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inder Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-20-2001

Reported in : 2001(2)WLC502; 2002(2)WLN533

Judge : Arun Madan and; K.S. Rathore, JJ.

Appeal No. : D.B. Habeas Corpus Petition No. 5133 of 2000

Appellant : inder

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Arun Madan, J.

1. By this habeas corpus petition, the petitionerBharatpur has assailed his detention ordered on 13.7.2000 by the District Magistrate, under Sub-section (2) of Section 3 of the National Security Act, 1980 (for short 'the Act') with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. Alongwith detention order (Ann. 2), the petitioner was also served with grounds of detention (Ann. 10) under Section 8(1) of the Act, against which he made a detailed representation (Ann. 3) to the Home Secretaries to the Government of India so also the Government of Rajasthan. By order dated

18.7.2000 (Ann. 4) the petitioner was communicated approval of the State Government to the order of his detention. Subsequently by order dated 4.9.2000 (Ann. 5) the State Government after having considered the report of the Advisory Board and relevant material on record confirmed the detention of the petitioner and ordered to continue his detention for a period of one year from the date of his detention viz. 13.7.2000 to 12.7.2001. Hence this petition.

2. Besides having filed para wise reply to the petition, the respondents have also filed an affidavit of Tanmay Kumar, who had issued impugned order of detention while functioning as District Magistrate, Bharatpur.

3. Shri M.K. Kaushik learned Counsel appearing for the detenu vociferously contended that though the detaining authority (District Magistrate Bharatpur) directed to detain the petitioner for only six months under detention order dated 13.7.2000 (Ann. 2) but the State Government while confirming the detention ordered to continue the detention for one year which is in contravention of the provisions of the Act.

4. Shri Kaushik further contended that the grounds of detention of the detenu are based on certain old incidents of 1992 onwards which are of stale nature inasmuch as for those incidents the petitioner had already been facing trial while he has been granted bail in all the cases but the detaining authority did not consider this aspect but also the facts of most of cases relating to few individuals.

5. During the course of arguments, Shri Kaushik argued that as would be evident from ground No. 1 of the detention order it was a case of mere beating involving offence of bailable nature and that apart the petitioner had also lodged counter report against Durga Prasad, Devendra etc. for offence of Section 307 I.P.C. but the prosecution has been lingering on the trial, whereas despite the fact of the petitioner having been acquitted, under ground No. 2 the detaining authority did not consider this fact of acquittal and further ground No. 3 dealt with facts of a very simple case but the allegations levelled by the detaining authority are against the material on record because he was not charged for offence punishable under the Arms Act, besides that the allegations stated in other grounds of detention are far from truth for which he has already been facing trial before the competent court for

offences under Sections 341, 323, 504, 510 I.P.C. Thus according to Shri Kaushik it is a case of non consideration of all material facts appearing in the challan papers of criminal cases stated in the grounds of detention which were not considered by the detaining authority inasmuch as relevant documents and papers requested by the petitioner were not furnished by the detaining authority which has resulted in causing prejudice in preparing his defence.

6. Shri Mohd. Rafiq, the learned Additional Advocate General, appearing for the respondents authorities while opposing the contentions canvassed on behalf of the petitioner, contended inter alia that there has been consideration of sufficient material as detailed out in the grounds of detention in an elaborate manner and they have been carefully examined by the detaining authority on the basis of particulars bearing on the necessity as to the detention and therefore, both the District Magistrate so also State Government had a subjective satisfaction before issuing detention order against the detenu (petitioner). Shri Rafiq cited the decisions in (1) Ahmed Nassar v. State of Tamilnadu : 2000 CriLJ33 (2) Meena Jayendra Thakur v. Union of India : 1999 CriLJ4534 and (3) Phalkoo v. State of Rajasthan 2001 (1) RLR 135.

7. We have heard the learned Counsel for the parties and considered their rival contentions besides having perused the relevant record produced during the course of arguments. Though the petitioner has alleged that relevant documents and papers were not furnished to him by the detaining authority but curiously enough either in the writ petition or during the course of arguments, the petitioner failed to show as to which of relevant documents necessitated for preparation of his defence had not been furnished by the detaining authority. The respondents alongwith reply to the petition have produced xerox copy of the letter of the Superintendent Jail. Bharatpur (Ann. R.1) according to which the detenu was handed over original detention order alongwith grounds of detention which accompanied with other documents. In support of it, Kailash Chand Meena Dy. S.P. Circle Deeg and Officer-In-Charge of the case has filed his affidavit certifying that Ann. R/1 is exact and true xerox copy of its original.

8. The District Magistrate Bharatpur who issued order of detention has filed his affidavit according to which copies of the order of detention, grounds of detention and supporting documents thereof were delivered to the Inder (detenu) through Superintendent District Jail, Bharatpur as is evident from communication dated 13.7.2000 (Ann. R-1 filed with reply) which was sent to him, with which he had annexed duly acknowledged receipt of detenu in token of having served upon him the order of detention so also the grounds of detention. Thus in our considered view, the petitioner was accordingly handed over all supporting documents to the detention order and in token of having received those documents he had given a receipt and also acknowledged the fact that they were read over and explained to him. Though the petition has been filed in the name and title of the petitioner but curiously enough affidavit has been filed not by the petitioner, himself, but by one Randir Singh who claims himself to be a relative of the petitioner and according to his affidavit as stated by him in para 2 thereof, the contents of para 1 to 10 with Sub-paras of the petition are true and correct to his personal knowledge, whereas as per para 8(j) it is the case on behalf of the petitioner that relevant documents and papers as requested by him were not supplied by detaining authority to him and in the absence of it he could not produce his defence properly which has caused great prejudice to his case. In the absence of affidavit of the petitioner himself, and further in the presence of incompetent affidavit to the petition stating above averments, especially when through its affidavit and acknowledgment receipt of the grounds of detention accompanying with supporting documents for passing order of detention, the detaining authority has prima facie established that all relevant documents and material had been furnished to the detenu having bearing on the necessity as to his detention, therefore, we find no force in the contention of the petitioner that he was not furnished with relevant documents and papers despite his request, besides he has failed to make out his case for having caused any prejudice in producing his defence properly for non-supply of documents.

9. Shri Kaushik cited decision of the Delhi High Court (DB) in Virendra @ Kala v. Union of India 2000 (1) Crimes 11, wherein with regard to the detention of a person already in jail, it has been held that subjective satisfaction must be reached on some cogent material and not only on the ground that he was likely to come out

on bail. It was a matter where out of six cases, in two cases he had been acquitted while four cases were still pending trial in different courts and in detention order, itself, it had been stated that there was every apprehension that very soon if released on bail in all the cases registered against him, he would again Indulge in criminal activities prejudicial to the maintenance of public order. Thus it was a case where there was a possibility of the detenu being granted bail as has been stated in the detention order, itself, and placing reliance upon the decision of the Apex Court in Surya Prakash v. State of U.P. : 1995 CriLJ2657 , it was observed as under:

In the grounds of detention it is stated that there is a possibility of the petitioner being granted bail. It is not enough. In Surya Prakash's case (supra) the Supreme Court emphasises that the subjective satisfaction for detaining a person already in jail must be reached on some cogent material that if he is released on bail he may again indulge in serious offences causing threat to public order, which is missing in this case. The impugned detention order on this solitary ground is liable to be quashed.

10. In the instant case the circumstances as were in Virendra v. UOI (supra) are distinct since in the grounds of detention it has not been stated that there is a possibility of the petitioner being granted bail, inasmuch as the subjective satisfaction of the authority for the purpose of detaining the detenu already in jail has been arrived at on the basis of some cogent material viz. that the detenu was persistently indulging in a number of criminal activities resulting in disturbance to the tempo of life of the society which affected the public order adversely, inasmuch as on account of his having been indulged in crimes of pitting, kidnapping, loot, theft, besides loss to the public, property and interference with the government work, and his having perpetrated terror in the area at the point of his wielding arms found in his possession, no public man is willing to come forward to depose against him as witness in court of law, and magnitude of his activities has been such which could not be controlled otherwise by the law enforcing agency except to prevent his subverse activities as they were prejudicial to the maintenance of the public order, thus justifying his detention.

11. Though in this habeas corpus petition it is the case on behalf of the petitioner that a detailed representation was sent to the Home Secretaries of the Central Government as well as the State Government, a carbon copy whereof has been annexed to the petition as Ann. 3, but curiously enough the said carbon copy does not bear either signature or thumb impression of the petitioner nor any affidavit has been filed by the petitioner himself, to certify or verify that it was true and exact carbon copy of the original representation sent by him allegedly to the aforesaid autophorities. Even it does not bear the date on which it was sent nor it has been pleaded as to by which mode and when it was sent to the respective authorities. Even as per affidavit accompanying the petition in support of documents, Shri Randhir Singh has merely stated that Annexure-1 to 4 are true and exact photo copies of originals thereof. It falsifies as regards Annexure-3 which is unsigned carbon copy and not photostat copy as stated in affidavit. That being so, the respondents in reply to the petition denied to have received any representation as alleged by the petitioner in the form of Annexure 3 either by the State or by the Central Government's Home Secretary against the detention order. The respondents further asserted that no such representation (Ann.3) has been received by the Home Secretary of the State Government and even they have also not received such representation for their comments or report from the Central Government, whereas when the petitioner appeared before the Advisory Board on 28.8.2000, in his presence the Board noted that he was not submitted any representation either to the Board or to the Government against order of his detention. The respondents have denied that cases against the petitioner had been lodged at the instance of liquor contractors or that he had ever opposed opening of liquor shops in the area.

12. The factum of acquittal of the petitioner as stated by him in the petition has been considered as is evident from the grounds of detention (Ann. 1) from which it is clear that the trial court acquitted him in the absence of evidence on record, which shows that the witnesses felt scared of appearing in the witness box to depose against the petitioner involved in criminal cases.

13. It is not the case of the petitioner and rather it is admitted position that the assertions made against the detenu in the grounds of detention as to the

registration of criminal cases, filing of charge sheets on the basis of investigations conducted in respective cases, and pendency of trial after having charged the petitioner for various offences punishable under different Sections of the Indian Penal Code including Sections 34/147, 148, 149, 323, 324, 332, 336, 341, 352, 353, 364, 365, 366, 379, 380, 392, 427, 452, 448, 504, 510, 511, as untrue nor can they be said to be irrelevant for passing the detention order. Even they have not been assailed as untrue by the detenu as to the incidents resulting in registration of criminal cases against him before competent criminal forums.

14. Mere assertion that some relevant material was not taken into consideration will not be sufficient, by itself, to invalidate the detention order automatically. That apart, the detention order will not become invalid merely because some material was not placed before the detaining authority for its consideration or that was not furnished to the detenu who is required to demand for it for making an effective representation, if any. The question which is relevant for determination in this context in our view is as whether the document or the material which was not placed before the detaining authority for its consideration, was relevant in the sense that its non-supply to the detenu would vitiate the detention, itself. We are fortified in our view from a decision of this Court in Phalkoo v. State of Rajasthan (supra) which is based on well canons of law laid down by plethora of decisions of the Apex Court, referred to therein.

15. In the instant case, the petitioner has failed to establish as to which of material was requested for by him but not furnished by the detaining authority to prepare his defence against the detention in question, and as to how it has caused prejudice to him. Hence the petitioner has no case to have effect of alleged non-consideration or non-supply of material document in vitiating the detention order itself.

16. As regards the determination of the period of detention and fixation in the initial detention order, Shri Kaushik cited the decisions of this Court in Kuldeep Singh v. State 1999 (3) SCC 36 and Dilip v. State 2000 (1) RCC 703. In Dilip v. State (supra) this Court while relying upon the decisions of the Apex Court in Makhan Singh v. Punjab State : 1952 CriLJ321 and Dattatraya Moreshwar v. State of

Bombay : 1952 CriLJ955 which were followed by this Court in Kuldeep Singh v. State (supra) and Rajulal v. State 2000 WLC (UC) Raj. 697 observed as under:

6. this Court in the aforesaid two cases has clearly held that if in the detention order a period is fixed for detention, it renders the detention order illegal and detention stands vitiated. In taking that view this Court had relied on the cases of Makhan Singh Tarsikka v. State of Punjab : 1952 CriLJ321 and Dattatraya Moreshwar v. State of Bombay : 1952 CriLJ955 and other cases wherein it has been held that if period of detention is already fixed in the detention order by the District Magistrate, the detention is vitiated.

7. We see no reason to take a view different than the one taken by the two Division Benches of this Court on the point. Admittedly, in the detention order the District Magistrate had fixed the period of one year. The order is liable to be quashed on this ground alone.

17. In Kuldeep Singh v. State (supra), after having analysed the scheme of the Act for proper adjudication of the question as to whether the District Magistrate under Section 3 of the Act has jurisdiction to determine the period for which the detenu shall be detained, this Court observed as under:

Thus only after confirmation of the order of the detention by the State in the manner prescribed that the proceedings before the Advisory Board commence and the Advisory Board then opines on the sufficiency of the cause of detention order by the order under Section 3. It is only after the Advisory Board has opined that the detention is for sufficient cause that the appropriate Government may confirm the order of detention and prescribe the period for which it is to be continued, the maximum being provided by Section 13 of the Act. It is, therefore, obvious that the Act confers the power of continuing the period of detention only on the appropriate Government. The only words in Section 12 are therefore, made 'the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.' The determination of the period of detention is, therefore, duty of the appropriate Govt. only...and it is for this reason that since the inception of law on preventive detention, it has been held by the courts in India including the Hon'ble Supreme

Court of India that the designated authority was having no jurisdiction to determine the period of limitation. We arrive to this conclusion on examination of several decisions of the Supreme Court of India in this regard, some of which have already been quoted above.

18. Let us advert to have a brief resume of facts in which the Apex Court in Makhan Singh v. State of Punjab (supra) held that the fixing of the period of detention in the initial order itself is therefore, contrary to the scheme of the Prevention Detention Act, 1950. Makhan Singh was arrested and detained under order dated 1.3.1950 made by the District Magistrate, Amritsar under Section 3(1) of the Preventive Detention Act and the grounds of detention were communicated to him on 15.3.1950, which was challenged by him under Article 32 of the Constitution but while the petition was pending after the Apex Court issued a rule nisi to the respondent the petitioner was also served on 6th August with another detention order dated 30.7.1951 purporting to be made by the Governor of Punjab under Sub-section (1) of Sections 3 & 4 of the Act, 1950 as amended by the Preventive Detention (Amendment) Act, 1951 with fresh grounds of detention on 16.8.1951 and thereupon Makhan Singh filed a supplementary petition impugning the validity of the said order on the ground that it directed the detention of the petitioner upto 31.3.1952 the date on which the Act itself was to expire and this was contrary to the provisions of the Act as amended. The Apex Court observed that the terms of the order make it clear that it was intended to operate as a fresh order for the detention of the petitioner and this view is strengthened by the fact that the order was followed on the service of a fresh set of grounds on the petitioner as required by Section 7 of the Act, a proceeding which would be wholly unnecessary if no fresh order of detention was intended. However, in the facts and circumstances of the case, the Apex Court opined that the order dated 30.7.1951 must be regarded as a fresh order made for the petitioner's detention in suppression of the earlier order and the question is whether it was illegal as it directed straightway that the petitioner be detained till 31.3.1952 which was the date of expiry, of the Act, 1951. Thereupon the Apex Court held as under:

Whatever might be the position under the Act before its amendment in February, 1951, it is clear that the Act as amendment requires that every case of detention

should be placed before an Advisory Board constituted under the Act (Section 9) and provides that if the Board reports there is sufficient cause for the detention 'the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit' (Section 11). It is, therefore, plain that it is only after the Advisory Board to which the case has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was therefore, contrary to the scheme of the Act and cannot be supported.

19. From a careful analysis of the facts and circumstances (which could not have been made by other DBs of this Court while relying upon the decision in Makhan Singh's case (supra) it is explicitly clear that in Makhan Singh's case the Government while issuing second detention order in supersession of earlier detention order issued by the District Magistrate, did not call for report of the Advisory Board by placing his detention case prior to confirmation of detention order, and in nut shell the case of detention of Makhan Singh was not placed before the Advisory Board by the Government which straightway directed that he be detained till 31.3.1951 which was the date of the expiry of the Act, 1950 as amended, itself, whereas in the instant case though the District Magistrate fixed the term of detention as six months but after complying with essentials as envisaged under Section 3 of the Act the District Magistrate reported the matter and case of the present petitioner's detention was placed before the Advisory Board which reported that there is sufficient cause for the detention whereupon the State Government confirmed the detention and ordered to continue the detention of the petitioner for one year from the date of his detention for which it thought fit. Hence, we do not think that the decision rendered by the Apex Court in Makhan Singh v. State with due respect helps in any manner to the petitioner in advancing his case so as to call for any interference in his impugned detention on this count for holding that specification of period of detention issued by the District Magistrate would make the detention, itself, a nullity so as to release the detenu.

20. We may hasten to add that their Lordships of the Apex Court in Makhan Singh's case were dealing with the detention having been directed under the

provisions of the Preventive Detention Act, 1950 as amended by Act IV (4) of 1951 which was to expire on 31.3.1952.

21. In Dattatraya v. State of Bombay : 1952 CriLJ955 their Lordships of the Apex Court then had an occasion to consider the controversy as to non-specification of period in detention and examine construction of 'such period as it thinks fit' in Section 11(1) of the Preventive Detention Act, 1950, wherein the Apex Court specifically observed that the notion that non-specification of the period will continue the detention for an indefinite period, need not oppress unduly because the Act itself being of a limited duration such detention must certainly come to an end on the expiry of the Act.

22. In Dattatraya v. State of Bombay, validity of detention of Dattatraya (petitioner) was challenged on two fold grounds including one that the State Government has failed to comply with the requirements of Section 11(1) of the amended Act as at the time of confirming the detention order it omitted to specify the period during which the detention would continue. After proper understanding of Section 11(1) of the aforesaid Act the Apex Court observed as under:

Grammatically Section 11(1) confers two powers, namely (1) the appropriate Government may confirm the detention order and (2) appropriate Government may continue the detention for such period as it thinks fit. The confirmation of the detention order certainly contemplates the taking of an executive decision, but the detenu being already in custody and the detention order being confirmed his detention continues automatically and therefore, no further executive decision is called for to continue the detention. It follows that it is not necessary to include a direction for the continuation of the detention in the decision confirming the detention order:(5) It is next suggested that the words 'such period' in the Sub-section clearly imply that it is necessary to specify the period during which the detention would continue for if the intention of Parliament were otherwise, the section would have stopped after the words 'may continue his detention'. It is urged that if as held by this Court in Petition No. 308 of 1951 Makhan Singh v. The State of Punjab : 1952 CriLJ321 it is illegal, after the amendment of the Act to mention any period of detention in the initial order of detention made under

Section 3 of the Act and if no period of detention need be mentioned at the time of confirmation under Section 11(1) then the appropriate Government will after confirmation loose sight of the case and the detenu will be detained indefinitely. It is suggested that if two constructions are possible, the one that advances the interests of the subject should be adopted. I do not think that two constructions are possible at all or that the suggested constructions will be of any advantage to the detenu for reasons which I proceed to state briefly.

23. The Apex Court then observed, as under:

On a proper construction of Section 11(1) a specification of the period of continuation of the detention is not necessary, however, desirable one may consider it to be. Non-specification of such period at the time of confirming the detention order will not therefore, make detention a nullity.

24. Here we deem it appropriate to also quote following observations of the Apex Court:

It follows therefore, that the specification of the period of detention does not destroy or abridge the wide over all power of the appropriate Government to direct the continuation of the detention as long as it thinks fit. If the specification of the period of detention is not at all sacrosanct and the appropriate Government may nevertheless continue the detention as long as it thinks fit to do, why is the specification of a period to be regarded as vitally or at all necessary? So far as the detenu is concerned, his detention will not be any more definite and less irksome if it is open to the appropriate Government to continue the detention by an indefinite number of orders made from time to time until the expiry of the Act itself by efflux of time to in the case of a temporary statute or by its repeal in the case of a permanent Act.

I am not much impressed by the argument that the non-mentioning of the period in the order of confirmation is likely to cause serious prejudice to the interests of the detenu. It may be that if a period is mentioned the attention of the Government is likely to be drawn to the case near about the time when the period is due to expire and the facts of the case may be reviewed by the appropriate authority at that time

before it decides to extend the detention any further but it seems to me to be clear from the provision of Section 13 that the Act contemplates review of individual cases by the appropriate Government from time to time the order of detention. It can legitimately be expected that the detaining authority would discharge the duties which are imposed upon it but even if it does not, there is nothing in the law which prevents it from fixing the period of detention upto the date of expiry of the Act itself which is by no means a long one and in that case the Court would obviously be powerless to give any relief to the detenu.'..In my opinion, Section 11(1) of the Preventive Detention Act does contemplate that a period should be mentioned during which the further detention of the detenu is to continue and the Government should see that no omission occurs in this respect but I am unable to hold that this omission alone would make the order a nullity which will justify us in releasing the detenu.

25. In Puranlal Lakhanpal v. Union of India : 1958 CriLJ283 , the Apex Court held that Clause (4) of Article 22 of the Constitution of India does not state that the Advisory Board has to determine whether the person detained should be detained for more than three months. What it has to determine is whether the detention is at all justified. The setting up of an Advisory Board to determine whether such detention is justified is considered as a sufficient safeguard against arbitrary detention under any law of preventive detention which authorises detention for more than three months. The matter before the Advisory Board is the subject of detention of the person concerned and not for how long he should be detained. The Apex Court held as under:

In the very nature of things the decision as to the period of detention must be of the detaining authority, because it is the authority upon which responsibility for detention has been placed. The reference to the Board is only a safeguard against Executive vagaries and high handed action and is a machinery devised by the Constitution to review the decision of the Executive on the basis of a representation made by the detenu, the grounds of detention and where the order is by an officer, the report of such officer.

26. In Kamleshkumar Ishwardas Patel v. Union of India : 1996(53)ECC123 the Apex Court observed that the provisions in the COFEPOSA Act and PIT NDPS Act differ from those contained in the National Security Act, 1980 as well as earlier preventive detention laws namely, the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971 in some respects. The Scheme of the National Security Act has been analysed in the aforesaid case. According to it, there is an express provision (Section 3(4) in respect of orders made by the District Magistrate or the Commissioner of Police under Section 3(3) and the District Magistrate or the Commissioner of Police who has made the order is required to forthwith report the fact to the State Government to which he is subordinate. The said provision further prescribes that 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. This would show that it is the approval of the State Government which gives further life to the order which would otherwise the its natural death on the expiry of twelve days after its making. It is also the requirement of Section 3(4) that the report should be accompanied by the grounds on which the order has been made and such other particulars as, in the opinion of the said officer, having a bearing on the matter which means that the State Government has to take into consideration the grounds and the said material while giving its approval to the order of detention. The effect of the approval by the State Government is that from the date of such approval the detention is authorised by the order of the State Government approving the order of detention and the State Government is the detaining authority from the date of the order of approval. That appears to be the reason and that is why Section 8(1) envisages that the representation against the order of detention is to be made to the State Government. According to the Apex Court, an order made by the officer specially empowered by the State Government is placed on the same footing as an order made by the State Government. Since the detention of the person detained draws its legal sanction from the order passed by such officer, the officer is the detaining authority in respect of the said person. He continues to be the detaining authority so long as the order of detention remains operative. He ceases to be the detaining authority only when the order of detention ceases to operate. This would be on the expiry of the period of detention as prescribed by law or on

the order being revoked by the authority competent under the Act.

27. The Apex Court further observed, 'moreover reference is required to be made to the Advisory Board only in cases where the period of detention is going to be longer than three months and it is not obligatory to make a reference to the Advisory Board if the period of detention is less than three months. In such a case the right to make a representation under Clause (5) of Article 22 would be rendered nugatory.'

28. In 'Tara v. State of Rajasthan 1982 Cr.L.R. Raj 552 while considering the contention advanced on behalf of the detenu that the order of detention for a period of one year was contrary to the proviso to Sub-section (3) of Section 3 of the Act, the D.B. of this Court (Per N.M. Kasliwal, J. as he then was) held as under:

The argument is absolutely devoid of force. Provisions of Sub-section (3) of Section 3 of the Act do not provide for the period of detention but it contemplates the period during which the State Government is satisfied by the order in writing that having regard to the circumstances prevailing or likely to prevail in any rea within local limits of the jurisdiction of a District Magistrate or a Commissioner of Police it was necessary so to do to give such powers to the aforesaid authorities as provided in Sub-section (2) of Section 3 of the Act. Thus the restriction contained in the provision is with regard to the powers conferred/on District Magistrate or Commissioner of Police in any area within the local limits of their jurisdiction and not with regard to the period of detention for which a detenu can be obtained. Section 13 lays down the period of detention under which the maximum period for which one person can be detained in pursuance of any detention order which has been confirmed by the Advisory Board under Section 12 of the Act, is 12 months from the date of detention. Thus, in the present case, the order of detention passed for a period of 12 months from the date of detention which has been admittedly confirmed by the Advisory Board, suffers from no illegality.

29. We are of the considered view that in the national interest an obligation is cast on the State even to curtail the most sacred of the human rights namely personal

liberty,' which flows from Article 22 of the Constitution of India within the limitation as provided therein. Every right under the Constitution within its widest amplitude is clipped with reasonable restrictions. The protection of life and personal liberty enshrined in Article 21 itself contains the restriction which can be curtailed through the procedure established by law, which has to be reasonable, fair and just. Article 22 confers power to deprive of very sacrosanct individual right of liberty under very restricted conditions. Sub-clauses (1) and (2) thereof confer right to arrest within the limitations prescribed therein. Sub-clause (3) even erases this residual protective right under Sub-clauses (2) and (3) by conferring right on the authority to detain a man without trial under the preventive detention law. Such a clipping of right is for a natural purpose and for the security of the State. We must state that Man is a social animal who dedicates his works to enrich social coffer for enriching social development. Though Article 301 confers right to trade, commerce and intercourse freely throughout India but succeeding Articles 302, 303 & 304 slice such absolute freedom in various grades and degrees. Such checks and clippings in absolute right of an individual are made within the sphere of certain reasonableness to give preference when in conflict with the collective right of and for the gain of the society, and that being so individual rights are well recognised but when they dent on society, affecting public right they give way. However, such rights are curtailed when they trample on community right or right of public at large or trample with magnitude for self gain, deleteriously affecting the national interest by dealing with such person sternly through preventive detention without trial for a specified period within limitation provided therein. In these situations, where an individual acts clandestinely for his personal gain against the national interest deleteriously affecting national economy or security, the drastic curtailment of his right should be kept in mind to see that no such person escapes from the clutches of law. That being so, since it takes away one's liberty, it should be strictly construed, but to subserve the objective of the Act, in the national interest it should be seen that no such person escapes. Thus viewed, in this backdrop of the scheme of the Constitution and the Act whenever there are two possible interpretations of a statute, the one that subserves the objective of an enactment is to be accepted.

30. Article 22(4) of the Constitution, itself, provides for preventive detention law authorising detention upto a period of three months. From the provisions of Section 3 of the Act, it stands clear that preventive detention can be ordered either--(a) by the Central Government or (b) by the State by District Magistrate or a Police Commissioner (Sub-section (4) of Section 3) in whose favours the State Government (under Sub-section (3) of Section 3) has delegated its powers to issue detention order (under Sub-section (4) of Section 3). However, when detention is ordered by the State Govt. or its delegated officer, the detention and its grounds are required to be communicated to the Central Govt. within seven days. And when detention is ordered by State Govt.'s delegated officer in exercise of its powers under Sub-section (4) of Section 3, then such delegated officer has to report the fact of detention together with the grounds of detention ordered to the State Government forthwith. No doubt as envisaged under Sub-section (4) of Section 3 of the Act, the detention order remains in force for more than twelve days after making thereof unless in the meantime it stands approved by the State Government. In this view of specific provision under Sub-section (4) of Section 3, life of detention if ordered by District Magistrate or Police Commissioner (delegated officers of the State Govt.) is only twelve days if in the meantime it is not approved by the State Government. Suppose a detention is ordered by delegated officers in exercise of powers under Section 3(4) and the same is reported forthwith to the State Govt. specifying even any period of detention in the order, itself, but such detention is not approved by the State Govt. within 12 days, then certainly despite specifying any period in the detention order, as per the scheme of the Act and Constitution of India, such detention order issued by the delegated officer shall loose its legal sanctity obviously for want of its approval by the State Govt. But if detention ordered under Section 3(4) by delegated officer with or without specifying any period thereof is approved by the State Govt., then there is no specific provision as to the life of such detention ordered by delegated officer under Section 3(4), obviously because of the provisions under Article 22(4) which provides for preventive detention authorising detention upto three months. It is settled law that under the constitutional scheme engrafted in Article 22, no law providing for preventive detention can authorise the detention of a person for a period longer than three months unless the Advisory Board reports before the

expiration of the said period of three months that there is, in its opinion, sufficient cause for such detention.

31. On the strength of the decisions of other DBs of this Court which are based on decisions of the Apex Court in the cases referred to and discussed above, much stress has been laid down that specification and prescription of the period of detention in the order issued by the delegated officer (District Magistrate) has resulted in causing prejudice to the case of detenu in the mind of the Advisory Board. In our considered view such a contention canvassed on behalf of the detenu is totally fallacious, bizarre and barren of force because neither Clause (4) of Article 22 of the Constitution nor any of relevant provisions conferring powers on the Advisory Board to consider the detention under the Act contemplates that the Advisory Board has to determine as to whether the person (detenu) should be detained for more than three months. What has to be determined by the Advisory Board is as to whether the detention ordered either by the Govt. or its delegated officer under Section 3 of the Act is at all justified. Thus the subject before the Advisory Board is of detention of the detenu and not for how long he should be detained. Hence the decision as to the detention period is of the detaining authority upon which responsibility for detention of a person whose activities have been found prejudicial to the maintenance of public order within the parameters under Section 3(2) of the Act, has been placed, obviously because reference to the Advisory Board is a safeguard to the detenu against high handed action on the part of the Executive and such is a device contemplated by the Constitution with a view to review the decision of the Executive upon a representation of the detenu, the grounds of detention and where the order is by an officer (District Magistrate or delegated officer under the Act), his report under Section 3(4) of the Act. Thus in view of the settled position that the Advisory Board has only to determine as to the justification of the detention of the detenu referred to it by the authority under Section 3 of the Act and not for how long the detenu should be detained, then in our considered view it cannot be inferred that prescription or specification of the detention period in the order passed by the delegated officer under Section 3 of the Act would result in prejudice to his case, matchless such a fixation or mention of the detention period, would render the detention itself nullity, nugatory or vitiated warranting interference by this Court for quashing the detention itself.

32. Further, as expounded by the Apex Court in Kamlesh Patel v. Union of India (supra), reference is to be made to the Advisory Board only in cases where the period of detention is going to be longer than three months obviously because in case the detention period is less than three months, then it is not obligatory to make a reference to the Advisory Board. Thus unless the detaining authority did arrive at its satisfaction as to the period of detention, how can it be possible either for the detaining authority or the appropriate Govt. to determine as to whether it is a case for being referred to the Advisory Board for its opinion and report, only on the point as to whether there is sufficient cause for detention of the detenu. It is neither called upon nor is it competent to say anything to the period for which such person should be detained. Hence, it follows therefrom that specification of the period of detention does not destroy or abridge the wide over all powers of either the Advisory Board to examine justifiability or sufficiency of the cause for detention ordered by the delegated officer and/or approved by the State Govt., or the appropriate Government to direct the continuation of such detention as long as it thinks fit under the Act. There is no specific bar either under the Constitution or the Act as to the specification of the period of detention in the initial order either ordered by the delegated officer or the State Govt. or the Central Govt., nor there is any procedure. No doubt, once the Advisory Board expresses its view that there is sufficient cause for detention at the date when it makes its report, what action is to be taken subsequently is left entirely to the appropriate Government and it can under Section 12(1) of the Act confirm the detention order and continue the detention of the person concerned for such period as it thinks fit'. Be that as it may, irrespective of the provisions made under Section 13 of the Act as to the maximum period of detention in pursuance of any detention order duly confirmed under Section 12, i.e. twelve months, the legislature has also made the law by providing under proviso to Section 13 of the Act that nothing contained in Section 13 shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time. Similarly powers of revocation of detention order are contemplated in Section 14 of the Act and its Sub-section (1) specifically provides that without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 10 of 1897, a detention order may, at any time, be revoked or modified. (a) notwithstanding that the order has been made by an officer mentioned in Sub-

section (3) of Section 3, by the State Government to which that officer is subordinate or by the Central Government; (b) notwithstanding that the order has been made by a State Government, by the Central Government. In this view of specific provisions having been made under the Act, itself, (supra) containing non-obstante clauses, in our considered view, the powers of the appropriate Government either as to the confirmation or the continuation or the revocation of the detention are not only independent to each others but also the wide overall. It follows that specification of the period in the detention order by itself will not in any case prejudice the case of the detenu when it goes up for consideration either before the Advisory Board or before the appropriate Government for approval, confirmation, continuation and/or revocation or modification of the detention order, in the light of the scheme of preventive detention law engrafted either under the Constitution or the Act. Rather, it may be that if a period is mentioned the attention of the Government is likely to be drawn to the case near about the time when the period is due to expire and the facts of the case may be reviewed by the appropriate authority at the time before it decides to extend the detention any further. There is nothing in the law which prevents it from fixing the period of detention upto the maximum period as provided in Section 13 of the Act.

33. In the instant case, once the detaining authority on the basis of the material placed before it did arrive at its satisfaction as to the necessity of having ordered the detention of the present detenu (petitioner) and the order has been passed inasmuch as the appropriate Government has approved such a detention besides having confirmed it after receipt of the opinion of the Advisory Board as to the justifiability of the detention or sufficient cause for having ordered such a detention by the detaining authority, in our considered opinion duly fortified by a comprehensive analysis of the relevant law in concomitant with dictum of law laid down in the facts of each case (supra) by the Apex Court, the present detention cannot be held to be void because of infraction of either the detenu's right or of non-compliance with the procedure prescribed under the Act on the contentions urged by the learned Counsel for the detenu because it does not affect the validity of the order of detention itself issued under Section 3 of the Act by the detaining authority in exercise of its powers. Therefore, the question of setting aside the order of detention issued on 13.7.2000 does not arise.

34. That apart, even if the District Magistrate had fixed the period of detention by mentioning it in the order itself, but as a consequent upon approval thereof and confirmation of the detention after having obtained the opinion of the Advisory Board, which has not been disputed by the detenu, in the present case, the detention order itself in our view does not suffer from any illegality.

35. Having considered the entire circumstances appearing on the material collected by the sponsoring and detaining authority and in the grounds of detention of the present detenu alongwith papers annexed thereto, in our opinion it is clear that the detaining authority had based its subjective satisfaction on a series of contemporaneous incidents in which the detenu was involved. The satisfaction was not based on a single or stray incident but on conspectus of series of incidents as referred to herein above. Further more the assertions made against the detenu are not assailed as untrue nor can they be said to be irrelevant for the purpose of determining the validity of detention. On such materials on record it cannot be said that there was no basis for detaining authority to feel satisfied that the detenu was engaged in anti national activities prejudicial to the maintenance of public order and his activities were such which in their totality had the effect of disturbing even the tempo of public life and therefore, the impugned order of detention was perfectly justified warranting no interference by this Court.

36. Resultantly, we find no merit in this habeas corpus petition and hereby dismiss the same and uphold the detention of the present petitioner under the impugned order referred to above.

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