely on the basis of news paper clippings an

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opinion has been formed by the District Magistrate in absence of any other cogent material.

12- The other important aspect of the case is that Section 3(4) of the National Security Act, 1980 provides for confirmation of detention order by the State Government. The reply has been filed today by the State of Madhya Pradesh and today the stand of the State Government is that process of passing the order of confirmation is under process. Section 3 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) 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 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.

(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

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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.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

(5) When any 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 and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

In the present case, the petitioner's father was served with detention order on 31/08/2020 and he was served with the grounds of detention on 31/08/2020 itself and therefore, the order by the State Government confirming the detention order was required to be passed within "twelve days". As the order has not been confirmed within "twelve days", it is no longer in force keeping in view Sub Section 4 of Section 3 of Act of 1980.

13- The District Magistrate, Indore has filed a reply along with his own affidavit and in paragraphs No.22 to 24 has stated as under:-

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- “22. It is further submitted that the Detenue in pursuance of order dated 31.08.2020 was taken into custody and detention order was served upon him along with grounds of detention. The copy of the grounds of detention along with receipt of the same by the Detenue is annexed herewith and marked as **ANNEXURE R/7** (collectively).
23. That, the answering Respondent most respectfully submits that the Section 3(4) of the Act provides for reporting/submitting the detention order before the State Government for approval and the answering respondent in compliance of the same mandatory provision reported the detention order to the State Govt. vide letter dated 31.08.2020, copy whereof is annexed herewith marked as **ANNEXURE R/8**. It is also pertinent to mention here that the Detenue's arrest information was also intimated to his family member named Aftab Patel S/o Ismail Patel. Copy of the acknowledgment of Detenue's arrest information is submitted here with marked as **ANNEXURED R/9**.
24. That, the detaining authority after going through all the documents placed before it and after applying mind to the same, reached for the subjective satisfaction and thereafter passed the detention order, in order to prevent the detenu from acting in any manner prejudicial to the maintenance of public order. Further the detention order passed by the Detaining Authority is pending for confirmation by the State Government.”

Affidavit signed by the District Magistrate is dated 14/09/2020.

Thus, on 14/09/2020 a submission was made on oath that the detention order passed by the Detaining Authority is pending for confirmation with the State Government, meaning thereby, there was no confirmation by the State Government on 14/09/2020 i.e. the day on which the reply was filed on affidavit. Even on 15/09/2020 when the matter was argued at length by Shri Pushyamitra Bhargava, learned Additional Advocate General till his arguments were closed he has stated categorically that the matter is still pending for confirmation with the State Government.

14- Shri Pushyamitra Bhargava, learned Additional Advocate General

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for the respondent / State, later on when the judgment was being dictated, has categorically stated in open Court that an order has been passed by the State Government on 15/09/2020. He has shown an order dated 15/09/2020, which is an order passed by the State Government in exercise of powers conferred under Section 3(4) of the National Security Act, 1980, which mandates for approval by the State Government. The order certainly reflects that the approval has been granted by the State Government on 08/09/2020. Order dated 15/09/2020 reads as under:-

“GOVERNMENT OF MADHYA PRADESH
HOME (C-SECTION) DEPARTMENT

ORDER

Bhopal, Dated 15/09/2020

F. NO.31-301/2020/II/C-1 : In exercise of the powers conferred by sub-section (4) of section 3 of the National Security Act, 1980 (No. 65 of 1980) the State Government has approved the detention order dated 31/08/2020 passed by the District Magistrate, Indore against Usman Patel S/o Kadar Patel R/o Distt. Indore under sub-section (2) of section 3 of the said Act on dated 08/09/2020.

By order and in the name of the
Governor of Madhya Pradesh,
Sd/-
(Shri Das)
Under Secretary to Government of
Madhya Pradesh Home Department

F.NO.31-301/2020/II/C-1

Bhopal, Dated 15/09/2020

Copy forwarded to :-

- 1- Under Secretary to Govt. of India, NDCC – II Bhavan Jai Singh Road New Delhi
- 2- District Magistrate, Indore for information and necessary action.
- 3- The Superintendent, Central Jail Indore

Sd/-
(Shri Das)

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Under Secretary to Government of
Madhya Pradesh Home Department”

This Court really fails to understand that if the approval was granted on 08/09/2020, why the approval order has been brought to the notice of this Bench after hearing was concluded that too the order is dated 15/09/2020. Resultantly, as the order is dated 15/09/2020 and the approval was certainly not granted by issuing any order within “twelve days” as required under under Section 3(4) of the Act of 1980

15- Preventive detention means detention of a person without trial. The order of preventive detention is issued by an executive authority in its subjective satisfaction. Thus, preventive detention involves a serious encroachment on the right of personal liberty. The law of preventive detention is strictly construed, and compliance with procedural safeguards is insisted upon [Union of India Vs. Paul Manickam reported in (2003) 8 SCC 342].

16- The Hon'ble Supreme Court of India has gone to point out that personal liberty is one of the most cherished values of mankind. As the power of preventive detention encroaches upon personal liberty, it is the solemn duty of the Courts to ensure that this power is exercised strictly in accordance with the requirements of the Constitution and the law, and the concerned person is not deprived of his personal liberty otherwise than in accordance with law.

17- On account of procedure irregularities by the authorities, the Hon'ble Supreme Court in the case of Icchu Devi Vs. Union of India

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reported in **(1980) 4 SCC 531** has set aside the detention under the COFEPOSA. In the case of **lcchu Devi**, there was an undue delay in supplying to her the copy of document and the material relied upon in the grounds of detention and there was unreasonableness, delay in considering the representation to the detenu.

18- In the considered opinion of this Court, keeping in view the fact that cases of 2005 and 2007 have been taken into account including the fact that there has been a violation of prohibitory order issued under Section 144 of the Code of Criminal Procedure, 1973, the action of the respondent / District Magistrate suffers from vice of non-application of mind and deserves to be quashed.

19- In the present case, the order of detention has been passed only because the petitioner has participated in a procession on the eve *Muharram* and that itself is certainly not a ground for detaining him by passing an order under the National Security Act, 1980.

20- The order passed by the District Magistrate refers to news published in *Nai Duniya, Dainik Bhaskar, Peoples Samachar*. The District Magistrate has formed his opinion on the basis of media trial. It is unfortunate that media trial has become very common these days and now the adjudicating authorities are delivering their judgments based upon media trials. Resultantly, there appears to be total non-application of mind on the part of the District Magistrate in passing the impugned order and therefore, the impugned order is here by quashed. The writ

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4yjs - npvr - ax2d	16108/2020	16-09-2020	52	Private	LAW003016092020000313
Valid along with certificate of the authorized officer.					



Writ Petition No.13234/2020, 13235/2020,
13679/2020 and 13682/2020

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

- 12 -

petition is allowed and the respondents are directed to set the petitioner at liberty forthwith.

21- In Writ Petition No.13235/2020, again the detention order is dated 31/08/2020 and it has not been confirmed within twelve days and therefore, the petition is allowed as the order of detention is no longer in force. The State is directed to release the petitioner's father forthwith.

22- In Writ Petition No.13679/2020, again the detention order was passed on 31/08/2020, which has not been confirmed within the statutory period as informed by the learned Additional Advocate General and therefore, as the order of detention is no longer in force, the petitioner's father be set at liberty forthwith.

23- In Writ Petition No.13682/2020, the detention order passed on 21/08/2020 has not been confirmed within the statutory period and therefore, as the order of detention is no longer in force, the petitioner's brother be set at liberty forthwith, in case he is not required in any other criminal case.

No order as to costs.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

(SHAIENDRA SHUKLA)
J U D G E