HETCHIN HAOKIP

v.

STATE OF MANIPUR AND ORS.

(Criminal Appeal No. 911 of 2018)

JULY 20, 2018

[DIPAK MISRA, CJI, A. M. KHANWILKAR AND DR. D. Y. CHANDRACHUD, JJ.]

National Security Act, 1980 – s.3(4) – Power to make orders detaining certain persons – Detention order against detenu – District Magistrate reporting the detention to the State Government on the fifth day, after the detention order – Challenge to, on the ground of failure of the detaining authority to report the detention to State Government 'forthwith' as provided u/s. 3(4) – High Court held that as long as the report to the State Government is furnished within twelve days of detention, it would not prejudice the detenu – On appeal, held: Expression 'forthwith' u/s. 3(4) must be interpreted to mean reasonable time and without any undue delay – There should be no laxity in reporting the detention to the Government – On facts, the District Magistrate offered no explanation for submitting the report to the State Government five days after passing the order of detention – This vitiated the order of detention – Thus, the order of the High Court set aside.

The issue before this Court is whether the provisions of Section 3(4) of the National Security Act, 1980, requiring the detaining authority to report the detention to the State Government 'forthwith,' have been violated.

Allowing the appeal, the Court

HELD: 1.1 "Forthwith," under Section 3(4) of the National Security Act, 1980 does not mean instantaneous, but without undue delay and within reasonable time. Whether the authority passing the detention order reported the detention to the State Government within reasonable time and without undue delay, is to be ascertained from the facts of the case. [Para 13] [604-A-B]

1.2 The High Court was not correct in holding that as long as the report to the State Government is furnished within twelve days of detention, it would not prejudice the detenu. It is settled law that a statute providing for preventive detention has to be construed strictly. While "forthwith" may be interpreted to mean within reasonable time and without undue delay, it certainly should not be laid down as a principle of law that as long as the report to the State Government is furnished within 12 days of detention, it will not prejudice the detenu. [Para 15] [604-F]

1.3 The detaining authority must furnish the report at the *earliest possible*. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to unavoidable circumstances beyond the control of the authority and not because of administrative laxity. [Para 16] [605-A-B]

1.4 In the instant case, the District Magistrate submitted the report to the State Government on the fifth day (17 July 2017), after the date of the detention order (12 July 2017). The reason for the delay of five days is neither mentioned in the State Government's order confirming the detention order, nor in the impugned judgment. It was for the District Magistrate to establish that he had valid and justifiable reasons for submitting the report five days after passing the order of detention. As the decision in *Joglekar holds, the issue is whether the report was sent at the earliest time possible or whether the delay in sending the report could have been avoided. Moreover, as the decision in **Salim holds, there should be no laxity in reporting the detention to the Government. Whether there were administrative exigencies which justify the delay in sending the reports must be explained by the detaining authority. In the instant case, the District Magistrate offered no explanation. This would vitiate the order of detention. [Para 17] [605-B-E]

1.5 It is evident, that there was no traverse to the submission that the act of reporting the detention after five days was in violation of Section 3(4). The District Magistrate did not furnish any reason whatsoever for having taken five days to report the detention to the state government. There was no traverse of the ground taken. No justification was sought to be

established for the delay in reporting the detention to the state government. The impugned judgment and order of the High Court dismissing the Writ Petition is set aside. [Paras 18-19] [606-A-C]

***S.K. Salim v. State of West Bengal* **(1975) 1 SCC 653 : [1975] 3 SCR 394 – relied on.**

Keshav Nilkanth Joglekar v. The Commissioner of Police, Greater Bombay* **[1956] SCR 653 ; *Bidya Deb Barma v. D.M. Tripura, Agartala* **[1969] 1 SCR 562 – referred to.**

Case Law Reference

[1956] SCR 653	**referred to**	**Para 10**
[1969] 1 SCR 562	**referred to**	**Para 11**
[1975] 3 SCR 394	**relied on**	**Para 17**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 911 of 2018.

From the Judgment and Order dated 03.04.2018 of the High Court of Manipur at Imphal in W.P. (Crl.) No. 43 of 2017.

Pukhrambam Ramesh Kumar, P. H. Sanjaoba, Leishangthem Roshmani Kh, Ms. Maibam Babina, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DR. D.Y. CHANDRACHUD, J. 1. Leave granted.

2. These proceedings have arisen from the judgment of a Division Bench of the Manipur High Court, at Imphal, dated 3 April 2018 in Writ Petition (Crl.) No 43 of 2017. The question before the High Court was whether the provisions of Section 3(4) of the National Security Act, 1980, requiring the detaining authority to report the detention to the State Government 'forthwith,' have been violated. The High Court recorded that this was the only issue which formed the subject of the challenge to the order of preventive detention.

3. The brief facts of the case are as follows. The appellant's husband, Jangkhohao Khongsai, with two others, was arrested by the police on 30 May 2017, and charged with offences under Section 400 of the I.P.C. and Section 25(1-C) of the Arms Act, 1959, allegedly for

being a member of the cadre of the KLA organization, and for possession of fire arms. On 12 July 2017, the District Magistrate, Bishnupur, Manipur, passed an order of detention against him, apprehending that the detenu was likely to be released on bail. On 17 July 2017, the District Magistrate served the detenu with the grounds for his detention. On 20 July 2017, the Government of Manipur approved the order of detention.

4. The appellant filed a writ petition before the Manipur High Court, challenging the order of detention. The appellant's contention was that the District Magistrate failed to report the detention to the State Government "forthwith," as provided under Section 3(4) of the Act. The District Magistrate – it was urged - reported the detention after a lapse of five days, which violated Section 3(4).

5. Section 3(4) of the Act provides that when a detention order is made by a District Magistrate or a Commissioner of Police under Section 3(3) of the Act, the Magistrate/Commissioner shall 'forthwith' report the fact of the detention order to the State Government, along with the grounds on which the order was made, and any other relevant facts. It also states that no detention order shall remain in force for more than twelve days after making the order, unless it has been approved by the State Government. The proviso to Section 3(4) states that, if the grounds for detention under Section 8 are communicated to the detenu after five days, but not later than ten days from the date of detention, the words 'twelve days' will be substituted by 'fifteen days' in that sub-section. Section 3, in so far as is material, is extracted below:

"3. Power to make orders detaining certain persons

(1) The Central Government or the State Government may,-

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defense 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) ..

(3)...

(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."

6. Section 8 requires the authority making the detention order to communicate, to the detenu, the grounds for his detention. This communication has to be made "as soon as maybe," but not later than five days from the date of detention, in ordinary circumstances, and not later than ten days from the date of detention, in exceptional circumstances (with reasons to be recorded in writing for the delay). The section also requires the detaining authority to give the detenu the earliest opportunity to make a representation against the detention order, to the appropriate government. Section 8 is extracted below:

"8. Grounds of order of detention to be disclosed to persons affected by the order

(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

A 7. The question before the High Court was whether the act of the Magistrate, in reporting the order of detention to the State Government, after five days, was contrary to the requirement of reporting it "forthwith" under Section 3(4). The appellant submitted before the High Court that "forthwith" means immediately. It was further submitted that the delay of five days by the Magistrate, in reporting the detention to the State Government, vitiates the detention.

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8. The High Court dismissed the writ petition, holding that the scope of Section 3(4) has to be understood according to the scheme of the Act, and not in isolation. The High Court juxtaposed Section 3(4) with Section 8. It noted that under Section 3(4), the report of the detention has to be submitted along with the grounds for the detention. Comparing Sections 3(4) and 8, the High Court reasoned that the purpose of sending the report (with grounds) to the State Government under Section 3(4), is to enable the State Government to decide whether or not to approve the order of detention. If the State government does not approve the order of detention within twelve (or fifteen) days, it will lapse anyway. On the other hand, the purpose of Section 8 is more sacrosanct, as it is to make the detenu aware of the reasons for his detention and make a representation to the authorities for release. The requirement under Section 8 was held to stand on a higher pedestal than the one under Section 3(4). If Section 3(4) was interpreted in isolation, it would mean that, while the authority can furnish the grounds of detention to the detenu within five days (or in exceptional circumstances, ten days), it must furnish the report with grounds to the State Government immediately, or instantaneously. According to the High Court, such an anomaly was not contemplated under the law.

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F 9. Before determining the correctness of the impugned judgment, it is important to understand the meaning and scope of the term "forthwith" used in Section 3(4) of the Act.

10. This Court has examined the meaning of "forthwith," in the context of statutes providing for preventive detention. In **Keshav Nilkanth Joglekar** v **The Commissioner of Police, Greater Bombay**[1], a Constitution Bench of this court interpreted Section 3(3) of Preventive Detention Act, 1950 [now repealed], which was similar to Section 3(4) of the Act. The court compared the text of Section 3(3)

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[1]1956 SCR 653

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with Section 7 (equivalent to Section 8 of the Act). It observed that "forthwith" is different from "as soon as may be" in that, under Section 7 the time permitted is "what is reasonably convenient," whereas under Section 3(3), only that period of time is allowed, where the authority could not, without its own fault, send the report. The court laid down the following test for determining whether the action of the authority was compliant with the "forthwith" requirement:

> "Under section 3(3) it is whether the report has been sent at the earliest point of time possible, and when there is an interval of time between the date of the order and the date of the report, what has to be considered is whether the delay in sending the report could have been avoided." (emphasis supplied)

11. In **Bidya Deb Barma** v **D.M. Tripura, Agartala**[2], a Constitution Bench of this court held that:

> "When a statute requires something to be done 'forthwith,' or 'immediately' or even 'instantly,' it should probably be understood as allowing a reasonable time for doing it."

12. In **S.K. Salim** v **State of West Bengal**[3], a two judge Bench of this court observed that laws of preventive detention must be construed with the greatest strictness. However, the rule of strict interpretation does not mean that the act has to be done instantaneously, or simultaneously with the other act, without any interval of time. Here, the court was dealing with Section 3(3) of the Maintenance of Internal Security Act, 1971 (which is equivalent to Section 3(4) of the Act). The Court held that:

> "…the mandate that the report should be made forthwith does not require for its compliance a follow-up action at the split-second when the order of detention is made. There ought to be no laxity and laxity cannot be condoned in face of the command that the report shall be made forthwith. The legislative mandate, however, cannot be measured mathematically in terms of seconds, minutes and hours in order to find whether the report was made forthwith. Administrative exigencies may on occasions render a post-haste compliance impossible and therefore a reasonable allowance has to be made for unavoidable delays."

[2]1969 (1) SCR 562
[3](1975) 1 SCC 653

A 13. From the above cases, the position that emerges is that "forthwith," under Section 3(4), does not mean instantaneous, but without undue delay and within reasonable time. Whether the authority passing the detention order reported the detention to the State Government within reasonable time and without undue delay, is to be ascertained from the facts of the case. In **Joglekar**, there was a delay of eight days by the Police Commissioner, in sending the report to the State Government. However, the court found that the reasons for the delay were reasonable, since the Commissioner and his team were occupied in maintaining law and order during a particularly tense time in Mumbai.

C 14. The High Court held in its impugned judgment that:

> "While the delay in furnishing grounds of detention under Section 8 of the Act may prejudice the right of the detenu as guaranteed under Article 22(5) of the Constitution, furnishing of the grounds of detention under Section 3(4) may not prejudice the detenu so long as the report along with the grounds of detention are furnished within a reasonable time, but certainly within 12 days of the detention…If the report along with the grounds of detention is submitted beyond 12 days, it would certainly vitiate the detention order as without the report and the grounds of detention, the State Government could not have applied their minds whether to approve or not to approve the detention order under Section 3(4) of the Act."

15. The High Court is not correct in holding that as long as the report to the State Government is furnished within twelve days of detention, it will not prejudice the detenu. It is settled law that a statute providing for preventive detention has to be construed strictly. While "forthwith" may be interpreted to mean within reasonable time and without undue delay, it certainly should not be laid down as a principle of law that as long as the report to the State Government is furnished within 12 days of detention, it will not prejudice the detenu. Under Section 3(4), the State Government is required to give its approval to an order of detention within twelve, or as the case may be, fifteen days.

16. The expression "forthwith" under Section 3(4), must be interpreted to mean within reasonable time and without any undue delay. This would not mean that the detaining authority has a period of twelve days to submit the report (with grounds) to the State Government from

the date of detention. The detaining authority must furnish the report at the *earliest possible*. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to unavoidable circumstances beyond the control of the authority and not because of administrative laxity.

17. In the present case, the District Magistrate submitted the report to the State Government on the fifth day (17 July 2017), after the date of the detention order (12 July 2017). The reason for the delay of five days is neither mentioned in the State Government's order confirming the detention order, nor in the impugned judgment. It was for the District Magistrate to establish that he had valid and justifiable reasons for submitting the report five days after passing the order of detention. As the decision in **Joglekar** holds, the issue is whether the report was sent at the earliest time possible or whether the delay in sending the report could have been avoided. Moreover, as the decision in **Salim** holds, there should be no laxity in reporting the detention to the government. Whether there were administrative exigencies which justify the delay in sending the reports must be explained by the detaining authority. In the present case, as we shall explain, this was a matter specifically placed in issue before the High Court. The District Magistrate offered no explanation. This would vitiate the order of detention.

18. In paragraph 7.1 of the Writ Petition before the High Court, the following ground was specifically raised:

> "7.1 That, it is humbly submitted that on the perusal of the approval order (Annexure A/3) it transpires that the Respondent No.2 failed to report the fact of detention of the detenu to the Respondent No.1 forthwith, rather, he reported after a lapse of 5 (five) days i.e. in violation of section 3(4) of the Act. Thus, the impugned detention order (Annexure-N/1) is bad in law and liable to be vitiated for non-compliance of Section 3(4) of the Act."

The affidavit in opposition filed by the District Magistrate contains the following response to paragraph 7.1 of the petition:

> "9. That, with reference to para No.7.1 of the Writ Petition, I beg to state that as the 16-07-2017 is Sunday, the grounds of detention was served to the detenu on 17-07-2017. There is no violation of the National Security Act, 1980."

A It is evident, that there was no traverse to the submission that the act of reporting the detention after five days was in violation of Section 3(4). The District Magistrate did not furnish any reason whatsoever for having taken five days to report the detention to the state government. Paragraph 9 of the counter contains a reference to the service of the grounds of detention to the detenu. There was no traverse of the ground B taken in paragraph 7.1. No justification was sought to be established for the delay in reporting the detention to the state government.

19. In the circumstances, we allow the appeal and set aside the impugned judgment and order of the High Court dismissing the Writ Petition. In consequence, the order of detention shall stand set aside. C The appeal is accordingly allowed.

Nidhi Jain Appeal allowed.