

GAHC040007162023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : W.P.(Crl.) 2/2023

1:Tadak Nalo
Son of Tanga Byaling,
Permanent Resident of Nacho, PO/PS Nacho, in the Upper Subansiri District,
Arunachal Pradesh.

VERSUS

1:THE STATE OF AP and 2 Ors.
to be represented by the Principal Secretary (Home), Govt. of Arunachal Pradesh,
Itanagar.

2:the Deputy Commissioner cum District Magistrate
Capital
Itanagar
Arunachal Pradesh

3:the Superintendent of Police
Capital
Itanagar
Arunachal Pradesh

Advocate for the Petitioner : A Sarma

Advocate for the Respondent : GA (AP)

Linked Case No. : W.P.(Crl.) 1/2023

1:Techi Puru
S/o Lt. Techi Kuli,
A Permanent Resident of Village Khemlee, PS Sagalee, Dist. Papumpare, AP and
presently residing at Doimukh, PO/PS Doimukh, Dist. Papum Pare, Arunachal
Pradesh.

VERSUS

1:THE STATE OF AP and 2 Ors.

to be represented by the Principal Secretary (Home), Govt. of Arunachal Pradesh,
Itanagar.

2:the Deputy Commissioner cum District Magistrate

Capital

Itanagar

Arunachal Pradesh.

3:the Superintendent of Police

Capital

Itanagar

Arunachal Pradesh

Advocate for the Petitioner : A Sarma

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN
HONBLE MR. JUSTICE KARDAK ETE

JUDGEMENT & ORDER (CAV)

Date:- 21-06-2023

(Robin Phukan, J)

Heard Mr. A. Sarma, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Sr. Govt. Advocate, Arunachal Pradesh appearing for the State/respondents.

2. As a common question of law is involved in both these writ petitions, being WP(Crl.) No.1(AP)/2023 and WP(Crl.) No.2(AP)/2023, and as agreed by learned Advocates of both sides, it is proposed to dispose of both these petitions, by this common judgment and order.

3. In writ petition (Crl.) No.1 (AP)/2023, the petitioner - Sri Tech Puru, has put to challenge the detention order, dated 10.05.2023, No. DM/ICC/APUAPA/01/2023-35/843,

under Section 3(i) of the Arunachal Pradesh Unlawful Activities (Prevention) Act, 2014, (hereinafter referred as 'the APUAPA') as well as the order dated 20.05.2023, No. DM/ICC/APUAPA/01/2023-35, passed by the District Magistrate, Capital: Itanagar, issuing proclamation against under Section 82 of the Cr.P.C. and declaring him as proclaimed offender under section 7 of APUAPA.

4. And in the writ petition (Crl.) No.2 (AP)/2023, the petitioner - Sri Tadak Nalo has put to challenge the detention order, dated 11.05.2023, No. DM/ICC/APUAPA/01/2023-39, passed under section 3(i) of APUAPA, as well as the order dated 20.05.2023, No. DM/ICC/APUAPA/01/2023-39, passed by the District Magistrate, Capital: Itanagar, issuing proclamation against him under Section 82 of the Cr.P.C. and declaring the petitioner as proclaimed offender under Section 7 of APUAPA.

Background Facts:-

5. The background facts, leading to filing of the present two writ petitions are adumbrated herein below :-

“A group of individuals have declared three days Capital Bandh from 10th to 12th May, 2023 to persuade their various demands with the Government, in connection with the paper leakage case of Arunachal Pradesh Public Service Commission (APPSC). Thereafter, the District Magistrate, Capital: Itanagar, vide order dated 06.05.2023, No.DM/ Capital/Jud-01/2023, under Section 144 Cr.P.C, read with APUAPA, has declared the aforesaid Capital Bandh from 10th to 12th May, 2023 as illegal and prohibited the same under the law. In doing so, the District Magistrate had relied upon a decision of Supreme Court in Civil Appeal No.7728/29 of 1997 (**CPI vs. Bharat Kumar and others**). It is to be noted here that in the aforesaid judgment, Hon'ble Supreme Court had termed any bandh call, given by any political parties or organizations or association or groups or individuals, as unconstitutional and illegal.

Thereafter, the District Magistrate, had found that the present petitioners, namely, Sri Tech Puru and Sri Tadak Nalo had taken active part in the said bandh call and they refused to co-operate with the District Administration, and intended to go ahead with the proposed bandh call. They came out of their respective houses and instigated the

public to participate in the bandh call through various means. And such activities of the petitioners had directly caused a feeling of insecurity, danger among the general public, disruption of daily supplies and essential services to the public. Then having been satisfied, the District Magistrate had declared both of them as 'unlawful person' in terms of Section 2(viii) of the APUAPA, 2014. Thereafter, the District Magistrate had passed the impugned detention orders, dated 10.05.2023, No.DM/ICC/APUAPA/01/2023-35/843, against Techhi Puru, and the order dated 11.05.2023, No. DM/ICC/APUAPA/01/2023-39, against Tadak Nalo, under Section 3(i) of the APUAPA.

Thereafter, the Superintendent of Police, Capital Itanagar, vide his letter No. SPC/ITA/CR-96/23, dated 20.05.2023, had submitted a report to the District Magistrate stating that all necessary efforts have been made to apprehend Sri Techhi Puru and Sri Tadak Nalo, but the same failed to yield any result, and the detention order could not be executed and they are absconding and concealing themselves from being detained by police and that they are also trying to instigate the public and the said act is seen in a video clip, uploaded in facebook on 18.05.2023. Thereafter, the District Magistrate, had issued proclamation against both the petitioners under section 82 Cr.P.C. read with section 7(1)(a) APUAPA vide order dated 20.05.2023, No. DM/ICC/APUAPA/01/2023-35, and No. DM/ICC/APUAPA/01/2023-39, and served the copy of the said orders to them and also pasted a copy in the conspicuous location for filing representation by them against the order of the District Magistrate, Capital: Itanagar under Section 8(i) of the APUAPA."

6. Being aggrieved, both the petitioners approached this Court, by filing the present Writ Petitions, challenging the correctness or otherwise of the impugned orders, on the following grounds:-

- (i)** that, the petitioners were not involved in the bandh call given by some individuals leading to passing of the impugned detention orders and in fact, the rally was organized by the All Nyishi Students Union (ANSU) in connection with the paper leakage case of Arunachal Pradesh Public Service Commission (APPSC) on 03.12.2022 and submitted a memorandum to the Chief Minister of the State, on behalf of the

aspirants and subsequently, the ANSU called 12 hours bandh on 27.12.2022, claiming non-fulfillment of their demands;

- (ii)** that, though the petitioner Sri Techī Puru is the Chairman and petitioner Sri Tadak Nalo is the Vice-Chairman of the PAN Arunachal Joint Steering Committee (in short 'the PAJSC'), yet, said PAJSC was espousing their cause in a democratic manner for transparency in the APPSC, accountability of the paper leakage and declaring all such examinations null and void;
- (iii)** that, the indifferent attitude of the Government towards the 13 Points Charter, a large section of the public called dawn to dusk bandh on 17.02.2023, and the said bandh was declared as illegal by the Government;
- (iv)** that, as regards the demands of the 13 Points Charter, the PAJSC and the ANSU sought intervention of the Chief Minister of the State on their 13 Points Charter and on 04.05.2023, certain social activists and groups called three days Capital Bandh from 10th to 12th May, 2023 and the PAJSC was no way involved in the same;
- (v)** that, the three days Capital Bandh from 10th to 12th May, 2023 went off peacefully and no untoward incident had happened during the period and the same was acknowledged by the Superintendent of Police (SIT), Crime in the press meet dated 12.05.2023, and the same was reported in the newspaper also;
- (vi)** that, the petitioners had addressed a press meet on 09.05.2023, and they clarified that the demands of the PAJSC were same as that of those social activists and groups, who called the bandh and thereafter, petitioner - Sri Techī Puru, who was serving as a Junior Engineer in the PWD, Capital Division-B, Itanagar; was suspended from his service on 17.05.2023.
- (vii)** that, the petitioners are available all along in Itanagar and they are not been absconding and also they had no criminal antecedent and never called any bandh and never took part in any act, which is to be construed as detrimental to the maintenance of public order;
- (viii)** that the detention order are sought to be executed against wrong persons and it was

passed for a wrong purpose and it was passed on fake, extraneous and irrelevant ground; and

(ix) that, Section 3(1) of the APUAPA is wrongly invoked against the petitioners, as they are not dangerous persons within the meaning of Section 2(ix) and not a property grabber within the meaning of Section 2(xi) of the said APUAPA and never been accused of engaging in any unlawful activities and the impugned orders have been passed arbitrarily, without any authority of law and that the object of law is not punitive, but only preventive and since the bandh call had passed off peacefully, the impugned orders have no life/ relevancy as on today and the proclamation order is bad in law and all the arrested persons have already been released by the Government. And therefore, it is contended to allow the petition.

7. The respondent No.2 has filed an affidavit-in-opposition, wherein it has been stated that the writ petitioners are the Chairman and Vice-Chairman of the PAJSC and they have tacitly been instigating the general public to resort to mass protest against the State Government in the APPSC Paper Leakage Fiasco, which is prejudicial to the security of the state and maintenance of public order/maintenance of daily supplies and services essential to the public. It is also stated that the aforesaid bandh call, though declared unlawful, yet, some individuals and groups indulged in protest, causing injuries to several police personnel deployed for maintaining law and order as well as destruction of public properties and causing injuries to public, for which many FIRs have been registered against the callers of the aforesaid illegal bandh. It is further stated that as a result of the bandh call, on 17.02.2023, the proposed swearing-in-ceremony of the new Chairman and Members of the APPSC, could not be held. It is also stated that the video clipping, which the deponent had collected, shows involvement of the petitioners, addressing and inviting all their relatives, clan members, the PAJSC activists and general public to accompany them in the march to the Deputy Commissioner's Office at Itanagar and the petitioners have been absconding and concealing themselves, for which proclamations had been issued against them. Under the aforesaid circumstances, it is contended to dismiss the petition.

8. The petitioner No.1 has also filed an additional affidavits stating that all detenus, who

have been arrested and detained, in connection with the three days bandh call, have already been released by the authority.

9. Mr. A. Sharma, the learned counsel for the petitioners submits that the impugned orders are bad in law and passed without consideration of the object of preventive detention law. Referring to the case of **Additional Secretary to the Government of India and Others vs. Alka Subhash Gadia**, reported in **1992 Supp (1) SCC 496**, Mr. Sharma submits that the impugned orders are being challenged at pre-execution stage and at this stage the court can interfere with the impugned orders on the five grounds mentioned therein. Mr. Sharma further submits that the case of the petitioner falls under ground No.2, 3 and 5 mentioned in the said case. Referring to the cases of **Subhash Popatlal Dave vs. Union of India & Anr.** reported in **(2012) 7 SCC 533** and **Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14**, Mr. Sharma submits that the five grounds mentioned in the case of **Alka Subhash Gadia** (supra) are only illustrative, not exhaustive. Referring to another decision in **State of Tamil Nadu through Secretary to Government, Public (Law and Order) vs. Nabila and Anr.**, reported in **(2015) 12 SCC 127**, Mr. Sharma submits that the object of preventive law is not punitive, but only preventive and the impugned orders were passed to prevent the three days bandh call, from 12.05.2023 till 15.05.2023, and as the said bandh call passed off peacefully, as per the press statement of the Superintendent of Police, and as such the impugned orders, as on date, has no relevancy and they becomes nonexistent or stale and lost its link with the object sought to be achieved, and according to him, as stated by Hon'ble Supreme Court in the case of **State of Maharastra and Ors. vs. Bhaurao Punjabrao Gawande** reported in **(2008) 3 SCC 613**, and subsequently, in the case of **Subhash Popatlal Dave (supra)**, on this count alone, it can be quashed, besides the other grounds as stated above, and also on the ground of delay in execution of the said orders. Mr. Sharma further submits that both the petitioners are very much available in the Itanagar capital region and they have never been absconding, and therefore, the impugned orders of issuing proclamation against them are illegal and therefore, Mr. Sharma has contended to set aside the same.

10. Per contra, Mr. S. Tapin, the learned Senior Govt. Advocate, vehemently opposed the

petition and submits that the District Magistrate, Capital: Itanagar had passed the impugned orders on subjective satisfaction, the same is within the domain of the authority, and the court cannot examine the subjective satisfaction of the authority. Producing the relevant Files of the petitioners before the court, Mr. Tapin submits that there are sufficient materials in the file to derive substantive satisfaction to pass the impugned orders against the petitioners and to declare them as proclaimed offender as they have been absconding and evading arrest. Mr. Tapin further submits that in view of a decision of three Judge Bench of Hon'ble Supreme Court in **Sayed Taher Bawamiya v. Jt. Secy. to the Govt. of India**, reported in **(2000) 8 SCC 630**, and also in view of another decision in **Admn. of the National Capital of Delhi v. Prem Singh**, reported in **1995 Supp (4) SCC 252**, no interference of the impugned orders, at the pre-detention stage, is permitted on any other grounds except on the five grounds, mentioned in the case of **Alka Subhash Gadia** (supra); otherwise the very object to preventive detention will be thwarted. Mr. Tapin also referred to some other decisions of Hon'ble Supreme Court in **Vinod K. Chawla vs. Union of India**, reported in **(2006) 7 SCC 337**, and also to the case of **Hare Ram Pandey v. State of Bihar** reported in **(2004) 3 SCC 289** and **Union of India and Others vs. Parasmal Rampuria** reported in **(1998) 8 SCC 402**, to contend that the submission of learned counsel for the petitioner that on account of delay in execution of the impugned orders, the live and proximate link in the alleged activities of the petitioner, with that of the object behind passing the impugned orders stands snapped and there is no reasonable cause for executing the same, is wholly misconceived. Therefore, Mr. Tapin has contended to dismiss both the petitions.

The issues before this court:-

11. From the assertions made in pleadings of the parties and also from the submissions and counter submissions of the learned counsel for the respective parties, the issues, that have arisen for consideration of this court are framed as under:-

- (I) Whether the impugned orders, passed under section 3(i) of the APUAPA, in respects of both the petitioners suffers from any infirmity?
- (II) Whether the impugned orders, which relates to pre-execution detention, can be challenged only on the five grounds mentions in the case

of **Alka Subhash Gadia** (supra) and not on any other grounds?

(III) Whether 'live and proximate link' between the incident of bandh call for which the petitioners are sought to be detained and the detention order get snapped on account of being delayed in execution of the same and on such count the impugned orders becomes non-existent or stale and on that ground the court can interfere with the same ?

Findings:-

12. Having heard the submission of learned Advocates of both sides we have carefully gone through the petition and the documents placed on record and also perused the counter affidavit filed by the respondent No.2 and the additional affidavit submitted by the petitioner in WP (Crl.) No.01(AP)/2023. Also we have gone through the case laws referred by learned Advocates of both sides. We have also gone through the connected Files produced before the court by Mr. Tapin, the learned Senior Government Advocate, and the relevant provisions of law.

13. It appears that both the impugned detention orders, dated 10.05.2023, No. DM/ICC/APUAPA/01/2023-35/843 against petitioner Techii Puru in WP(C) AP NO.01/2023 and detention order dated 11.05.2023, No. DM/ICC/APUAPA/01/2023-39 against petitioner Tadak Nalo in WP(C) AP NO.02/2023, were passed under section 3(i) of the APUAPA. And the requirement of passing such detention orders was to prevent the untold miseries and hardship to the patients, students and business community in particular and general public at large, and also to protect the fundamental right of the common citizen, from three days bandh call given by some group of individuals. From a careful perusal of the connected Files produced before the court and from the submissions advanced by learned Advocates of both sides, we have no doubt in our mind about the requirement of passing such orders in the greater interest of public.

14. Indisputably, both the petitioners are Chairman and Vice-Chairman of PAJAC. A careful perusal of the Files, so produced before this court for perusal, reveals that there are sufficient grounds to derive subjective satisfaction by the District Magistrate to pass the impugned orders. Though Mr. Sharma, the learned counsel for the petitioners submits the petitioners are innocent and no way involved in the bandh call and in fact, it was called by

one organization namely 'Nari Sakti' and several local organizations, yet, we are unable to agree with such submission in view of the materials available on the record. Having tested the impugned orders on the touchstone of the provisions of the APUAPA, we have no good reason to arrive at a finding that at the relevant point of time it was not the right course, that have been adopted by the District Magistrate, Capital : Itanagar.

15. Thus, we find no infirmity in the impugned orders so passed by the District Magistrate, Capital, Itanagar. Though Mr. Sharma, the learned counsel for the petitioner, submits that the petitioners comes under the exception No.2, 3 and 5, so mentioned in the case of **Alka Subhash Gadia** (supra), yet, the materials available on the Files so produced by Mr. Tapin, speaks otherwise and therefore, we are unable to record concurrence with Mr. Sharma. Thus, Issue No.I, has to be answered in affirmative, and accordingly, the same stands answered.

16. Now coming to the issue No. II, we find that the categorical submission of Mr. Tapin, the learned Senior Government Advocate is that except the five grounds mentioned in the case of **Alka Subhash Gadia** (supra) the petition challenging detention orders at pre-execution stage is not permissible. It is to be mentioned here that the five grounds mentioned in the said case are:-

- (i) that the impugned order is not passed under the Act under which it is purported to have been passed,
- (ii) that it is sought to be executed against a wrong person,
- (iii) that it is passed for a wrong purpose,
- (iv) that it is passed on vague, extraneous and irrelevant grounds or
- (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question."

17. We have carefully gone through the case laws - **Alka Subhash Gadia** (supra) and

Sayed Taher Bawamiya (supra) and another decision in **Admn. of the National Capital of Delhi v. Prem Singh**, reported in **1995 Supp (4) SCC 252**, referred by Mr. Tapin the learned Senior Government Advocate, to bolster his submission. And we find that the proposition of law, so laid down in aforementioned cases, have undoubtedly strengthened the submission of Mr. Tapin. It is to be mentioned here that the decisions in **Sayed Taher Bawamiya** (supra), was rendered by a three Judge Bench, wherein it has been held that : *‘the courts have the necessary power in appropriate cases, to interfere with the detention order at the pre-execution stage, but the scope for interference is very limited, and only after being prima-facie satisfied with the existence of any of the five grounds mentioned in the case of **Alka Subhash Gadia** (supra) the court can interfere.’* The Bench also did not agree with the contention of the petitioner that these exceptions are not exhaustive, and held that as said in the case of **Alka Subhash Gadia** (supra) it is only in these five types of instances that the court may exercise its discretionary jurisdiction under Article 226 or Article 32 of the Constitution, at the pre-execution stage.

18. However, the submission of Mr. Tapin is being controverted by Mr. Sharma, the learned counsel for the petitioner, by referring to a decision of another Bench of three Judges strength, in the case of **Subhash Popatlal Dave** (supra), wherein, after taking into account all the previous judgments, including the case of **Sayed Taher Bawamiya** (supra), it has been held that the five exceptions, mentioned in the case of **Alka Subhash Gadia** (supra) are not exhaustive, but illustrative only. And it is further held that the court can interfere the same on any other just ground. The same view is also expressed in the case of **Bhaurao Punjabrao Gawande** (supra), wherein Hon’ble Supreme Court has held as under:-

“40. An order of detention can be challenged on certain grounds, such as, the order is not passed by the competent authority; condition precedent for the exercise of power does not exist; subjective satisfaction arrived at by the detaining authority is irrational; the order is mala fide; there is non-application of mind on the part of the detaining authority in passing the order; the grounds are, or one of the grounds is, vague, indefinite, irrelevant, extraneous, non-existent or stale; the order is belated; the person against whom an order is passed is already in jail; the order is punitive in nature; the order is not approved by the State/Central Government as required by law;

failure to refer the case of the detenu to the Board constituted under the statute; the order was quashed/revoked and again a fresh order of detention was made without new facts, etc.”

19. Thus, the submission of Mr. Sharma, the learned counsel for the petitioners, to our considered opinion, has substance. It is, however, a fact that the case of **Sayad Taher Bawamiya** (supra) was a decision rendered by a three Judges Bench. But, in the case of **Subhas Popotlal** (supra) another Bench of three Judges strength, has clarified and explained the aforesaid proposition of law, to a great extent. It has been held that with due respect to the Hon’ble Judges, we have not been able to read into the judgment in **Alka Subhash Gadia’s** case (supra) any intention on the part of the Hon’ble Judges, who rendered the decision in that case, that challenge at the pre-execution stage would have to be confined to the five exceptions only and not in any other case. To accept that it was the intention of the Hon’ble Judges in **Alka Subhash Gadia’s** case (supra) to confine the challenge to a detention at the pre-execution stage, only on the five exceptions mentioned therein, would amount to imposing restrictions on the powers of judicial review vested in the High Courts and the Supreme Court under Articles 226 and 32 of the Constitution and the exercise of powers vested in the superior Courts in judicially reviewing executive decisions and orders cannot be subjected to any restrictions by an order of the Court of law.

20. Prior to this decision also, in **Dipak Bajaj** (supra) a two Judge Bench has held that the observation made in the case of **Alka Subhas Gadiya** (supra) that the 5 grounds mentioned therein, on which the court can set aside the detention at the pre- execution stage are only illustrative not exhaustive. In view of above, we are unable to record concurrence with the submission of Mr. Tapin, the learned Senior Government Advocate appearing for the State respondents.

21. The entire aspect has been dealt with by Hon’ble Supreme Court in paragraph Nos. 45, 46, 47, 48 and 49 of the judgment of **Subhas Popotlal** (supra) and we are tempted to reproduce the same for better understanding the proposition, herein below:-

“45. Nowhere in Alka Subhash Gadia case has it been indicated that challenge to the detention order at the pre-execution stage, can be made mainly on the aforesaid exceptions referred to

hereinabove. By prefacing the five exceptions in which the Courts could interfere with an order of detention at the pre-execution stage, with the expression "viz", Their Lordships possibly never intended that the said five examples were to be exclusive. In common usage or parlance the expression "viz" means "in other words". There is no aura of finality attached to the said expression. The use of the expression suggests that the five examples were intended to be exemplar and not exclusive. On the other hand, the Hon'ble Judges clearly indicated that the refusal to interfere on any other ground did not amount to the abandonment of said power.

46. It is only in Sayed Taher Bawamiya's case that another three-Judge Bench considered the ratio of the decision of this Court in Alka Subhash Gadia's case and observed that the Courts have the power in appropriate cases to interfere with the detention orders at the pre-execution stage, but that the scope of interference was very limited. It was in such context that the Hon'ble Judges observed that while the detention orders could be challenged at the pre-execution stage, that such challenge could be made only after being prima facie satisfied that the five exceptions indicated in Alka Subhash Gadia's case (supra) had been fulfilled. Their Lordships in paragraph 7 of the judgment held that the case before them did not fall under any of the five exceptions to enable the Court to interfere. Their Lordships also rejected the contention that the exceptions were not exhaustive and that the decision in Alka Subhash Gadia's case (supra) indicated that it is only in the five types of instances indicated in the judgment in Alka Subhash Gadia's case (supra) that the Courts may exercise its discretionary jurisdiction under Articles 226 and 32 of the Constitution at the pre-execution stage.

47. With due respect to the Hon'ble Judges, we have not been able to read into the judgment in Alka Subhash Gadia's case (supra) any intention on the part of the Hon'ble Judges, who rendered the decision in that case, that challenge at the pre-execution stage would have to be confined to the five exceptions only and not in any other case. Both the State and the Hon'ble Judges relied on the decision in Sayed Taher Bawamiya's case (supra). As submitted by Mr. Rohatgi, to accept that it was the intention of the Hon'ble Judges in Alka Subhash Gadia's case

(supra) to confine the challenge to a detention at the pre-execution stage, only on the five exceptions mentioned therein, would amount to imposing restrictions on the powers of judicial review vested in the High Courts and the Supreme Court under Articles 226 and 32 of the Constitution. The exercise of powers vested in the superior Courts in judicially reviewing executive decisions and orders cannot be subjected to any restrictions by an order of the Court of law. Such powers are untrammelled and vested in the superior Courts to protect all citizens and even non-citizens, under the Constitution, and may require further examination.

48. In such circumstances, while rejecting Mr. Rohatgi's contention regarding the right of a detenu to be provided with the grounds of detention prior to his arrest, we are of the view that the right of detenu to challenge his detention at the pre-execution stage on grounds other than those set out in para 30 of the judgment in **Alka Subhash Gadia** case, requires further examination. There are various pronouncements of the law by this court, wherein detention orders have been struck down, even without the apprehension of the detenu, on the ground of absence of any live link between the incident for which the detenu was being sought to be detained and the detention order and also on grounds of staleness. These are issues which were not before the Hon'ble Judges deciding **Alka Subhash Case**.

49. The law is never static but dynamic, and to hold otherwise, would prevent the growth of law, especially in matters involving the right of freedom guaranteed to a citizen under Article 19 of the Constitution, which is sought to be taken away by orders of preventive detention, where a citizen may be held and detained not to punish him for any offence, but to prevent him from committing such offence. As we have often repeated, the most precious right of a citizen is his right to freedom and if the same is to be interfered with, albeit in the public interest, such powers have to be exercised with extra caution and not as an alternative to the ordinary laws of the land."

22. From the conspectus of aforementioned discussion and findings, we are of the considered opinion that the grounds mentioned in the case of **Alka Subha Gadiya** (supra)

are not exhaustive, but illustrative only. We find the submission of Mr. Sharma, the learned counsel for the petitioner is more acceptable and logical than the submission of Mr. Tapin, the learned Senior Government Advocate. Thus, Issue No. II, has to be answered in negative and we answered the same accordingly.

23. Now, coming to the last issue, as to whether the live link between object of passing the impugned orders has lost its relevancy because of delay of execution of impugned detention orders and on such count the court can interfere with the same. Before a discussion is directed into this issue, it would be beneficial to understand the objective of the law of preventive detention.

24. While dealing with the objective of the law of preventive detention, in **Ashok Kumar v. Delhi Administration and Ors., (1982) 2 SCC 403**, Hon'ble Supreme Court has observed as under:-

“Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing.”

25. In the case of **Nabila and another** (supra) in paragraph no.12, Hon'ble Supreme Court has held as under :-

“12. Indisputably, the object of law of preventive detention is not punitive, but only preventive. In case of preventive detention no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability and there is no criminal conviction which can only be warranted by legal evidence. However, the detaining authority must keep in mind while passing the order of detention the civil and constitutional right granted to every citizen by Article 21 of the Constitution of India inasmuch as no person shall be deprived of life and liberty except in accordance with the procedure established by law. The laws of preventive detention are to be strictly construed and the procedure provided must be meticulously complied with.”

26. Again in the case of **Bhaurao Punjabrao Gawande** (supra), Hon'ble Supreme Court has held as under:-

“26. There is no authoritative definition of 'preventive detention' either in the Constitution or in any other statute. The expression, however, is used in contradistinction to the word 'punitive'. It is not a punitive or penal provision, but is in the nature of preventive action or precautionary measure. The primary object of preventive detention is not to punish a person for having done something, but to intercept him before he does it. To put it differently, it is not a penalty for past activities of an individual, but is intended to pre-empt the person from indulging in future activities sought to be prohibited by a relevant law and with a view to preventing him from doing harm in future.”

27. Thereafter, in the case of [Naresh Kumar Goyal vs. Union of India](#), (2005) 8 SCC 276, Hon'ble Supreme Court has held as under:-

"It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so. It, therefore, becomes imperative on the part of the detaining authority as well as the executing authority to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detainee and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority will defeat the very purpose of preventive action and turn the detention order as a dead letter and frustrate the entire proceedings. Inordinate delay, for which no adequate explanation is furnished, led to the assumption that the live and proximate link between the grounds of detention and the purpose of detention is snapped". [See : [P.U. Iqbal v. Union of India](#) and Ors., (1992) 1 SCC 434; [Ashok Kumar v. Delhi Administration](#), (1982) 2 SCC

403 and Bhawarlal Ganeshmalji v. State of Tamilnadu, (1979) 1 SCC 465].

28. Keeping the aforesaid principles in mind, while we have examined the record of the case in hand and also the connected Files, produced by Mr. Tapin, the learned Senior Government Advocate, we find that the impugned orders were passed to prevent the three days bandh call from 10th to 12th of May, 2023. The said bandh had passed off peacefully as per press statement given by the Superintendent of Police, Capital Complex, Itanagar. Mr. Sharma, the learned counsel for the petitioner has rightly pointed this out during hearing. But, since the passing of the impugned orders more than one month had already elapsed, and the authority concerned had failed to execute the said orders. There is no quarrel at the Bar in regards to delay of more than one month.

29. Though, an explanation is being offered for the delay, that the petitioners have been absconding to evade arrest, for which proclamation has been issued against them vide orders, dated 20.05.2023, No.(s) DM/ICC/APUAPA/01/2023-35 and DM/ICC/APUAPA/01/2023-39, as per the provision of section 7 (1)(a) of the APUAPA, 2014, yet, we failed to convince from the materials available on the Files, so produced by Mr. Tapin, that any sincere attempt were being made by the respondent authority, to cause arrest of the petitioners. Except one letter of the Superintendent of Police, Capital: Itanagar, dated 20.05.2023, no material are available in the Files. In absence of any such materials, let alone a convincing one, the contention of Mr. Sharma, the learned counsel for the petitioner, that they are very much available in the capital region, assumes significance. It is to be mentioned here that this contention of Mr. Sharma, the learned counsel for the petitioner, remained uncontroverted. It is also worth mentioning in this context that in the case of **Naresh Kumar Goyal** (supra), it has been held that inordinate delay, in absence of adequate explanation led to the assumption that the live and proximate link between the grounds of detention and the purpose of detention is snapped.

30. Further, it appears that as held in the case of **Subhas Popatlal** (supra) now, there is absence of live link between the incident for which the detenue was sought to be detained and the detention order and also on the ground of staleness, and these are some of the grounds for which the detention order can be quashed by the High Court by exercising of

power under Section 226 of the Constitution of India. The same view is reiterated by Hon'ble Supreme Court in the case of **Dipak Bajaj** (supra) also. It is to be noted here that the liberty is precious fundamental right under Article 21 of the Constitution of India and should not be lightly transgressed as impugned order has lost the live link between the incident for which detenu sought to be detained and the detention order become stale.

31. In **Sk. Nizamuddin v. State of West Bengal, (1975) 3 SCC 395**, Hon'ble Supreme Court, while examining the necessity of securing the arrest of the detenu immediately after the order of detention has held thus:

“It would be reasonable to assume that if the District Magistrate was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude in securing the arrest of the petitioner immediately after the making of the order of detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine.”

32. In a very recent case, **Promod Singla vs. Union of India & Ors.** (Special Leave Petition (Crl.) No. 10798 of 2022, Hon'ble Supreme Court, explaining the role, required to be played by the courts in the case of preventive detention, held as under:-

“--- that preventive detention laws in India are a colonial legacy, and have a great potential to be abused and misused. Laws that have the ability to confer arbitrary powers to the state, must in all circumstances, be very critically examined, and must be used only in the rarest of rare cases. In cases of preventive detention, where the detenu is held in arrest not for a crime he has committed, but for a potential crime he may commit, the Courts must always give every benefit of doubt in favour of the detenu, and even the slightest of

errors in procedural compliances must result in favour of the detinue.”

33. Thus, drawing premises from the illuminating discourse, and reminding ourselves about the role, required to be played in the cases of preventive detention, we are inclined to hold that the impugned detention orders Nos. DN/ICC/APUAPA/01/2023-35/843 and DM/ICC/APUAPA/01/2023-35, dated 10.05.2023, as on date, becomes non-existent or stale on the ground of delay in execution of the same, and on that count the live and proximate link between the grounds of detention and the purpose of detention stands snapped. As such, both the impugned orders dated 10.05.2023, requires interference of this court.

34. In the result, we find sufficient merit in both the petitions and accordingly, the same stands allowed. The impugned orders dated 10.05.2023, are set aside and quashed. And in absence of supporting materials to suggest the factum of absconding and evading arrest by the petitioners, the impugned orders, by which proclamation were issued under section 82 of the Code of Criminal Procedure, read with section 7(1)(a) APUAPA, also stands set aside and quashed.

35. The parties have to bear their own cost.

JUDGE

JUDGE

Comparing Assistant