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HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 07/05/2018****Order Delivered on : 18/05/2018****W.P. (Cr.) No. 9 of 2018**

Malkit Singh Gendu Son Of Late Mohinder Singh Gendu, Aged About 52 Years R/o Shanti Nagar Ward, Jagdalpur, District Bastar, Chhattisgarh., Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Raipur, Chhattisgarh., Chhattisgarh.
2. Superintendent Of Police, District Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh.
3. The Collector, District Magistrate, District Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh.
4. Union Of India, Through Secretary, Ministry Of Home Affairs, Jai Singh Road, New Delhi, 110001, District : New Delhi, Delhi.

---- Respondents

For the Petitioner	:	Shri Kishore Bhaduri and Shri Pawan Kesharwani, Advocates.
For the Respondent/State	:	Shri Anupam Dubey, Dy. G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

1. This petition has been brought by the petitioner for issuance of an appropriate writ under Article 226 of the Constitution of India, specifically with a prayer to quash the impugned order dated 22.6.2017 passed by respondent No.3 – The Collector/ District Magistrate, District Bastar, Chhattisgarh.

2. The facts of the case against the petitioner are that respondent No.2 – Superintendent of Police, District Bastar, Chhattisgarh initiated action against the petitioner vide Annexure-P/2 on the ground that the petitioner is engaged in criminal activities of assault and hooliganism, because of which the public at large of the area is under constant threat. It was stated that the petitioner had been engaged in various criminal activities and acting in manner prejudicial to the maintenance of public order or from acting in manner prejudicial to the supplies and services essential to the community. For the aforesaid reasons, it was prayed that action be taken under National Security Act, 1980.

3. Respondent No.3 – The Collector/ District Magistrate responded to the initiation made by respondent No.2 – Superintendent of Police and has passed the impugned order dated 22.6.2017 vide Annexure-P/1. By said order, it was ordered that under the circumstances and for the reason that the petitioner is engaged in activities against the public and society and the said activity is creating terror in the area, it has become essential that action under sub-section (2) of Section 3 of the National Security Act is required to be taken. The order was passed to place the petitioner in detention and the order was made effective from 22.6.2017 up till 21.9.2017.

4. It is submitted by counsel for the petitioner that while passing the impugned order, the principles of natural justice had not been followed and the petitioner was not given any opportunity of hearing before passing such order. The petitioner happens to be a leader of the political party and interested in opposing the actions of the State. He happens to be engaged in activities like *Dharna*, calling for *Bundh* and other peaceful demonstrations,

because of which, various proceedings have been initiated under the preventive provisions of Cr.P.C. which cannot be taken into account for passing such orders and the said activities are not causing any threat to the national security. Apart from that, pendency of such matters cannot be made a ground, that the intention of Section 3 of the National Security Act is clearly made out, so as to make out the case for passing any order for detention. It is also submitted that in the judgment of the Supreme Court in the case of **Aidal Singh vs. State of Madhya Pradesh and Another** reported in **(1981) 4 SCC 428**, it was held that neither maintenance of public security nor maintenance of law and order can justify the detention of a person under Section 3(2) of the National Security Act. It was held by the High Court of Madhya Pradesh in the case of **Dharmendra Singh vs. State of Madhya Pradesh** reported in **2007(2) MPLJ 108** that before passing any order, one has to apply his mind recording subjective satisfaction.

5. It is further submitted by the petitioner that although the effectiveness of the impugned order has lapsed subsequent to 21.9.2017 and there is no threat for the public at large to place the petitioner under detention but existence of such order against him shall be continuously giving this impression that the petitioner is an antisocial and unwanted element in society. Hence, for these reasons, it is prayed that the impugned order be quashed.

6. Learned State counsel has opposed the petition and the submissions made in this respect. It is submitted that the impugned order has been directly passed by respondent No.3 – the Collector/ District Magistrate, after taking into consideration all the material against the petitioner. The

petitioner has a history of having 9 previous cases registered against him, which shows that he is a criminal element, whereas the impugned order which has lost its efficacy since 21.9.2017 and has not been extended, shows that there is no threat to the petitioner. The order has been passed under Section 3 of the National Security Act for the purpose of bringing public order. Hence, it is prayed that there is no substance in the petition, hence, the same may be dismissed.

7. In reply, learned counsel for the petitioner submit that no subjective satisfaction has been recorded by respondent No.3 while passing the impugned order and in all the cases against the petitioner which are cited, out of those some had been the proceeding of preventive nature under the provisions of Cr.P.C. which have terminated and in the cases under the various provisions of IPC, the petitioner has been acquitted by the concerned trial Courts, which again gives this impression that the petitioner is not a threat to the national security.

8. Heard counsel for both the parties and perused the documents present in the petition filed by both the sides.

9. The provisions under Section 3 of Sub-section (2) of the National Security Act, 1980 is as under:

'(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 and services 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.'

10. The conclusion has been drawn by respondent No.3 in the impugned order in the cases of the list of the proceedings and the criminal cases against the petitioner, that if any legal action is not taken, then it will have adverse effect on the security of common public and that liberty of the petitioner shall be against the interest of the public in the State affecting the law and order situation.

11. It is clear from the contents of the impugned order that no opportunity of hearing has been given to the petitioner before passing such order. The direction in **Aidal Singh vs. State of Madhya Pradesh and Another** (supra), **Sheikh Nizam vs. State of West Bengal** (supra) and **Dharmendra Singh vs. State of Madhya Pradesh** (supra) is specific that subjective satisfaction has to be recorded. The initiation by respondent No. 2 is dated

16.5.2017 and the impugned order was passed on 22.6.2017. The criminal record submitted vide Annexure-R/2 by the respondents would show that on three occasions, the petitioner was proceeded under the preventive provisions of Cr.P.C. in the year 2014 and there are four criminal cases registered against him, regarding which the learned counsel for the petitioner has submitted, that the petitioner has been acquitted in all the criminal cases filed against him. Hence, the only thing against the petitioner is that he was proceeded against under the provisions of Cr.P.C. On the basis of the same, the order that could have been passed by the concerned Magistrate would have been to ask the petitioner to furnish bond for keeping peace and maintaining good behaviour and in regard to the other prosecutions against him, those were the grievances of the private parties and were initiated on the basis of the FIR lodged by them. In what manner it had become essential to prevent the petitioner for the purposes of security of the State or for the purposes of maintenance of public order etc., in that regard, there is no specific finding in the impugned order.

12. The finding recorded by respondent No.3 in the impugned order is to the effect, that if action will not be taken, then it shall affect adversely to the public security which shall be detrimental to the public interest and the liberty of the petitioner is against the interest of public and the State, which is not in accordance with Section 3 sub-section (2) of the National Security Act. Apart from that, this order was passed *ex-parte* without following the principles of natural justice. Hence, under these circumstances, this Court is of this opinion that the impugned order is against the provisions of law, mentioned above and affects the liberty of the petitioner as guaranteed under the Constitution of India. On the basis of the aforesaid findings, the petition is

allowed and the impugned order dated 22.6.2017 passed by respondent No.3 – Collector/ District Magistrate is hereby quashed.

13. With the aforesaid observations, this petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi