

Parash Kishorbhai Sachadev Through Kishorbhai S/o Ramjibhai Sachdev Versus Vs The Collector And District Magistrate, Porbandar & Ors.

Court: Gujarat High Court

Date of Decision: Jan. 20, 2025

Acts Referred: Constitution of India, 1950 Articles 22(5), 226

Indian Penal Code, 1860 Section 120B, 406, 409, 465, 467, 471, 477A

Prevention of the Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 Section 3, 3(1), 7

Hon'ble Judges: Ilesh J. Vora, J; Hemant M. Prachchhak, J

Bench: Division Bench

Advocate: Rohan G Vaghela, Maithili Mehta

Final Decision: Allowed

Judgement

Ilesh J. Vora

1. By this petition under Article 226 of the Constitution of India, petitioner Parash Kishorbhai Sachadev, has challenged the order dated 07.02.2024

passed by the respondent District Magistrate, Porbandar directing him to be detained under the provisions of the Prevention of the Black

Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act of 1980" for short).

2. The said order has been passed in purported exercise of powers conferred by sub-section (1) read with sub-clause (b) of sub-section (2) of Section

3 of the said Act.

3. Brief facts giving rise to file the petition are that, the applicant detenue was employed as a outsource Computer Operator to look after the affairs of

essential commodities and its distribution under the jurisdiction of District Porbandar, State of Gujarat. The essential commodities like wheat, rice, etc.

Essential to the community to be supplied through Public Distribution System ("PDS" for short), had been stored in different godowns under the

jurisdiction of Porbandar District. The applicant was in charge of issuing on-line gate pass etc. The Government noticed some irregularities in the

stock maintained at the godown place. It is alleged that during 01.01.2020 to 04.01.2023, the applicant along with the other state government

employees in connivance with the transporters and other persons misappropriated the huge stocks of food grains of Rs.99,77,551/- for their personal

gains which has directly affect the supply of essential commodities. After in depth inquiry made by the State Government, the FIR came to be lodged

with Ranavav Police Station, Porbandar for the offence punishable under Sections 3 and 7 of the Essential Commodities Act and Sections 406, 409,

120B, 465, 467, 471 and 477A of the IPC. The said FIR was registered on 13.01.2023, against 12 persons. The applicant herein was arrested on

28.01.2023 and later on he was enlarged on bail. The Porbandar, DSP made a proposal to detain the applicant and others under the PBM Act of 1980.

The District Magistrate, Porbandar, after considering the entire material supplied by the sponsoring authority, satisfied that with a view to preventing

the applicant from acting in any manner prejudicial to the maintenance of supplies of essential to the community, it is necessary to detain the applicant

who derived the gain from the said malpractice, which act of the applicant defeat the provisions of the Essential Commodities Act.

4. In the aforesaid set of circumstances, by exercising powers under Section 3(1) of the PBM Act of 1980, the District Magistrate, Porbandar passed

detention order dated 07.02.2024 and the same was executed upon the applicant. The District Magistrate, Porbandar, after consideration the entire

circumstances and the documentary evidence was of the opinion that mere registration of the FIR against the detainee would not effectively prevent

him from acting in a manner prejudicial to the maintenance of supplies of food grains and further, opined that after releasing on bail, it quite possible

that the detainee will continue with the illegal and antisocial activities and it is imperative for the effective measures to detain the applicant preventing

him from acting in a manner prejudicial to the maintenance of essentially commodities.

5. The detention order dated 07.02.2024 was intimated to the State Government along with the grounds on which the order was made and the State

Government has approved the order impugned. The Central Government vide communication dated 19.02.2024 was also informed along with the

grounds of detention, etc.

6. Being aggrieved with the order impugned dated 07.02.2024, the present application has been filed.

7. We have heard learned counsel Mr. Rohan Vaghela for the applicant and Ms. Maithili Mehta, learned APP for the respondent " State.

8. Mr. Vaghela, learned counsel appearing for and on behalf of the applicant detainee, made the following submissions:

(A) That there is a delay in passing the order of detention, which is evident from the order of the detention itself as the same was passed on

07.02.2024, whereas the FIR under the provisions of the Essential Commodities Act was registered against the applicant and others on 13.01.2023, as

such there is a delay of more than 11 months in passing the order of detention. That in absence of any complaint in the interregnum, the conclusion of

the detaining authority that it was necessary to detain the applicant with a view to preventing him from acting in a manner prejudicial to the

maintenance to the supplies of the commodities essential to the community has no rationality and there is no material placed before the authority to

show that applicant would indulge in future in such kind of activities and therefore, while passing the order, the authority did not apply its mind and in a

mechanical manner, without any material, the order was passed.

(B) That the grounds for detention has no nexus with the expression "acting in any manner prejudicial to the maintenance of supplies of

commodities essential to the community" as explained under Section 3 of Act of PBM 1980 and therefore, where the offence is registered under the

Essential Commodities Act and the applicant has been released on bail, the solitary offence is thus not necessarily sufficient for the action under the

preventive detention.

9. In view of the aforementioned submissions, learned counsel Mr. Vaghela would submit that, during the investigation of the case, the police did not

find any short fall in the stock stored in the various godowns under the jurisdiction of Porbandar district and considering the solitary offence registered

against the applicant herein, the alleged apprehension recorded by the authority cannot be said to have either affected adversely or are likely to affect

adversely the maintenance of supply of good grains essential to the community and thus, therefore, he prays that the applicant is under detention since

07.02.2024 and the maximum period of detention is only 06 months, which is going to complete in the month of August, 2024 and in that view of the

matter as well as the grounds urged hereinabove, the order impugned may be quashed and set aside.

10. On the other hand, opposing the application, learned State Counsel reiterating the contents of the affidavit, has contended that, the applicant was

employed as out-source computer operator and was aware of procedure how to supply the quantity of food grains to end users, stored in the

government godown and in connivance with the co-accused and for their personal financial benefit, abated and aided the principal accused, whereby,

by issuing forged gate-passes committed an offence under the Essential Commodities Act and has acted prejudicial to the maintenance of the supplies

of the commodities essential to the community and therefore, there was sufficient material before the detaining authority that in future he would

indulge in the same activities and to prevent him, the order of detention is required to be passed and based on this subjective satisfaction and on

sufficient grounds, the order of detention was passed.

11. In view of the aforesaid facts, learned APP would further submit that, the order of detention dated 07.02.2024 was immediately forwarded to the

State Government for its approval and on 07.02.2024, the approval was given by the State. He would further urged that within 7 days from the date of

order, the report was forwarded to the Central Government together with the grounds of detention was made and matter was placed before the

Advisory Board within 3 weeks from the date of order. Thus, there is no any breach of any mandatory provisions of PBM Act, 1980.

12. In view of the aforesaid contentions, learned State counsel would urge that, once the offence is registered under the Essential Commodities Act,

the authority can invoke Section 3(1) of the PBM Act, 1980 for passing an order preventing the applicant acting in any manner prejudicial to the

maintenance of supplies of commodities essential to the community. Thus, therefore, at this stage, sufficiency of the material available to the detaining

authority is not to be examined and in absence of delay in passing the detention order, the application may not be entertained.

13. Having regard to the facts and circumstances of the present case, the issue falls for our consideration is as to whether the order of detention

passed by the District Magistrate, Porbandar in exercise of his power under the provisions of the PBM Act, 1980 is sustainable in law?

14. Before advertng to the submissions, we may refer to Section 3 of the Act, which authorized the authority to pass an order of detention. Section 3

reads as under:

3. Power to make orders detaining certain persons. " (1) The Central Government or a State Government or any officer of the Central

Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or

any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that

Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance

of supplies of the commodities 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, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities

essential to the community" means-

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955) or under any other

law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to

the community; or

(b) dealing in any commodity

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a),

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(2) Any of the following officers, namely:—

(a) district magistrates;

(b) Commissioners of Police, wherever they have been appointed, may also if satisfied as provided in sub-section (1), exercise the powers conferred

by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2) 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 authority 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.

(4) When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the

State Government not below the rank of Secretary to that Government specially empowered under sub-section (1) 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.

15. In light of the statutory provision and considering the grounds for detention, we may first examine the principal argument that there was a delay in

passing the detention order and same vitiates the detention itself. In the facts of the present case, the authority noticed the irregularities in the stock of

the food grains in the month January, 2023. The FIR under the Essential Commodities Act as well as under the penal laws came to be lodged on

13.01.2023. The sponsoring authority made a proposal to exercise power under Section 3 of the PBM Act, 1980 in the year 2024. The order impugned

came to be passed on 07.02.2024. In the aforesaid admitted facts, it is evident that since 13.01.2023, the authorities were knowing the alleged mal-

practise as well as antisocial activities affecting the supply of the commodities and despite of these facts, the authority did not initiate any proceedings

and set silent and waited for about 11 months. In short, we found that, there is a gap of 11 months in passing the detention order. On the issue of delay

in passing the detention order, the Supreme Court in case of Saeed Zakirhussain Malik Vs. State of Maharashtra (2012) 8 SCC 223, held that, prompt

action in such matter should be taken as soon as the incident as mentioned in the FIR as well as referred in the grounds for detention have taken

place. Relevant para-27 reads as under:

“As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after

15 months vitiates the detention itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is

proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the

facts and circumstances of each case. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however,

when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to

scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why

such a delay has occasioned.”

16. We take the notice of the admitted fact that during the gap of 11 months time, no any fresh complaint being registered against the applicant. In

absence of any complaint or other materials, the conclusion of the detaining authority that it was necessary to detain the applicant with a view to

preventing him from acting in a manner prejudicial to the maintenance of supplies of the commodities essential to the community has no rationality and

the subjective satisfaction being arrived without any material. In such set of circumstances, we are of the view that considering the undue delay of 11

months between the prejudicial activities and passing of the detention order, the detaining authority failed to examine such delay and did not assign any

reasons or explanation as to why such delay has occasioned.

17. In view of the aforesaid discussions, we came to the conclusion that the impugned detention order has been rendered illegal for the reason being

that, there was a delay in passing detention order.

18. In light of the above discussions, we have no hesitation in quashing the order of detention on the ground as discussed above, as the detention order

has become illegal for violation of Article 22(5) of the Constitution of India and accordingly, the order of detention dated 07.02.2024 is hereby

quashed. We direct the detinue to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service

permitted.