HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Division Bench : HON'BLE MR. JUSTICE S. C. SHARMA AND HON'BLE MR. JUSTICE SHAILENDRA SHUKLA

Writ Petition No.15330/2020 (O)

Smt. Neetu Agrawal

Versus

State of Madhya Pradesh and Others

Shri Prateek Maheshwari, learned counsel for the petitioner.

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

O R D E R

(Delivered on this 02nd November, 2020)

Per S. C. Sharma, J.:

The petitioner before this Court, Smt. Neetu Agrawal, who is wife of Shri Deepak Agrawal, has filed this present petition being aggrieved by order dated 24/09/2020 passed by District Magistrate, Neemuch, District Neemuch in exercise of powers conferred under the National Security Act, 1980.

02- The petitioner's contention is that her husband is a businessman. He is involved for last 30 years in the business of food grains and a report was submitted by Superintendent of Police under Section 3(2) of the National Security Act, 1980 against her husband and based upon the report submitted by the Superintendent of Police, an order has been passed on 24/09/2020 under Section 3(2) of the

National Security Act, 1980.

03- The petitioner's contention is that two cases have been registered against her husband and the same are as under:-

> **"**(i) Crime No.263/2020 for offences under Section 3/7 of the Essential Commodities Act, 1955 at Police Station Neemuch Cantt; and
>
> (ii) Crime No.116/2020 for offences under Section 3/7 of Essential Commodities Act, 1955 at Police Station Baghana, Neemuch.**"**

The petitioner has further stated that bail has been granted to her husband by an order dated 11/09/2020 and by an order dated 24/09/2020, in both the criminal cases. The impugned order passed by the respondents suffers from total non-application of mind and only on the basis of registration of bailable offences against her husband, the order has been passed.

04- The petitioner has raised various grounds before this Court and the contention of the petitioner is that the learned District Magistrate has erred in law in passing the impugned order merely on the basis of assumption, surmises and conjuncture. It has also been stated that offences are of general nature, they are bailable offences and therefore, the question of passing the impugned order does not arise.

05- It has also been stated that the ingredients of Section 3 are not at all fulfilled and an order could have been passed under Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 and the impugned order is again bad in law. It has been further stated that after receiving the report from

Superintendent of Police, the impugned order has been passed in a mechanical manner on the next day and the same is violative of fundamental rights guaranteed by the Constitution of India.

06- Learned counsel for the petitioner has placed reliance upon a judgment delivered in the case of **Ram Manohar Lohiya Vs. The State of Bihar** reported in **AIR 1966 SC 740** and has argued that concept of 'public order' must be distinguished from the concept of 'law and order' and concept of 'security of State' and in light of the aforesaid order the order of detention deserves to be quashed.

07- It has also been stated that the learned District Magistrate was not having the material to drawn an inference to form an opinion and only on the basis of two criminal cases, the order under the National Security Act, 1980 has been passed.

08- Reliance has also been placed upon a judgment delivered in the case of **Union of India Vs. Paul Manickam** reported in **(2003) 8 SCC 342** and it has been argued that preventive detention means detention of a person without trial and therefore,compliance with procedural safeguards is must.

09- Learned counsel has also submitted a rejoinder and it has been reiterated that only on account of two cases under the Essential Commodities Act, 1955, the impugned order has been passed. Reliance has been placed upon judgments delivered in the case of **Lallan Prasad Chunnilal Yadav Vs. S. Ramamurthi and Others** reported in **AIR 1993**

SC 396, **Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and Others** reported in **AIR 1994 SC 656**, **Attorney General for India Vs. Amratlal Prajivandas and Others** reported in **1994 (5) SCC 54**, **A. K. Roy Vs. Union of India** reported in **1982 (1) SCC 271**, **Piyush Kantilal Mehta Vs. Commissioner of Police** reported in **AIR 1981 SC 491** and **Prabhu Dayal Deorah Vs. District Magistrate** reported in **AIR 1974 SC 183** and a prayer has been made for quashment of the impugned order passed under the National Security Act, 1980 with a compensation of Rs.5 Lakhs.

10- Learned counsel for the petitioner on 22/10/2020 has also submitted a compilation of judgments and the compilation includes the judgments delivered in the case of **Ajay Dixit Vs. State of U. P. and Others** reported in **AIR 1985 SC 18**, **Yumman Ongbi Lembi Leima Vs. State of Manipur and Others** reported in **(2012) 2 SCC 176**, **Licil Antony Vs. State of Kerala and Others** reported in **(2014) 11 SCC 326**, **Sama Aruna Vs. State of Telangana and Others** reported in **(2018) 12 SCC 150**, **Nuzhat Perween Vs. State of U. P. and Another** [Habeas Corpus Writ Petition No.264/2020 (All. HC)], **Shailendra Gupta Vs. State of U. P.** [Habeas Corpus Writ Petition No.34008/2018 (All. HC)], **Balmukund Garg Vs. State of M. P. and Others** [Writ Petition No.19974/2019, decided on 02/12/2019 by High Court of Madhya Pradesh, Indore Bench], **Rinku Vs. State of M. P. and Others** reported in **2015 (3) MPLJ 157** and **Krishan Yadav Vs. State of M. P.** [Writ

Petition No.18825/2019, decided on 16/10/2016 by High Court of Madhya Pradesh, Jabalpur].

11- On the other hand a detailed and exhaustive reply has been filed in the matter and the stand of the State Government is that in a short span two cases were registered against the husband of the petitioner i.e. on 27/06/2020 and 18/07/2020 at Police Station Neemuch Cantt and Police Station Baghana for offences punishable under Section 420 of the Indian Penal Code, 1860 read with Section 3 and 7 of the Essential Commodities Act, 1955 .

12- The respondents have also stated that a report was forwarded to the Superintendent of Police by District Magistrate keeping in view Section 3(2) of the National Security Act, 1980 and the District Magistrate based upon the report received has formed an opinion after following due process of law to pass an order under the National Security Act, 1980. An order was passed on 24/09/2020. The order of detention was approved by the State Government *vide* order dated 03/10/2020 in exercise of powers conferred under Section 3(4) of the National Security Act, 1980 and thereafter, the Advisory Board constituted under Section 9 of National Security Act, 1980 has confirmed the order of detention by an order dated 20/10/2020, meaning thereby, the procedure prescribed under the Act of 1980 has been followed.

13- The respondents have further stated that the entire country is effected with COVID-19 Pandemic. People are dying out of hunger,

people don't have food grains to cook, majority of the population is able to survive only on a meal in a day, they are not able to get meal twice a day and the Government of India as well as State Government is making all possible endeavour to supply food grains under the Public Distribution System (PDS) to the citizens and persons like husband of the petitioner are siphoning the food grains meant for distribution under the Public Distribution System for black-marketing it.

14- It has been stated that in light of the judgment delivered in the case of **Attorney General for India Vs. Amratlal Prajivandas and Others** reported in **1994 (5) SCC 54** even on the basis of a solitary act, an order of detention can be passed. Reliance has also been placed upon judgments delivered in the case of **Suraj Pal Sahu Vs. State of Maharashtra and Others** reported in **(1986) 4 SCC 378** and **A. K. Roy Vs. Union of India** reported in **(1982) 1 SCC 271** and a prayer has been made for dismissal of the writ petition.

15- Heard learned counsel for the parties and perused the record. The undisputed facts reveals that the husband of the petitioner is a businessman involved in the business of food grain and two cases have been registered against petitioner's husband at Crime No.263/2020 and 116/2020. The First Information Reports are on record and the same reveals that the petitioner has siphoned food grain, which was meant to be distributed to poor people under the Public Distribution System and has stored the same for black-marketing. The seizure of

food grain has certainly taken place in the matter from the godowns belongs to the petitioner.

16- The statutory provisions governing the field as contained under the National Security Act, 1980 reads as under:-

> **"3. Power to make orders detaining certain persons.–** (1) The Central Government or the State Government may, –
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> (*a*) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or
>
> (*b*) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained.
>
> (2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.
>
> *Explanation*.– For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.
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> (3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:
>
> Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

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

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

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

9. Constitution of Advisory Boards.—(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed, as Judges of a High Court, and such persons shall be appointed by the appropriate Government.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union territory, the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.**"**

In the present case, the Superintendent of Police in exercise of powers conferred under the National Security Act, 1980 has submitted a report / representation to the District Magistrate and the District Magistrate with due application of mind has formed an opinion for passing an order under the National Security Act, 1980 in exercise of power under Section 3(2). The order passed under the National Security Act, 1980 has been approved by the State Government as well as by the Advisory Board within a time frame work.

17- Learned counsel for the petitioner has argued before this Court that the approval of the order by the State Government in exercise of power conferred under Section 3(4) is bad in law as there was no opinion of the Advisory Board before the State Government. He has stated that the approval by the State Government was done on 24/09/2020 and the Advisory Board has confirmed the order on 20/10/2020 and therefore, in light of the judgment delivered on 16/10/2019 by the Division Bench of this Court in Writ Petition No.18825/2019 (Kirshan Yadav Vs. The State of Madhya Pradesh) is bad in law.

18- This Court has carefully gone through the aforesaid judgment dated 16/10/2019 passed in Writ Petition No.18825/2019. In the aforesaid case, the Division Bench has certainly held that the order of confirmation was passed by the State Government without getting a report of Advisory Board. In the present case, the petitioner is mixing the issue of approval by the State Government and confirmation by the State Government. An order of detention is passed and the same has to be approved by the State Government within 12/15 days as per statutory provisions and thereafter, the matter is placed before the Advisory Board and the State Government based upon the recommendations of the Advisory Board passes an order under Section 12(1) confirming the detention order. The same process has been done in the present case and therefore, the judgment relied upon by the

learned counsel is of no help to the petitioner.

19- Learned counsel for the petitioner has placed reliance upon a judgment delivered in the case of **Ajay Dixit** (Supra) and his contention is that the order of detention with no sufficient grounds as to the disturbance of peace or endangering the public order is liable to be quashed. This Court has carefully gone through the aforesaid judgment and is of the considered opinion that the petitioner was certainly a threat to public order as he was involved in siphoning the food grains meant for free distribution / distribution under PDS, especially in light of the COVID-19 Pandemic and therefore, there was sufficient ground in existence before the District Magistrate to pass an order under the National Security Act, 1980. The judgment does not help the petitioner at all.

20- In the case of **Yumman Ongbi Lembi Leima** (Supra), it has been held that personal liberty of an individual is the most precious and prized right guaranteed under Constitution. There can be no doubt about the aforesaid preposition of law / observation made by the Hon'ble Supreme Court but the fact remains that the petitioner was certainly acting in a prejudicial manner in respect of maintaining public order and was also creating hindrance in maintenance of supplies and services essential to the community. Hence, the District Magistrate was justified in passing the impugned order.

21- This Court has carefully gone through the judgment

delivered in the case of **Licil Antony** (Supra) as well as in the case of **Pradeep Nikanth Paturkar** (Supra), however, they are distinguishable on facts. There has been no delay in passing an order under the National Security Act, 1980 by District Magistrate.

22- In the case of **Sama Aruna** (Supra), the detention order was set aside as it was passed on vague and stale cases, whereas in the present case, detention order has not been passed on vague and stale cases and therefore, the judgment relied upon is of no help tot the petitioner.

23- Reliance has also been placed in the case of **Nuzhat Perween** (Supra) and the contention of learned counsel for the petitioner is that the order of detention was quashed in the aforesaid case, as offence mentioned in the case had to be dealt in accordance with Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980. In the considered opinion of this Court, we are dealing with an extraordinary situation of COVID-19 Pandemic, people are dying out of hunger and the State Government cannot close its eyes towards the atrocities which are being committed by the black marketers, who are stopping the supply of food grains to the poor people and who are breaking the chain of supplies of food grain and therefore, the judgment is distinguishable in the peculiar facts and circumstances of the case.

24- Reliance has also been placed upon a judgment delivered

in the case of **Shailendra Gupta** (Supra) in which again a case was registered relating to black-marketing of the essential commodities, however, it was a case of the year 2018 and this Court has already distinguished the other cases keeping in view the COVID-19 Pandemic.

25- In the case of **Prabhu Dayal Deorah** (Supra) the ground of detention was found to be vague and they were not related to public order and the detention order was set aside, however, in the present case, the petitioner by storing the food grains, which was supposed to be distributed free / under the Public Distribution System to poor people is certainly responsible for the offences under the Essential Commodities Act, 1955 as well as Indian Penal Code, 1860 and keeping in view COVID-19 Pandemic, the ingredients of Section 3 are fulfilled. Hence, the District Magistrate was justified in passing the impugned order.

26- In the case of **Paul Manickam** (Supra), the detention order was quashed as it was passed on account of trivial nature of cases and non-availability of material to testify offences. In the present case, huge quantity of food grain has been recovered from the godowns of the husband of the petitioner and as there is no error in the decision making procedure by the District Magistrate, the procedure prescribed under the Act has been followed and there was enough material to form an opinion, the question of interference by this Court does not arise.

27- Reliance has also been placed upon a judgment delivered

in the case of **Balmukund Garg** (Supra). In the aforesaid case, *Ghee* and *Mawa* was recovered and case was registered and the detention order was set aside. The facts of each and every case are different. We are dealing with a case during COVID-19 Pandemic and as already stated earlier people don't have job, people are suffering on account of COVID-19 Pandemic, people don't have food to eat and the Governments are making all possible efforts to continue food supply to poor people and in such a scenario black-marketing is being done, supplies are being siphoned, supplies are being stored to gain profit and therefore, the judgment delivered in the aforesaid does not help at all. Reliance has also been placed in the cases of **Rinku** (Supra), **Ram Manohar Lohia** (Supra) and **Lallan Prasad Chunnilal Yadav** (Supra) and in the considered opinion of this Court, in the peculiar facts and circumstances of the case, the order of the detention of the husband of the petitioner cannot be set aside.

28- In the case of **Amratlal Prajivandas** (Supra), the Hon'ble Supreme Court in paragraphs No.48 has held as under:-

> **"48.** Now, it is beyond dispute that an order of detention can be based upon one single ground. Several decisions of this Court have held that even one prejudicial act can be treated as sufficient for forming the requisite satisfaction for detaining the person. In Debu Mahato v. State of W.B.15 it was observed that while ordinarily-speaking one act may not be sufficient to form the requisite satisfaction, there is no such invariable rule and that in a given case one act may suffice. That was a case of wagon-breaking and having regard to the nature of the Act, it was held that one act is sufficient. The same principle was reiterated in Anil Dey v. State of W. B. 16 It was a case of theft of railway signal material. Here too one act was held to be sufficient. Similarly, in Israil SK v. District Magistrate of West Dinajpur17 and Dharua Kanu v. State of W.B.18 single act of theft of telegraph copper wires in huge quantity and

> removal of railway fish-plates respectively was held sufficient to sustain the order of detention. In Saraswathi Seshagiri v. State of Kerala19, a case arising under COFEPOSA, a single act, viz., attempt to export a huge amount of Indian currency was held sufficient. In short, the principle appears to be this: Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial 15 (1974) 4 SCC 1351974 SCC (Cri) 274 16 (1974) 4 SCC 5141974 SCC (Cri) 550 17 (1975) 3 SCC 292:1974 SCC (Cri) 900 18 (1975) 3 SCC 527 :1975 SCC (Cri) 117 19 (1982)2SCC310:1982 SCC (Cri) 423 activity. That is the reason why single acts of wagon- breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and Organisation. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.**"**

It was a case wherein detention order was passed on one single ground and the Hon'ble Supreme Court in the aforesaid paragraphs had held that the order of detention can be passed on one single act also.

29- In the case of **Suraj Pal Sahu** (Supra), the Hon'ble Supreme Court in paragraphs No.19 to 21 has held as under:-

> **"19.** The High Court in its judgment referred to the grounds. It reiterated that permanent way material is essential to the maintenance of railway track and safety of the railway travelling

public. After referring to the various grounds referred to hereinbefore, the High Court has noted that three points were urged before it on behalf of the detenu namely; (1) the order was mala fide, (2) there was total absence of material, and (3) in any event the provisions of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 being Act of 1980 would be attracted. The High Court referred to the affidavits of the Commissioner of Police who passed the detention order which was filed in the High Court and found that there were good grounds for detention and it was not possible to hold that there were no grounds of detention relevant for the Act.

20. The High Court referred to the expression 'acting in any manner, prejudicial to the maintenance of supplies of commodities essential to the community' as mentioned in Explanation to section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The High Court was of the view that it was clear that only National Security Act was attracted in the facts and circumstances of this case.

21. In view of the Explanation to section 3 of Act 7 of 1980, it appears "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" has certain particular connotation. But in the instant case the Act under consideration, the conduct of the detenu was prejudicial to the maintenance of supplies and services essential to the community in general as contemplated by section 3(2) and not in any particular mode contemplated by Explanation to section 3(1) of Act 7 of 1980 and as such is not excluded by the Explanation to sub- section (2) of section 3 of the Act. In the premises we are therefore of the opinion that the High Court was right in the view it took on this aspect of the matter. We are also of the opinion that for the same reason, the same contentions urged before us in support of the writ petition cannot be sustained.

The aforesaid case was also relating to a case arising out of supplies of essential commodities and the order of detention was not interfered with.

30- In the case of **A. K. Roy** (Supra), the Hon'ble Supreme Court in paragraphs No.34 to 36 has held as under:-

"34. But, the liberty of the individual has to be subordinated, within reasonable bounds, to the good of the people. Therefore, acting in public interest, the Constituent Assembly made provisions in Entry 9 of List I and Entry 3 of List III, authorising the Parliament and the State legislatures by Article 246 to pass laws of preventive detention. These entries read thus:

Entry 9, List I:

"Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India ' persons subjected to such detention."

Entry 3, List III:

"Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention."

The practical need and reality of the laws of preventive detention find concrete recognition in the provisions of Article 22 of the Constitution. Laws providing for preventive detention are expressly dealt with by that article and their scope appropriately defined. "The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited.....,it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions" (see The Queen v. Burah. The legislative power in respect of preventive detention is expressly limited to the specific purpose mentioned in Entry 9, List I and Entry 3, List III. It is evident that the power of preventive detention was conferred by the Constitution in order to ensure that the security and safety of the country and the welfare of its people are not put in peril. So long as a law of preventive detention operates within the general scope of the affirmative words used in the respective entries of the union and concurrent lists which give that power and so long as it does not violate any condition or restriction placed upon that power by the Constitution, the Court cannot invalidate that law on the specious ground that it is calculated to interfere with the liberties of the people. Khanna J., in his judgment in the Habeas Corpus case has dwelt upon the need for preventive detention in public Interest.

35. The fact that England and America do not resort to preventive detention in normal times was known to our Constituent Assembly and yet it chose to provide for it, sanctioning its use for specified purposes. The attitude of two other well-known democracies to preventive detention as a means of regulating the lives and liberties of the people was undoubtedly relevant to the framing of our Constitution. But the framers having decided to adopt and legitimise it, we cannot declare it unconstitutional by importing our notions of what is right and wrong. The power to judge the fairness and justness of procedure established by a law for the purposes of Article 21 is one thing: that power can be spelt out from the language of that article. Procedural safeguards are the handmaids of equal justice and since, the power of the government is colossal as compared with the power of an individual, the freedom of the individual can be safe only if he has a guarantee that

he will be treated fairly. The power to decide upon the justness of the law itself is quite another thing: that power springs from a 'due process' pro vision such as is to be found in the 5th and 14th Amendments of the American Constitution by which no person can be deprived of life, liberty or property "without due process of law".

36. In so far as our Constitution is concerned, an amendment was moved by Pandit Thakur Dass Bhargava to draft Article 15, which corresponds to Article 21 of the Constitution, for substituting the words "without due process of law" for the words "except according to procedure established by law". Many members spoke on that amendment on December 6, 1948, amongst whom were Shri K.M. Munshi, who was in favour of the amendment, and Sir Alladi Krishnaswamy Ayyar who, while explaining the view of the Drafting Committee, said that he was "still open to conviction". The discussion of the amendment was resumed by the Assembly on December 13, 1948 when, Dr. Ambedkar, who too had an open mind on the vexed question of 'due process', said:

"...I must confess that I am somewhat in a difficult position with regard to article 15 and the amendment moved by my friend Pandit Bhargava for the deletion of the words "procedure according to law" and the substitution of the words "due process".

The question of "due process" raises, in my judgment, the question of the relationship between the legislature and the judiciary. in a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is ultra vires or intra vires in reference to the powers of legislation which are granted by the Constitution to the particular legislature.... The 'due process' clause, in my judgment, would give the judi-ciary the power to question the law made by, the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.

....There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is a rather a case where a man has to sail between Charybdis and Seylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes."

(See Constituent Assembly Debates Vol. VII, pp. 999-1001)

The amendment was then put to vote and was negatived. In view of this background and in view of the fact that the Constitution, as originally conceived and enacted, recognizes preventive detention as a permissible means of abridging the liberties of the people, though subject to the limitations imposed by Part III, we must reject the contention that preventive detention is basically impermissible under the Indian Constitution.**"**

In light of the aforesaid judgment, as the petitioner has been detained by following due process of law, there was ample material before the District Magistrate to form an opinion, the two cases registered against the husband of the petitioner are of very serious nature keeping in view COVID-19 Pandemic,this Court is of the opinion that the question of interference by this Court in the peculiar facts and circumstances of the case does not arise.

31- Resultantly, the writ petition is dismissed. No order as to costs. Certified copy as per rules.

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

(SHAILENDRA SHUKLA)
J U D G E

Tej

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