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WP-21535-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 16th OF OCTOBER, 2024

WRIT PETITION No. 21535 of 2024

HARSH @ HARSHVARDHAN

Versus

*UNION OF INDIA THROUGH PRINCIPAL SECRETARY AND
OTHERS*

.....
Appearance:

Shri Akash Rathi, learned counsel for the petitioner.

*Shri Himanshu Joshi, learned Deputy Solicitor General for respondent
No.1 / Union of India.*

*Shri Bhuwan Gautam, learned Government Advocate for the
respondents / State.*

.....
WITH

WRIT PETITION No. 23408 of 2024

SANDEEP

Versus

*UNION OF INDIA THROUGH PRINCIPAL SECRETARY AND
OTHERS*

.....
Appearance:

Shri Navendu Joshi, learned counsel for the petitioner.

*Shri Himanshu Joshi, learned Deputy Solicitor General for
respondent No.1 / Union of India.*

Shri Bhuwan Gautam, learned Government Advocate for the



respondents / State.

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ORDER

Per. Justice Vivek Rusia

Since the controversies involved in these petitions are identical in nature, therefore, with the consent of parties, these petitions are analogously heard and being decided by this common order. Facts of Writ Petition No.21535 of 2024 are narrated hereunder.

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the order of extension of detention period dated 12.04.2024, whereby the period of detention has been extended for the period of three months from 19.04.2024 to 19.07.2024.

02. Facts of the case is short are as under:-

2.1. The petitioner is a resident of Ratlam and there are series of criminal cases registered against him from 2023 till 2024, details of which are given in paragraph - 3 of the memo of writ petition. Due to the criminal activities of the petitioner, the Superintendent of Police, Ratlam vider letter dated 18.01.2024 requested the District Magistrate, Ratlam for initiation proceedings for detention of the petitioner under Section 3(2) of the National Security Act, 1980 (in short "The NSA").

2.2. Considering the criminal record of the petitioner and the detailed report submitted by the police authorities, the District Magistrate after recording its subjective satisfaction has passed the order of detention of the petitioner on 18.01.2024 initially for a period of three months. Thereafter, the matter was placed before the Advisory Board. The Advisory Board has



approved the detention of the petitioner, and accordingly, vide order dated 01.03.2024, the State Government, in exercise of power conferred under Section 12(1) of the NSA has confirmed the order of detention for a period of three months up to 19.04.2024.

2.3. The petitioner submitted a representation against the said detention order to the District Magistrate, Ratlam on 17.05.2024. Before expiry of the detention period, vide order dated 12.04.2024 the State Government further extended the detention period for three months from 19.04.2024 to 19.07.2024 considering the fact that in District - Ratlam one Rahul S/o Shankarlal Jaat a member of Azad Gang along with the associates committed double murder and FIR in this regard at Crime No.119/2024 has been registered for commission of offences punishable under Sections 302, 201 & 120-B of the Indian Penal Code, and this petitioner is the member of Azad Gang.

2.4. The petitioner has filed the present petition challenging the order of extension only, on the ground that once the confirmation order has been passed under Section 12(1) of the NSA for the period of three months, the same cannot be reviewed after expiry of three months by the State Government.

03. After notice, the respondents have filed a reply on 29.08.2024, by that time the period of extension had already expired on 19.07.2024. Thereafter, vide order dated 16.07.2024, the period of extension has further been extended for three months up to 19.10.2024 on the same facts and circumstances. It is further submitted by the State Government that while



passing the order of detention as well as extension orders, the competent authority has recorded its satisfaction that the detention of the petitioner is in the public interest, the petitioner is a habitual offender and if he is released, he would not again indulge himself into criminal activities. Therefore, no interference is called for and the petition is liable to be dismissed.

04. Shri Akash Rathi, learned counsel for the petitioner submits that the Apex Court in the case of *Pesala Nookaraju v/s The Government of Andhra Pradesh (Criminal Appeal No.2304 of 2023)* reported in *Live Law (SC) 678* has held that the State Government need not to review the orders of detention every three months after it has passed the confirmatory order. Similar view has been taken by the Division Bench of Allahabad High Court in the case of *Mohd. Asim @ Pappu Smart & Another v/s Union of India & Seven Others (Writ Petition No.657 of 2023)* Neutral Citation No. -2024: AHC:21911-DB.

05. Shri Bhuwan Gautam, learned Government Advocate for the respondents / State submits that as per the scheme of the NSA, the Central Government or State Government, as the case may be, may pass an order under Section 3(2) of the NSA directing that such person be detained. As per proviso to sub-section (3) the period specified in an order made by the Station Government under this sub-section may not, in 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. Under Section 10, in every case where a detention order has been made under this



Act the appropriate Government shall be within three weeks from the detention of such person, place before the Advisory Board constituted by it under Section 9 and under Section 11 the Advisory Board shall, after considering the materials placed before it record its opinion about the confirmation of detention order. Section 12(1) says that in case the Advisory Board is of the opinion that sufficient cause for the detention of person is there, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

5.1. Shri Gautam further submits that Section 12(1) has to be read jointly with proviso to sub-section (3) of Section 3, which gives power to the State Government to extend the period of detention by 3 - 3 months up to one year as stipulated under Section 13. Once the Advisory Board has given its opinion that there are sufficient cause for detention of a person, every time, the matter is not liable to be started from Section 3 followed by Section 10 of the NSA for grant of extension of three months. So far as the merit is concerned, the petitioner is the member of Azad Gang which is involved in commission of double murder and if he is released, he will again indulge into criminal activities. Learned Government Advocate has referred to paragraph 44 of the judgment passed by the Apex Court in the case of *Pesala Nookaraju (supra)* and submits that the State Government may extend that period of three months after recording its satisfaction. It is further submitted by Shri Gautam that the period of detention is going to be expired on 19.10.2024, but the State Government has taken a decision to extend it for further three months.



Heard.

06. The petitioner is not aggrieved by the original order of detention dated 18.01.2024 and the confirmation order dated 01.03.2024, but he is aggrieved by the order of extension of detention period from 19.04.2024 to 19.07.2024 and from 19.07.2024 to 19.10.2024.

07. By placing reliance upon the judgment passed by the Apex Court in the case of *Pesala Nookaraju (supra)*, learned counsel for the petitioner submits that if any period is specified in the confirmatory order, then the period of detention would be up to such period and if no period is specified, then it would be for a maximum period of 12 months from the date of detention and the State Government need not review the order every three months after it has passed the confirmatory order.

09. Paragraphs - 42, 43 & 44 of the judgment passed in the case of *Pesala Nookaraju (supra)* is reproduced below:-

"42. Hence, Article 22(4)(a) in substance deals with the order of detention and has nothing to do with the delegation of the power of detention by the State Government to an Officer as stipulated under Section 3(2) of the Act. In fact, under Section 9 of the Act, the State Government has to refer the matter to the Advisory Board within three weeks from the date of detention, irrespective of whether the detention order is passed under Section 3(1) or Section 3(2) of the Act and the Advisory Board has to give its opinion within seven weeks from the date of detention. That would totally make it ten weeks. As stipulated in Article 22(4)(a) of the Constitution, if in a given case, once the Advisory Board gives its opinion within the stipulated period of three months, then in our view, Article 22(4)(a) would no longer be applicable. Thus, Article 22(4)(a) applies at the initial stage of passing of the order of detention by the State Government or by an officer who has been delegated by the State Government and whose order has been approved by the State Government within a period of twelve days from the date of detention and not at the stage subsequent to the



report of the Advisory Board. Depending upon the opinion of the Advisory Board, under Section 12 of the Act, the State Government can revoke the order of detention and release the detenu forthwith or may confirm the detention order and continue the detention of the person concerned for any period not exceeding the maximum period of twelve months, which is stipulated in Section 13 of the Act. Therefore, when the State Government passes a confirmatory order under Section 12 of the Act after receipt of the report from the Advisory Board then, such a confirmatory order need not be restricted to a period of three months only. It can be beyond a period of three months from the date of initial order of detention, but up to a maximum period of twelve months from the date of detention.

43. We reiterate that the period of three months stipulated in Article 22(4)(a) of the Constitution is relatable to the initial period of detention up to the stage of receipt of report of the Advisory Board and does not have any bearing on the period of detention, which is continued subsequent to the confirmatory order being passed by the State Government on receipt of the report of the Advisory Board. The continuation of the detention pursuant to the confirmatory order passed by the State Government need not also specify the period of detention; neither is it restricted to a period of three months only. If any period is specified in the confirmatory order, then the period of detention would be upto such period, if no period is specified, then it would be for a maximum period of twelve months from the date of detention. The State Government, in our view, need not review the orders of detention every three months after it has passed the confirmatory order.

44. Thus, in our view, the period of three months specified in Article 22(4)(a) of Constitution of India is relatable to the period of detention prior to the report of the Advisory Board and not to the period of detention subsequent thereto. Further, the period of detention in terms of Article 22(4)(a) cannot be in force for a period beyond three months, if by then, the Advisory Board has not given its opinion holding that there is sufficient cause for such detention. Therefore, under Article 22(4)(a), the Advisory Board would have to give its opinion within a period of three months from the date of detention and depending upon the opinion expressed by the Advisory Board, the State Government can under Section 12 of the Act, either confirm the order of detention or continue the detention of the person concerned for a maximum period of twelve months as specified in Section 13 of the Act or release the detenu forthwith, as the case may be. If the order of detention is confirmed, then the period of detention can be



extended up to the maximum period of twelve months from the date of detention. With respect, we observe that it is not necessary that before the expiration of three months, it is necessary for the State Government to review the order of detention as has been expressed by this Court in Cherukuri Mani (supra). The Act does not contemplate a review of the detention order once the Advisory Board has opined that there is sufficient cause for detention of the person concerned and on that basis, a confirmatory order is passed by the State Government to detain a person for the maximum period of twelve months from the date of detention. On the other hand, when under Section 3(2) of the Act, the State Government delegates its power to the District Magistrate or a Commissioner of Police to exercise its power and pass an order of detention, the delegation in the first instance cannot exceed three months and the extension of the period of delegation cannot also be for a period exceeding three months at any one time. [See: Abdul Razak v. State of Karnataka, ILR 2017 Kar 4608 (FB)]."

[Emphasis Supplied]

10. In the aforesaid case, the Apex Court has held that under Article 22(4)(a), the Advisory Board would have to give its opinion within a period of three months from the date of detention and depending upon the opinion expressed by the Advisory Board, the State Government can under Section 12 of the NSA, either confirm the order of detention or continue the detention of the person concerned within a period of 12 months as specified in Section 13 of the Act or release the detenu forthwith, as the case may be. It is further held that if the order of detention is confirmed, then the period of detention can be extended up to the maximum period of twelve months from the date of detention.

11. By conjoint reading of proviso to Section 3(3) with Section 12(1) of the NSA, the State Government may continue the detention of the person concerned for such period as it thinks fit up to the maximum period of detention i.e. up to 12 months. Hence, the contention of Shri Rathi,



learned counsel for the petitioner is hereby rejected.

12. On merit, so far as reasons for extension of the detention period thrice are concerned, initially the petitioner was detained for a period of three months on the basis of his criminal antecedents. The initial period of detention was only three months as contemplated under Article 22(4), but in the extension orders the reason which is recorded that associates of this petitioner and the head of Azad Gang namely Rahul has committed double murder in Ratlam City and they have been arrested, if this appellant is released, he may again commit the criminal offence.

13. As per the reasons mentioned in the detention order, Rahul and other have already been arrested in respect of Crime No.119/2024. There is no such definition of "gang" in the penal law, there is only a provision of formation of unlawful assembly. The petitioner is not the member of that unlawful assembly which has committed the Crime No.119/2024 and he is not the accused in the aforesaid crime. Therefore, for the crime committed by some other person, the period of detention has wrongly been done in the name of public interest and maintenance of law & order.

14. In view of the foregoing discussions, the impugned order of extension of detention period dated 16.07.2024 and all consequential order are hereby quashed. The State Government is hereby restrained to pass any order of extension. The petitioner be released forthwith, if his custody is not required in any other case.

15. So far as Writ Petition No.23408 of 2024 is concerned, in this petition also, the impugned order of extension of detention period dated



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16.07.2024 and all consequential order are hereby quashed. The State Government is hereby restrained to pass any order of extension. The petitioner be released forthwith, if his custody is not required in any other case.

16. With the aforesaid, both the Writ Petitions stand allowed.

Let a copy of this order be kept in the connected writ petition also.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

Ravi