

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE PUSHPENDRA YADAV

WRIT PETITION No. 327/2026

VIKAS TIWARI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Somnath Seth and Shri Sushil Goswami – Advocates for the petitioner.

Shri Vivek Khedkar – Senior Advocate/Additional Advocate General with Shri Ravindra Dixit – Govt. Advocate for the respondents/State.

ORDER

(Passed on this 31st day of March 2026)

Per: Justice Anand Pathak

Present petition is preferred by the petitioner under Article 226 of the Constitution of India taking exception to the orders dt.04.11.2025 (Annexure P/1), dt. 04.12.2025 (Annexure P/2) and subsequent order dt.04.02.2026 (Annexure P/8), whereby the petitioner is detained under Section 3 of the National Security Act, 1980 (for short “Act of 1980”).

2. It appears that petitioner is resident of District Vidisha (M.P.) and due to his criminal antecedents and some incident of crime took place on

20.10.2025, a case has been registered against the petitioner vide Crime No.815/2025 for the offences under Sections 296, 115 (2), 351 (3), 61(2), 238 and 49 of BNS at Police Station Kotwali, Vidisha. It appears that this incident precipitated the chain of events, which resulted into passing of order dt.04.11.2025 by District Magistrate (D.M.) Vidisha, whereby petitioner has been detained under Section 3 of the Act of 1980 purportedly for three months. During pendency of this petition, vide order dt. 04.02.2026 his detention is extended for another three months.

3. Counsel for the petitioner raised the question of opportunity of hearing and absence of cogent material against him to be detained under Act of 1980. However, prime argument of counsel for the petitioner was that after detention order is passed, D.M. (although mentioned the fact that representation can be made by the petitioner/detenué before State Government, the Advisory Board and Central Government against detention). did not mention the fact that representation can be made before D.M. also, thus vitiated the proceeding.

4. It is the submission of counsel for the petitioner in support of the grounds raised is that D.M. is the detaining authority under Section 3 of the Act of 1980 till detention is approved by the State Govt. Therefore, D.M. is required to mention the fact that representation can be made before him also.

5. Learned counsel for the petitioner refers Section 8 of Act of 1980, which talks about grounds of order of detention to be disclosed affected by the order and Section 14, which deals with Revocation of detention orders. According to him, authority, who passes the order, has authority to revoke it under Section 14 of the Act of 1980 [as well as under Section 21 of General Clauses Act, 1897 (for short “Act of 1897”)]. Therefore, D.M. is the authority for revocation of detention order beside State. Therefore, representation can be made before D.M. Non-disclosure of the fact to detenu that representation can be made before D.M. also, whole proceeding stands vitiated.

6. In support of his submissions, learned counsel for the petitioner placed reliance over Constitution Bench judgment of Apex Court in the case of **Kamleshkumar Ishwardas Patel v. Union of India (1995) 4 SCC 51** and Full Bench Judgment of this Court in the case of **Kamal Khare v. State of M.P. and others 2021 (2) MPLJ 554**. He also relied upon the judgment of this Court in the case of **Monika Tripathi Vs. State of M.P. and others (2021) 2 MPLJ 25**. On the strength of these judgments and referring Article 22 (5) of the Constitution of India, counsel for petitioner prayed for setting aside of impugned orders.

7. *Per contra*, learned counsel for respondents vehemently opposed the prayer. Learned counsel for respondents referred different paragraphs of judgment passed by the Apex Court in the case of **Kamleshkumar**

Ishwardas Patel (supra) and submits that this judgment was passed **while** considering the statute Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (for short “**COFEPOSA Act**”) and the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 (for short “**PIT NDPS Act**”). In those statutes, detaining authority does not need approval of the appropriate Government of the detention order passed by the officer because he is empowered to pass such an order under Section 3 of the COFEPOSA Act. Therefore, in that particular factual details and peculiar facts and circumstances of that case, Apex Court passed the order and held that detaining authority has to decide the representation. It is clarified that while dealing with COFEPOSA Act and PIT NDPS Act, Constitutional Bench passed the said order. However, Constitution Bench was aware of the fact that Section 3 of the Act of 1980 and its different provisions are not such where the detaining authority can decide the representation.

8. Learned counsel for the respondents referred different paragraphs of judgment passed by the Apex Court in the case of **Kamleshkumar Ishwardas Patel (supra)** and submits that D.M., who made the order, is required to forthwith report the fact to the State Government to which he is subordinate. Said provision further prescribes that order passed by the detaining authority shall remain in force for twelve days only unless it is approved by the State Government, otherwise it meets the natural death.

Therefore, appropriate Authority is State Government which can decide the representation.

9. Heard learned counsel for the parties at length and perused the record.

10. Though the Constitution has recognized the necessity of laws as to preventive detention, however, it has also provided certain safeguards to address the harshness of provisions while circumscribing the legislative power conferred on this topic. In other words, Article 22 lays down the permissible limits of legislation empowering the preventive detention and it prescribes the minimum procedure and that must be included in any law, which permits authority to use preventive detention in National/Public interest as provided in Statute.

11. Immediately after Constitution came into being, Preventive Detention Act, 1950 (for short “Act of 1950”) was promulgated with an object to provide preventive detention in certain cases and for matters connected therewith. It was replaced by the National Security Ordinance 1980 and thereafter by The National Security Act, 1980 (Act of 1980). Subject matter of present case falls under the Act of 1980. Section 3 of the Act of 1980 gives power to make order detaining certain persons. Section 3 of the Act of 1980 is reproduced hereinbelow for ready reference :-

3. Power to make orders detaining certain persons.—(1)

The Central Government or the State Government may,—

(a) -----X-----X-----

- (b) -----X-----X-----
- (2) -----X-----X-----
- (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 detentions, this sub-section shall apply subject to the modification that, for the words “twelve days”, the words “fifteen days” shall be substituted.

12. Similarly, Sections 8 of the Act of 1980 provides for grounds of order of detention to be disclosed to persons affected by the order and the earliest opportunity of making a representation against the order to the appropriate Government.

13. Now the grievance of the petitioner is that D.M. has passed the order of detention and did not mention the fact in the impugned order that representation can be made to D.M. himself. Although it is mentioned that representation can be made by the petitioner/detenué before the State Government, Advisory Board and the Central Government, however, it is not mentioned that representation can be made to him also. Therefore, according to petitioner, detention order is vitiated by law. However, it does not appear so.

14. Perusal of Section 3 (3) and (4) of the Act of 1980 reveals that for detention of three months, D.M. can pass detention order but he shall have to forthwith report the fact to the State Govt. and no such order shall remain in force for more than twelve days after making thereof unless it is approved by the State Govt. It means, the detaining authority has the power to revoke the order of detention (if any available) at best within twelve days. This aspect has been dealt with by the Apex Court in the case of **Ibrahim Bachu Bafan v. State of Gujarat (1985) 2 SCC 24** while interpreting Section 11 of COFEPOSA Act (regarding revocation of detention order) read with Section

21 of Act of 1897. Apex Court has given certain guidelines in para 7, which is reproduced hereinbelow for ready reference :-

".....the words "without prejudice to the provisions of Section 21 of the General Clauses Act 1897" used in Section 11 (1) of the Act give expression to the legislative intention that without affecting that right which the authority making the order enjoys under Section 21 of the General Clauses Act, an order of detention is also available to be revoked or modified by authorities names in clauses (a) and (b) of Section 11 (1) of the Act. Power conferred under clauses (a) and (b) of Section 11 (1) of the Act could not be exercised by the named authorities under Section 21 of the General Clauses Act as these authorities on whom such power has been conferred under the Act are different from those who made the orders. Therefore, conferment of such power was necessary as Parliament rightly found that Section 21 of the General Clauses Act was not adequate to meet the situation. **Thus, while not affecting in any manner and expressly preserving the power under Section 21 of the General Clauses Act of the original authority making the order, power to revoke or modify has been conferred on the named authorities."**

15. This observation is reiterated by the Apex Court in the case of **Kamleshkumar Ishwardas Patel (supra)** also in para 26. However, Constitution Bench in **Kamleshkumar Ishwardas Patel (supra)** was aware of different provisions of Act of 1980 and the realm of COFEPOSA Act and PIT NDPS Act. Therefore, while interpreting the same, Apex Court in para 34 has held as under :-

34. In the National Security Act there is an express provision [Section 3(4)] in respect of orders made by the District Magistrate or the Commissioner of Police under Section 3 (3) and the District Magistrate or the Commissioner of Police who has made the order is required to forthwith report the fact to the State Government to which he is subordinate. The said provision further prescribes that 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. This would show that it is the approval of the State Government which gives further life to the order which would otherwise die its natural death on the expiry of twelve days after its making. It is also the requirement of Section 3 (4) that the report should be accompanied by the grounds on which the order has been made and such other particulars as, in the opinion of the said officer, have a bearing on the matter which means that the State Government has to take into consideration the grounds and the said material while giving its approval to the order of detention. The effect of the approval by the State Government is that from the date of such approval the detention is authorised by the order of the State Government approving the order of detention and the State Government is the detaining authority from the date of the order of approval. **That appears to be the reason why Section 8 (1) envisages that the representation against the order of detention is to be made to the State Government. The COFEPOSA Act and the PIT NDPS Act do not require the approval of an order made by the officer specially empowered by the State Government or by the Central Government. The order passed by such an officer**

operates on its own force. All that is required by Section 3(2) of COFEPOSA Act and PIT NDPS Act is that the State Government shall within 10 days forward to the Central Government a report in respect of an order that is made by the State Government or an officer specially empowered by the State Government. An order made by the officer specially empowered by the State Government is placed on the same footing as an order made by the State Government because the report has to be forwarded to the Central Government in respect of both such orders. No such report is required to be forwarded to the Central Government in respect of an order made by an officer specially empowered by the Central Government. Requirement regarding forwarding of the report contained in Section 3(2) of the COFEPOSA Act and the PIT NDPS Act cannot, therefore, afford the basis for holding that an order made by an officer specially empowered by the central Government or the State Government acquires deemed approval of that government from the date of its issue. Approval, actual or deemed, postulates application of mind to the action being approved by the authority given approval. Approval of an order of detention would require consideration by the approving authority of the grounds and the supporting material on the basis of which the officer making the order had arrived at the requisite satisfaction for the purpose of making the order of detention. **Unlike Section 3 (4) of the National Security Act there is no requirement in the COFEPOSA Act and the PIT NDPS Act that the officer specially empowered for the purpose of making of an order of detention must forthwith send to the concerned government the grounds and the supporting material on the**

basis of which the order of detention has been made. Nor is it prescribed in the said enactments that after the order of detention has been made by the officer specially empowered for that purpose the concerned government is required to apply its mind to the grounds and the supporting material on the basis of which the order of detention was made. The only circumstance from which inference about deemed approval is sought to be drawn is that the order is made by the officer specially empowered for that purpose by the Government concerned. Merely because the order of detention has been made by the officer who has been specially empowered for that purpose would not, in our opinion, justify the inference that the said order acquires deemed approval of the government that has so empowered him, from the date of the issue of the order so as to make the said government the detaining authority. By specially empowering a particular officer under Section 3 (2) of the COFEPOSA Act and the PIT NDPS Act the Central Government or the State Government confers an independent power on the said officer to make an order of detention after arriving at his own satisfaction about the activities of the person sought to be detained. Since the detention of the person detained draws its legal sanction from the order passed by such officer, the officer is the detaining authority in respect of the said person. He continues to be the detaining authority so long as the order of detention remains operative. He ceases to be the detaining authority only when the order of detention ceases to operate. This would be on the expiry of the period of detention as prescribed by law or on the order being revoked by the officer himself or by the authority mentioned

in Section 11 of the COFEPOSA Act and Section 12 of the PIT NDPS Act. There is nothing in the provisions of these enactments to show that the role of the officer comes to an end after he has made the order of detention and that thereafter he ceases to be the detaining authority and the concerned government which had empowered him assumes the role of the detaining authority. We are unable to construe the provisions of the said enactment as providing for such a limited entrustment of power on the officer who is specially empowered to pass the order. **An indication to the contrary is given in Section 11 of the COFEPOSA Act and Section 12 of the PIT NDPS Act which preserve the power of such officer to revoke the order that was made by him. This means that the officer does not go out of the picture after he has passed the order of detention. It must, therefore, be held that the officer specially empowered for that purpose continues to be the detaining authority and is not displaced by the concerned government after he has made the order of detention. Therefore, by virtue of his being the detaining authority he is required to consider the representation of the person detained against the order of detention.”**

16. If Section 8 of the Act of 1980 is seen in juxtaposition to Section 7 of the Act of 1950, then it gives an impression that once a person is detained in pursuance of detention order, then he has to be given reasons for his detention and opportunity to make representation against the order to the appropriate Government.

17. “Appropriate Government” is defined in Section 2 (a) of the Act, 1980 which in the present case is State Government. Therefore, Constitution Bench while referring the judgments passed by the Apex Court earlier in the case of **Abdul Karim (supra), Pankaj Kumar Chakrabarty (supra) and Jayanarayan Sukul (supra)** held that representation in the case of Act of 1980 is to be made to the State Government.

18. Now the question arises regarding effect of Section 21 of Act of 1897 vis-a-vis Section 14 of the Act of 1980. True it is, that the authority, which has passed the order, can revoke it and if guidance given by the Apex Court in the case of **Ibrahim Bachu Bafan (supra)** is considered, then beside State Government, the detention authority has also right to revoke the detention order but in the present case in statutory set up of Act of 1980, D.M. can revoke the order till it is approved by the State Govt. Thereafter, D.M. has no authority to consider the order even for revocation. But so far as consideration of representation is concerned, said authority lies with the appropriate Government. Therefore, even if the authority of revocation may be available to the D.M. for 12 days as outer limit or till approved by the State Govt. (which can happen before 12 days even), still representation is to be made to the State Government and not to the Collector. Section 8 also mandates so. Interpreting that legal framework, Constitution Bench of Apex

Court clarified the position in different paragraphs, specially in para 34 of the judgment referred hereinabove.

19. Full Bench of this Court in the case of **Kamal Khare (supra)**, while relying upon the judgment of Constitution Bench of Apex Court in the case of **Kamleshkumar Ishwardas Patel (supra)**, apparently lost sight of distinction carved out by the Constitution Bench, which is prominently reflected in para 34 of the said judgment. Similarly, the judgments referred in the case of **Abdul Karim (supra)**, **Pankaj Kumar Chakrabarty (supra)** and **Jayanarayan Sukul (supra)** although passed in the realm of Act of 1950 and hold that the appropriate Government shall consider the representation but with same object and more or less similar provisions Act of 1980 is framed, therefore, analogy can be drawn from those judgments which were passed in statutory realm of Act of 1950. Therefore, this Court is bound by guidance given by the Apex Court. Even Section 8 of Act of 1980 also mandates for consideration of representation by the appropriate Government.

20. One more aspect deserves consideration is that as per Section 8 of the Act of 1980, detention authority shall submit grounds to the detenu on which the order has been passed, ordinarily not later than five days and in exceptional circumstances not later than 10 days from the date of detention. Section 3 (4) of the Act of 1980 mandates that the order shall remain in force not more than 12 days unless approved by the State Government. It means,

for example, if in exceptional circumstances on 10th day grounds have been furnished to the detenu, then as per proviso to sub section (4) of Section 3, only five days extra are available to the detenu to make representation and to get the representation decided by D.M. because after 12 days (or 15 days in exceptional circumstances, detention order may meet natural death if it is not approved by the State Government. In other words, after 12 days (or 15 days as the case may be), D.M. ceases to be detaining authority.

21. Even otherwise, the moment D.M. passes the order and refers the matter to the appropriate Government, he becomes *functus officio*. Record is sent with the order to the appropriate Government, therefore, DM would not be in a position to take decision over any representation preferred by detenu.

22. Therefore, no logic exists for consideration of representation by D.M. Therefore, making representation and taking decision over representation would not be an effective remedy for the detenu. Therefore, if grounds are furnished within five days, and if representation is made by the detenu before the State Government, then it can be decided by the State Government without delay and as per Section 14 of the Act of 1980, it can be revoked even by the State Government at any time. Therefore, scheme and provisions of Act of 1980 indicates that no illegality has been caused by D.M. if detenu has not given option to make representation before D.M. himself. Detenu has right to make representation before the State Government.

23. However, it is apposite and desirable that clarity be brought to the issue regarding consideration of representation by D.M. and/or by appropriate Government. If representation can be decided by DM, then whether non-mentioning of the fact in the impugned order about right of detinue to make representation before D.M. vitiates the order or not is another question.

24. Therefore, this Court deems fit to make a reference to Hon'ble the Chief Justice with a recommendation that it be placed before a Larger Bench as per **Chapter IV Rule 8 to Rule 12** of The High Court of Madhya Pradesh Rules, 2008. Questions for reference are as under :-

- (i) Whether in view of clarification and distinction carved out by the Constitution Bench of the Apex Court in the case of **Kamleshwar Ishwardas Patel (supra)**, D.M. has no authority to consider representation of detinue and representation can only be considered by the appropriate Government ?
- (ii) Whether Full Bench of this Court in the case of **Kamal Khare (supra)** did not consider the law propounded by Apex Court in the case of **Kamleshwar Ishwardas Patel (supra)** specially in para 34 in correct perspective and wrongly held that D.M. has the authority to consider the representation ?
- (iii) In view of Section 8 of the Act of 1980, where power is vested with the appropriate Government to consider

representation, whether representation can only be considered by appropriate Government ?

- (iv) If D.M. has not disclosed the fact that representation can be made to the D.M. also, whether it vitiates the process ?
- (v) Whether judgment of the Full Bench of this Court in the case of **Kamal Khare (supra)** lays down correct law so far as present issue is concerned, in the light of judgment pronounced by Constitution Bench of the Apex Court in the case of **Kamleshwar Ishwardas Patel (supra)**.

25. At this stage, counsel for the petitioner prays for interim relief and release of petitioner during pendency of petition.

26. Since the matter is to be referred to Larger Bench, therefore, petitioner may prefer appropriate application before Larger Bench or avail remedy available to him under Section 15 of the Act of 1980 before appropriate Government (if available) in accordance with law.

27. Registry of this Court is directed to place the matter before Hon'ble the Chief Justice with a request for constitution of a Larger Bench either at Principal Seat Jabalpur or at Bench Gwalior, as deem fit.

(ANAND PATHAK)
JUDGE

(PUSHPENDRA YADAV)
JUDGE

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