

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (Cr.) No. 660 of 2018**

1. Aarti Singh, W/o Shri Hitendra Singh Thakur, aged about 35 years, r/o Akash Nagar Bahatarai Road, Police Station – Sarkanda, District Bilaspur, Chhattisgarh
---- **Petitioner**

Versus

1. State of Chhattisgarh, through Secretary, Department of Home, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. Superintendent of Police, Bilaspur, Office of Superintendent of Police, District Bilaspur, Chhattisgarh
---- **Respondents**

For Petitioner : Shri Malay Shrivastava and Shri Shaleen Singh Baghel, Advocate.

For Respondent No.1/State : Shri Chandresh Shrivastava, Dy. A.G.

Hon'ble Shri Justice Goutam Bhaduri**Order****18-01-2019**

Heard.

1. The present petition is against the order dated 25.10.2018 (Annexure -P/1) whereby the petitioner's husband was detained by virtue of sub-section(2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as the 'Act of 1980'). It is contended that the husband of the petitioner namely Hitendra Singh Thakur was arrested in a criminal case on 13.10.2018. Subsequently, while he was in detention, the Act of 1980 was invoked and the Collector under sub-section (2) of Section 3 of the Act of 1980 has directed the detention of petitioner's husband from 25.10.2018 to next three months which would expire on 21.01.2019. It has been stated that said detention order should have been approved by the State Government under sub-section (4) of Section 3 of the Act of 1980. It is stated that the approval under sub-section (4) by the State Government never accorded, therefore, by force

of sub-section (4) of Section 3 the detention cannot continue further.

2. Learned counsel for the petitioner further relied on the judgment rendered by the Supreme Court in case of **Hetchin Haokip vs. State of Manipur and Others**¹ and submits that the continuation of detention would cause prejudice.

3. In the reply filed by the State counsel, it has been stated that after the Act of 1980 was invoked on 25.10.2018 the reasons for detention were communicated to the detainee on 25.10.2018 itself and he was given a clear understanding and opportunity to make representation to the Home Department of the State or Central Government. It is further contended that he was also given the opportunity of hearing. However, instead of availing the same, at the fag end, this instant petition has been preferred. He further submits that as per Section 10 of the Act of 1980, the State Government has already made a representation to the Advisory Board constituted under Section 9 of the Act of 1980.

4. Heard learned counsel for the parties and perused the records.

5. Sub-section (2) of Section 3 of the Act of 1980 reads as under :-

“3. Power to make orders detaining certain persons.-

(1) xxx xxx xxx

(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

¹ (2018) 9 SCC 562

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 Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 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.”

6. Further sub-section (4) of Section 3 of the Act of 1980 which would be relevant to decide the issue reads as under :-

“(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 an 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.”

7. Here, in this case, the record would show that on 25.10.2018, the Act of 1980 was invoked by the District Magistrate and the District Magistrate on 25.10.2018 itself has communicated the ground of

detention and disclosed the reasons for it to the detenu himself thereby the compliance of Section 8 of the Act of 1980 was made. Reading of sub-section (4) of Section 3 of the Act of 1980 further makes it clear that after the detention is made, the District Magistrate shall forthwith report the facts to the State Government to which he is subordinate. Here, on 25.10.2018 itself, the reasons were communicated to the State Government therefore, first part of compliance of sub-section (4) was made. Sub-section (4) further reads that no such order shall remain in force for more than twelve days after making thereof unless in the meantime it has been 'approved' by the State Government. Therefore, sub-section (4) places two barriers for compliance after sub-section (2) of Section 3 is invoked by District Magistrate ; (i) – the report has to be made to the State Government forthwith and (ii)- the order is to be approved by the State Government to whom the communication of detention was made.

8. The proviso to clause to sub-section (4) of section 3 further allows that if the grounds of detention are communicated within a period of 5 days but not later on 10 days the words “twelve days” in sub-section (4) shall be read as “fifteen days”. Therefore, necessarily the interpretation would be that the detention cannot be more than twelve days in absence of necessary compliance. The further interpretation would be that the order of the detention under sub-section (2) of section 3 of the Act 1980 passed by the District Magistrate shall remain in force for 12 days or 15 days, as the case may be, if it is not approved by the State Government. But if the approval is made then it would not be covered by the bar of sub-section (4). During the course of argument, the State Government

has placed on record order of approval dated 02nd November 2018. Reading of it would show that approval was made by the State Government on 02nd November, 2018. It shows that detention was approved till 24.01.2019. Under the circumstances, I do not find any infirmity or illegality in the impugned order warranting interference by this Court. The petition has no merit and is dismissed.

**Sd/-
(Goutam Bhaduri)
JUDGE**

Priyanka/

Rao