

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 15th OF NOVEMBER, 2022

WRIT PETITION No. 19623 of 2022

BETWEEN:-

ABDUL MAHMOOD RANGREZ, S/O LATE MR. ABDUL SHAKOOR RANGREZ, AGED ABOUT 44 YEARS, OCCUPATION: SOCIAL WORKER, R/O FOOTATAL CHOWK, JABALPUR, THROUGH HIS NEPHEW, MR. MOHAMMAD JAHID RANGREZ, S/O ABDUL JAHOOR, HOUSE NO. 10/2, FOOTATAL SATHIYA KUA, JABALPUR (MADHYA PRADESH)

.....PETITIONER

(SHRI ADITYA KHANDEKAR – ADVOCATE)

AND

- 1. UNION OF INDIA, THROUGH ITS SECRETARY, DEPARTMENT OF CONSUMER AFFAIRS, MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION, KRISHI BHAWAN, NEW DELHI (DELHI)**
- 2. STATE OF MADHYA PRADESH, THORUGH ITS PRINCIPAL SECERETARY, DEPARTMENT OF FOOD, CIVIL SUPPLIES AND CONSUMER PROTECTION, VALLABH BHAWAN, BHOPAL (MP)**
- 3. THE COLLECTOR, DISTRICT JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI SANDEEP SHUKLA – ADVOCATE FOR RESPONDENT NO.1 AND
SHRI B.D. SINGH – GOVERNMENT ADVOCATE FOR RESPONDENTS
NO.2 AND 3)**

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*This petition coming on for orders this day, **Hon'ble Shri Justice Ravi Malimath, Chief Justice** passed the following:*

ORDER

This petition is filed under Article 226 of the Constitution of India challenging the impugned order bearing No.08/P.B.M./R.D.M./2022 dated 05.07.2022 passed by the respondent No.3/Collector-cum-District Magistrate, District Jabalpur.

2. The case of the petitioner is that the respondents, on information that the petitioner and his son are illegally stocking essential commodities in their house, made a search on 06.06.2022. As per respondents, 116 bags of grains were stored in the house. It was intended to be transported elsewhere. Four bags were also found stored in a vehicle. The respondents visited the fair price shop belonging to the petitioner's son on 07.06.2022 and noted the discrepancy of the stocks. Thereafter the order of preventive detention was issued under Section 3(1) and (2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "the Act"), ordering detention for a period of six months in terms of the impugned order of detention dated 05.07.2022. Questioning the same, the instant petition is filed.

3. Shri Aditya Khandekar, learned counsel for the petitioner contends that there are virtually no allegations against the petitioner. That if at all the case of the respondents is to be accepted, the case can only be made out against his son and not him. That even otherwise an F.I.R. has been

lodged against the petitioner and others in Crime No.270 of 2022 at Police Station Kotwali, Jabalpur for offences punishable under Sections 406 and 34 of the Indian Penal Code and Section 7(3) of the Essential Commodities Act. He was thereafter taken into custody. Subsequently, he moved an application seeking for bail in Miscellaneous Criminal Case No.32191 of 2022 wherein the Hon'ble High Court of Madhya Pradesh at Jabalpur vide order dated 01.08.2022 granted bail to the petitioner. Hence, he pleads that none of these facts have been considered by the detaining authority. Hence, the order of detention is liable to be quashed. He further places reliance on a Division Bench judgment of this Court passed in Writ Petition No.12072 of 2022 dated 14.06.2022 in the case of Sanjay Kurmi (Patel) vs. The State of Madhya Pradesh and others. He contends that the orders of detention were quashed therein primarily on the ground that since an F.I.R. has already been lodged, the question of ordering preventive detention would not arise for consideration.

4. The State have filed their reply. They have disputed the pleadings of the petitioner. It is their case that the petitioner was involved in various offences as mentioned in the chart Annexure R-4 (at page 105 of their return), which is in Hindi and on being translated in English, reads as follows:-

Sr. No.	Crime No.	Police Station	Offences under sections	Date of registration	If under investigation, the current status	Date of submission of challan in the court	Whether bail granted or not	Decided or not	If not decided, next date
1.	375/2014	Omti	147, 188 IPC	19.7.2014	No	26.12.2017	--	--	No record found
2.	53/2019	Belbabh	294, 323, 506, 341, 34 IPC	20.1.2019	No	3.4.2019	--	--	Next date 9.9.2022
3.	233/2020	Omti	420, 467,	23.3.2020	No	22.12.2020	--	--	Next date 17.8.2022

			468, 471 IPC						
4.	270/ 2022	Kotwali	406, 34 IPC and 7/3 of E.C. Act	6.6.2022	No	Under investigati on	--	--	Under investiga -tion

That the petitioner is a habitual offender. That he is involved in stocking of essential commodities against the provisions of the Act. That his son is absconding. That the petitioner was found at the place where the raid was conducted and the essential commodities were recovered from the house of the petitioner. That so far as the contention with regard to the grant of bail is concerned, the detaining authority was very well aware of the same. That the detaining authority has taken that into consideration and thereafter has passed the order of detention. Therefore, it is pleaded that there is application of mind by the detaining authority while passing the impugned order. Hence, no fault could be found with the order of detention. He further pleads that the judgment relied upon by the learned counsel for the petitioner has no bearing to the facts of this case. Hence, he pleads that the petition be dismissed.

5. Heard learned counsels.

6. The factum of four cases pending against the petitioner is not disputed. However, what is being contended by the petitioner is that excluding the instant case where the F.I.R. was lodged, in the remaining three cases, none of them are offences under the Essential Commodities Act. They are all offences pertaining to the offences under the Indian Penal Code. Therefore, the same would have no bearing on the detention order.

7. However, we are of the view that so far as Section 3 of the Act is concerned, it is intended to ensure that the detenu does not commit offences under the Act. An order of detention is passed to ensure that the detenu does not act in any manner prejudicial to the maintenance of supplies of commodities essential to the community. Therefore, it is the subjective satisfaction of the detaining authority before an order of detention is passed. As to how the subjective satisfaction is to be arrived at, has been held by a catena of judgments of the Hon'ble Supreme Court. There has to be application of mind by the detaining authority in order to pass an order of detention. The grounds of detention would clearly indicate the history of the petitioner with regard to the offences committed by him. The grounds of detention would also indicate the consideration of the detaining authority so far as the order of bail is concerned. Therefore, we find that there is absolute application of mind by the detaining authority while passing the order.

8. The contention that the petitioner was already in custody by virtue of the F.I.R. lodged against him, in our considered view, may not be relevant to affect the order of detention. The detaining authority was very well aware that he is under custody with regard to the F.I.R. that is lodged. That itself cannot constitute a ground to dissuade the detaining authority not to pass an order of detention. An order of detention is passed in order to prevent future commission of crimes. An F.I.R. is lodged for the offences that have already taken place. Therefore, there are two concepts altogether. Therefore, even if he is in custody for the offences that he has committed, the detaining authority is entitled to pass an order of detention.

9. So far as the judgment relied upon by the learned counsel for the petitioner is concerned, we are of the view that the same would have no bearing on this case. In the facts and circumstances involved therein, the factor that was taken into consideration by the Court, was that the detenu being granted bail by the High Court was not taken into consideration by the concerned authority. That when orders of detentions were passed in order to ascertain whether subjective satisfaction has been arrived at, the detaining authority would have to take into consideration all facts that are relatable to the detenu. The order of bail was not considered by the detaining authority. It is ostensibly on that ground that the order of quashing the detention was passed by this Court.

10. However, what is being contended by the learned counsel for the petitioner is, that part of the judgment where it has been stated that since an F.I.R. has been lodged, the order of detention lacks the essentialities as provided under Section 3 of the Act. We are of the considered view that the reading of the judgment may not be appropriate. If at all the contention of the petitioner were to be accepted that once an F.I.R. has been lodged then no orders of preventive detention can be passed. In that event there can never ever be an order under Section 3 of the Act, in a case where an offence is committed and an F.I.R. is lodged. Just because an F.I.R. has been lodged, cannot prevent the detaining authority from passing an order under Section 3. An F.I.R. is lodged for an offence that is committed. An order under Section 3 is an order for prevention of future crimes. Therefore, the reading of the judgment to mean that if an F.I.R. is lodged a preventive order of detention cannot be passed, was neither the intention nor the purport of the judgment of this Court. Therefore, we clarify the judgment to that extent.

11. Under these circumstances, we do not find any illegality in the order of detention passed by the authority. The order of detention is just and appropriate.

12. For all these reasons, the petition being devoid of merit, is dismissed.

13. Pending interlocutory application is disposed off.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

PSM