

2024:PHHC:166627



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-15937-2024

JUDGMENT RESERVED ON: 27.11.2024

JUDGMENT PRONOUNCED ON: 12.12.2024

LAL BAHADUR ALIAS VIKAS

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Radhe Shyam Sharma, Advocate
for the petitioner.

Mr. Vivek Saini, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J.

Challenge in the present writ petition is to the order dated 11.12.2023 passed by the Additional Chief Secretary to Govt. of Haryana directing preventive detention of the petitioner under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as “the Act of 1988”) as well as to the order dated 28.02.2024 whereby the order of preventive detention has been confirmed by the Advisory Board under Section 9 (f) read with Section 11 of the Act of 1988 (supra) and directing detention of the petitioner for a period of one year from the date of his detention i.e. 19.12.2023.



2. Learned Counsel for the petitioner contends that the petitioner has been falsely involved in as many as five cases and he is out on bail in all the said matters. A table showing details of the FIRs, the quantity of Narcotic Substances recovered and the details as regards the bail and status of the criminal case is extracted as under:-

<i>Sr.No</i>	<i>FIR No., date, u/s and Police Station</i>	<i>Narcotic substance</i>	<i>Date of arrest</i>	<i>Bail/custody</i>	<i>Present status of case</i>
1.	<i>FIR No. 217 dated 09.11.2019 u/s 20 (b) NDPS Act, P.S. Bhattu Kalan, Fatehabad</i>	<i>40 gm heroin (supplier)</i>	<i>29.11.2019</i>	<i>Bail granted on 19.12.2019</i>	<i>Under Trial</i>
2.	<i>FIR No. 18 dated 01.03.2020 u/s 21 (b), 27-A NDPS Act, P.S. Bhattu Kalan, Fatehabad</i>	<i>5.40 gm heroin (supplier</i>	<i>23.06.2020</i>	<i>Bail granted on 09.09.2020</i>	<i>Under Trial</i>
3.	<i>FIR No. 26 dated 12.03.2020 u/s 21 (b) NDPS Act, P.S. Bhattu Kalan, Fatehabad</i>	<i>30.45 gm heroin (supplier)</i>	<i>22.06.2020</i>	<i>Bail granted on 08.11.2021</i>	<i>Under Trial</i>
4	<i>FIR No. 23 dated 18.01.2023 u/s 21 (b) NDPS Act, P.S. Bhattu Kalan, Fatehabad</i>	<i>20 gm heroin</i>	<i>18.01.2023</i>	<i>Bail granted on 18.04.2023</i>	<i>Under Trial</i>
5.	<i>FIR No. 164 dated 15.06.2023 u/s 15 NDPS Act, P.S. Bhattu</i>	<i>2 kg poppy husk (supplier)</i>	<i>20.09.2023</i>	<i>Bail granted on 13.03.2024 by High Court but</i>	<i>Under Trial</i>



	<i>Kalan, Fatehabad</i>			<i>Jail Authority has not released due to impugned order</i>	
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3. He argues that even though the petitioner was granted bail by the High Court on 13.03.2024 in FIR No. 164 dated 15.06.2023, however, he was still not released by the Jail Authorities. It was then that the petitioner came to know that the Director General of Police, Haryana had sent a proposal for preventive detention of the petitioner under Section 3 of the Act of 1988 wherein the Additional Chief Secretary, Department of Home Affairs, Govt. of Haryana passed the impugned order on 11.12.2023 in compliance whereof the petitioner was detained on 19.12.2023. The petitioner filed his objections to the order of Preventive Detention vide representation dated 10.01.2024. The Advisory Board, after granting an opportunity of hearing to the petitioner, through Video Conferencing and submitting its report, upheld the order of preventive detention of the petitioner, its decision communicated vide order dated 28.02.2024. He contends that in the above case no recovery had been effected from the petitioner and he was involved on the statement of co-accused. The order granting bail was passed later than the proposal mooted by the Director General of Police, Haryana. All the cases and role of petitioner were taken into consideration by the High Court while granting the concession of bail and that the order of preventive detention has been passed solely to



incarcerate the petitioner and to defeat the bail granted to him by the High Court.

4. Counsel for the respondent-State refers to the reply filed by the Secretary to the Govt of Haryana in the Department of Home Affairs and contends that the State Government has notified the detaining authority under the provisions of the Act of 1988 to curb the menace of drug trafficking and that the State Narcotic Control Bureau had issued guidelines for formulation of proposals seeking preventive detention under the Act of 1988.

5. It is argued that the proposal was received from the Director General of Police, Haryana alongwith the relevant documents vide letter dated 12.10.2023 and the matter was considered and examined by the competent authority before passing the detention order dated 11.12.2023 and the same was issued on 14.12.2023. Since the petitioner was already in custody at Central Jail-II, Hisar, the translated detention order was served upon him on 19.12.2023 alongwith the grounds of detention on the same day i.e. within the prescribed period of 05 days under Section 3 (3) of the Act of 1988. He was also apprised about his right to prefer a representation to the detaining authority as well as the Advisory Board. The report was also sent to the State Government vide letter dated 18.12.2023 i.e. within a period of 10 days and reference was made to the Advisory Board vide letter dated 09.01.2024, i.e. within 05 weeks from the date of detention in compliance of Section 9 (b) of the Act of 1988. A report was prepared by the Advisory Board, after granting an opportunity of hearing to the petitioner, on



02.02.2024 and on receipt thereof, the State Government confirmed the impugned detention order on 28.02.2024 i.e. within the timelines as prescribed under the Act. It is further argued that the last case against the petitioner was registered on 15.06.2023 and as he was taken in custody on 20.09.2023. The proposal was sent by the Director General of Police, Haryana vide letter dated 12.10.2023 and communicated to the petitioner at Central Jail, Hisar. A pattern of periodic involvement of the petitioner in NDPS Cases showed that there was likelihood and a proximate cause and sufficient substance for directing preventive detention of the petitioner and that there was a strong possibility and likelihood of his involvement in illicit trafficking of drugs, if not detained immediately. It is thus argued that the entire proposal alongwith all the details and report was considered by the competent authority and order of preventive detention was passed. There was thus, no violation of the mandate of law. He also referred to the written statement filed by the Superintendent of Police, Fatehabad i.e. respondent No.4 wherein a similar stand had been taken. The averments contained therein are not being reiterated.

6. I have heard learned Counsel appearing on behalf of the parties and have gone through the documents available on record.

7. It is undisputed that the proposal for preventive detention of the petitioner was moved by the Director General of Police on 12.10.2023 i.e. nearly four months after registration of FIR No. 164 on 15.06.2023. The recovery of 2 kilogram of poppy husk was effected from the co-accused. A perusal of the order of preventive detention shows that the petitioner was



arrested in case FIR No. 23 dated 18.01.2023 on the basis of disclosure statement made by the co-accused and that 20 grams of heroin had been recovered from him. No recovery has been effected from him in case FIR No. 164 dated 15.06.2023. The dossier sent by the Director General of Police, Haryana records a probability of the petitioner getting bail in above FIR and it was in the said circumstances that a justification for an order of detention was initiated. It is also noticed by this Court that while granting concession of regular bail in case FIR No. 164, the State Counsel specifically opposed the grant of relief to the petitioner by contending that he was involved in four other cases under the NDPS Act despite which the concession of regular bail was granted by this Court on 13.03.2024. Significantly, even though as on the said date, the order of preventive detention was already passed by the respondent-authorities and it was also affirmed by the Advisory Board, yet, the said aspect was not disclosed by the respondents before this Court. The inference which flows from the above is that the respondent-State failed to convince the Court to decline the grant of concession of regular bail.

8. While acknowledging the powers conferred on the State in seeking preventive detention of a person, who is suspected of being involved in a drug trade and has a huge probability and likelihood of continued involvement in such a trade, it is also required to be kept in mind that the preventive detention is an extra-ordinary power and has to be exercised in rare circumstances. The persons whose's liberties are being sought to be curtailed is not yet accused of commission of any offence but is being



detained only on a suspicion. The proposal for seeking custodial detention was moved in October, 2023 i.e. after 04 months of registration of FIR No.164 and on specifically noticing that there is a likelihood of the petitioner being granted bail notwithstanding that petitioner was made an accused on statement of co-accused Vishnu and Anoop from whom a recovery of 2 kg poppy husk (small quantity) was effected. There was no credible information which could substantiate any live and proximate link of the petitioner of his involvement giving rise to a heightened likelihood and probability of his committing another offence.

9. This Court had dealt with the issue regarding the essential factors to be taken into consideration while exercising the powers of preventive detention in the matter of ***“Sadha Ram @ Bhajna Ram versus State of Haryana and others”*** in CWP-22223 of 2023 decided on 02.07.2024. The power of preventive detention has to be exercised with a view to strike a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on one hand and security and safety of the country alongwith interest of the society on the other. The Courts are required to show their concern and solitude in upholding and safeguarding the fundamental rights and liberties of a citizen while being conscious that the Court cannot substitute its opinion from the subjective satisfaction of the detaining authority, however, the same does not mean that the subjective satisfaction of the detaining authority is immune from judicial review. The extract of the aforesaid judgment reads thus:-

**CONSIDERATION:**

56. *The position in law has been culled out by the Hon'ble Supreme Court in a catena of judgments referred above under the circumstances in which order of preventive detention may be passed. An order of preventive detention needs to be examined from the availability of the legal framework and the statutory requirements for directing preventive detention along with reasonable grounds laying foundation for directing such detention. The satisfaction of the competent authority has to be seen on the basis of credible evidence and not just a mere apprehension and must be propelled by public interest. Besides, the proportionality of preventive detention also needs to be kept in mind along with the fact as to whether there is an effective alternate measure with the authority to seek the desired result but for adopting the course of preventive detention. For examining as to whether the satisfaction of an authority is formed on reasonable grounds, the Court is also required to see the relevant factors which may be essential for giving rise to reasonable grounds and it usually refers to a standard suggesting rational basis or credible evidence to believe that the detenue is likely to engage in such activity. The fact which may be crucial for propelling a satisfaction include the prior criminal record/past involvement, the credibility of the witness/informant, the existence of physical evidence in the form of seizure of any narcotic etc. The assessment of the flight risk, public safety and tampering with evidence as also input from the intelligence and surveillance. A perusal of Section 3 of the Act of 1988, requires that the competent authority should be satisfied with respect to the involvement of the person and with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic*



substances, deem it necessary to direct detention. The subsequent part necessitates that as and when an order of detention is made, the same shall be forwarded to the Central Government within a period of ten days and that communication of the grounds of detention to the detainee shall be made within a period of five days from the date of detention. Further, the appropriate Government is required to make a reference to the Advisory Board within a period of five weeks of the detention and the Advisory Board thereafter has a period of six weeks (a total of 11 weeks from the date of order of detention) to prepare its report specifying its opinion as to whether there is a sufficient cause for detention or not. The appropriate Government is thereafter required to confirm the order of preventive detention and continue the detention for such period as it thinks fit.

*57. A perusal of the provisions as also the precedents establish that the timelines prescribed and the safeguards evolved are mandatory and have to be adhered to. The power of preventive detention is not a mode of infliction of punishment and that the proximity of the cause to the past conduct and the imperative need to detain a person has attained vital significance. Where the satisfaction of the authority is not based upon a live and proximate link between the past conduct of a person and the imperative need to detain, such detention is deemed as based on a stale cause and the orders of preventive detention held to be bad. Similarly, where there has been an inordinate delay in passing the order of preventive detention from the date when the proposal was mooted, such order of detention has also been held to be bad. It is apparent from a perusal of the order of Hon'ble Supreme Court passed in the matter of **Sushanta Kumar Banik***



*(supra) that as the order of preventive detention was passed after a period of five months, the same was held to be bad and liable to be set aside. However, the Division Bench of the Gauhati High Court set aside the order of preventive detention when there was a delay of 2 ½ months in decision making in the matter of **Babul Ahmed** (supra).*

58. *Even though the grounds for which preventive detention may be invoked may vary in statutes, however, the safeguards prescribed under the Constitution are in addition to the safeguards that may be provided under the respective statute. The tests prescribed in the judgment of **Ameena Begum** (supra) have to be satisfied collectively and any disregard of such circumstances may render the order of preventive detention bad and liable to be set aside. The said circumstances do not transcend the decision but examine the decision making process only with a view to ascertain as to whether an order of preventive detention is imperative. Being an extraordinary power which infringes on the rights and liberties of an individual in anticipation of crime, the exercise of power has to be sparing and as an exceptional contingency.*

59. *The power of preventive detention is not just an empowering provision with no responsibility or checks. When the power is immense, invocation of the power needs to be justified as per the exceptional circumstances and to establish as to how only the mode of preventive detention is the only way forward. It is not a mode of enforcing Police rule on suspicion or heightened probabilities but for reasons beyond that and on credible likelihood of his involvement in another crime. Such credibility may be required to be supported by some*



proximate and live link to an imminent involvement in another crime and not just on the belief that the past defines the future and that there is no other way forward to a detenu than indulge in another crime. Any lack of such credible input and the proximate live link is likely to label the exercise of such power as excessive, arbitrary, draconian and liable to be set aside.

60. An objective decision is backed by cogent material and objective conclusion and not just a subjective decision on a perceptive conclusion.

61. A Court of law thus is required to see whether the necessary tests, parameters and circumstances justifying need for preventive detention exist or not. Where any of the safeguards are found lacking, the fundamental rights guaranteed to a citizen would override such order being in violation of the safeguards and not fulfilling the cardinal test of authority in law.

10. In the case of **Icchu Devi Choraria v. Union of India** reported as (1980) 4 SCC 531, the judicial commitment to strike down illegal detention was highlighted in following words :

5. ... Where large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and make out a prima facie case in support of those grounds before a rule is issued or to hold that the detaining authority should not be liable to do any thing more than just meet the specific grounds of challenge put forward by the petitioner in the petition. The burden of showing that the detention is in



accordance with the procedure established by law has always been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detenu even though the detention may have been valid till the breach occurred. The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

11. The Hon'ble Supreme Court in the case of ***Golam Hussain v. Commr. of Police*** reported as (1974) 4 SCC 530, while dealing with the contention of past conduct of the accused, observed as follows:

5. *"... No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by*



counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case. If the detaining authority takes the chance of conviction and, when the Court verdict goes against it, falls back on its detention power to punish one whom the Court would not convict, it is an abuse and virtual nullification of the judicial process....”

12. Similar observations were again made by the Apex Court in the case of ***Sama Aruna v. State of Telangana*** reported as ***(2018) 12 SCC 150***, wherein the court held that:

16. ...There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. ...”



13. This Court has also noticed that FIR No. 18 dated 01.03.2020 and FIR No. 26 dated 12.03.2020 registered at Police Station Bhattu Kalan, District Fatehabad wherein the petitioner was shown as having been arrested in FIR No. 26 on 22.06.2020 and in FIR No. 18 dated 01.03.2020 on 23.06.2020 i.e. on the very next day. Both the aforesaid cases have been registered on the basis of the disclosure statements and not on account of any actual recovery effected from the petitioner. The recovery of 20 gram heroin is stated to have been made in FIR No. 23 which was registered on 18.01.2023 which is about one and a half year after the release of petitioner on bail on 08.11.2021 (in FIR No. 26 dated 12.03.2020). He was released on bail in the above said FIR for possession of non-commercial quantity on 18.04.2023, whereafter he was nominated as an accused in FIR No. 164 dated 15.06.2023, on disclosure of co-accused from whom recovery of 2 kg poppy husk (small quantity) had been effected. The order of preventive detention have been passed on the pretext of recovery of heavy quantity of poppy husk whereas the quantity is a small quantity and even the recovery thereof has not been effected from the petitioner. Thus, of the five cases that have been registered, there is actual recovery from the petitioner only in one case. While in FIR No. 217 the recovery had been effected from Jitender @ Jittu and he named the petitioner in his disclosure; in FIR No. 18 dated 01.03.2020, the recovery was effected from one Rakesh son of Chanderpal who named the petitioner in his disclosure. In FIR No. 26 dated 12.03.2020, the name of the petitioner was roped in on disclosure of Parmod Kumar alias Modi and Naveen Kumar and similarly, in FIR No. 164 dated 15.06.2023, he has been nominated as an accused on the disclosure statement of Vishnu and



Anoop. There has been thus only a single instance of actual recovery of the Narcotic Drugs from the petitioner and the power of preventive detention would ordinarily not be permitted to enable a continued incarceration of the petitioner as an accused.

14. The Hon'ble Supreme Court was seized of a matter relating to the preventive detention of a person and examined the applicability of Article 22 of the Constitution of India as well as the provisions of Telangana Prevention Of Dangerous Activities Of Bootleggers, Dacoits, Drug offenders, Goondas, Immoral Traffic Offenders Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders And White Collar Or Financial Offenders Act, 1982, while dealing with the general discussion on preventive detention and judicial reviewability, in the matter of **Ameena Begum Vs. The State of Telangana &Ors, reported as 2023 (9) SCC 587**, the Apex Court observed as under:

25. Be that as it may, culling out the principles of law flowing from all the relevant decisions in the field, our understanding of the law for deciding the legality of an order of preventive detention is that even without appropriate pleadings to assail such an order, if circumstances appear therefrom raising a doubt of the detaining authority misconceiving his own powers, the Court ought not to shut its eyes; even not venturing to make any attempt to investigate the sufficiency of the materials, an enquiry can be made by the Court into the



authority's notions of his power. Without being remotely concerned about the sufficiency or otherwise of the materials on which detention has been ordered, the Court would be justified to draw a conclusion, on proof from the order itself, that the detaining authority failed to realize the extent of his own powers. This is quite apart from questioning the action for want of sufficient materials that were before the detaining authority. The authority for the detention is the order of detention itself, which the detenu or the Court can read. Such a reading of the order would disclose the manner in which the activity of the detenu was viewed by the detaining authority to be prejudicial to maintenance of public order and what exactly he intended should not be permitted to happen. Any order of a detaining authority evincing that the same runs beyond his powers, as are actually conferred, would not amount to a valid order made under the governing preventive detention law and be vulnerable on a challenge being laid. In the circumstances of a given case, a Constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether:-

- (i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;*
- (ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;*
- (iii) power has been exercised for achieving the purpose*



for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

(iv) the detaining authority has acted independently or under the dictation of another body;

(v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

(vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

(ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(x) the timelines, as provided under the law, have been strictly adhered to.

Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits



the person detained with drastic consequences would call for being interdicted for righting the wrong.

15. For the reasons as aforesaid, I find that the order of preventive detention passed against the petitioner is not based upon any cogent material as would substantiate his probabilities and likelihood of involvement in commission of offence appealing to objectivity & prejudice as would justify invocation of the powers of preventive detention. The order of preventive detention makes a reference to a huge recovery where a recovery is of small quantity of 2kg poppy husk and that too from co-accused and there is only one instance of recovery from his possession. Such a nature of involvement may not be objectively sufficient to substantiate a valid foundation for an order of preventive detention. Such nature of allegation can be made aplenty and absence of any recovery, despite an alleged disclosure, would have to undergo a judicial scrutiny before it can be considered as a material and objective evidence. The same is however not being gone into at this stage since the same is a matter of trial. The present writ petition is accordingly allowed and the order dated 11.12.2023 passed by the Additional Chief Secretary to Govt. of Haryana and the order of affirmation dated 28.02.2024 are consequently set aside.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 12, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No