

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

CRWP-11824-2023 (O&M)

Date Reserved: 23.01.2024

Date of Pronouncement: 31 .01.2024

Hari Om

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Dinesh Kumar Dakoria, Advocate
for the petitioner (through video conferencing).

Mr. Rajiv Sidhu, DAG, Haryana

HARKESH MANUJA, J.

By way of present writ petition filed under Article 226/227 of the Constitution of India, petitioner has prayed for issuance of a writ in the nature of Habeas Corpus and other appropriate writ to direct respondent no. 1 to revoke the detention order dated 17.10.2023 (**Annexure P-5**), passed under section-3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short 1988 Act) and to release the petitioner from the detention who has been detained in District Jail, Faridabad since 31.10.2023.

2. Briefly stating, facts of the case are that vide memo No. 2544-P dated 25.07.2023, the proposal for detention of petitioner was sent by respondent No 4 / Deputy Commissioner of Police, NIT Faridabad to the respondent No 3 / Inspector General of Police, Haryana State Narcotics Control Bureau, Madhuban Karnal. Vide letter dated 05.09.2023, the said proposal was forwarded by

respondent No 2/Director General of Police, Haryana to respondent No 1 / Additional Chief Secretary to Government, Haryana, Home Department. In pursuance thereof, the respondent no. 1 passed the detention order dated 17.10.2023 under section 3 of the 1988 Act to detain the petitioner. On 31.10.2023, petitioner was taken into custody and since then he remains detained in District Jail, Faridabad. It is the detention order dated 17.10.2023 which has been impugned by way of present writ petition.

3. Primary basis for issuing detention order against the petitioner was that there were three FIRs against him, details of which are as follow:

i) FIR No. 67 dated 28.01.2021 u/s 20/61/85 of NDPS Act, registered at PS Mujesar, District Faridabad, wherein, petitioner was arrested on 28.01.2021 on account of recovery of 546 gram of Ganja and was released on bail on 29.01.2021.

ii) FIR No. 77 dated 05.02.2022 u/s 20/61/85 of NDPS Act, registered at PS Mujesar, District Faridabad, wherein, petitioner was arrested on 05.02.2022 on account of recovery of 865 gram of Ganja and was released on bail on 06.02.2022.

iii) FIR No. 309 dated 02.06.2022 u/s 20/61/85 of NDPS Act, registered at PS Mujesar, District Faridabad, wherein, petitioner was arrested on 02.06.2022 on account of recovery of 776 gram of Ganja and was released on bail on 03.06.2022.

4. Learned counsel for the petitioner submitted that petitioner being infected with the deadly and life killing disease

HIV+ve, was taking the ART therapy from Safdarjung Hospital, New Delhi, but due to the detention, he was not able to take regular treatment which was mandatory for his survival. He further submitted that the recovery effected from the petitioner was not of commercial quantity and he was on bail in all the three FIRs and he was not having any other criminal history. On merits it was also submitted that there was a huge delay between the proposal of detention sent by respondent No. 4 and passing of the detention order dated 17.10.2023 by respondent No. 1 under which the petitioner was detained on 31.10.2023 and therefore, the same was invalid and illegal, as there was no "live and proximate link" between the prejudicial activities and the purpose of detention and further, there was no explanation furnished on the part of detaining authority for such long delay.

4.1 In support of his contentions, Id. Counsel placed reliance upon the recent judgment dated 30.09.2022 passed by the Hon'ble Supreme Court in “**Sushanta Kumar Banik Versus State of Tripura & Ors.**”, reported as (AIR 2022 SC 4715), Relevant paras of the judgment reads as under:

“14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the

sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same."
.....

4.2 Learned Counsel further contended that the respondent no. 1 even did not disclose the period of detention of the petitioner in the aforesaid detention order which was the clear-cut violation of section 10 and 11 of the Act.

5. On the other hand, learned State Counsel submitted that petitioner was repeatedly involved in the cases of smuggling Ganja and as soon as he was being released on bail in one case, he was getting involved in another case and on that account, preventive detention of the petitioner became imperative. He admitted the fact regarding petitioner being on bail in all the three FIRs. With respect to his medical condition, learned State counsel submitted that though the petitioner was infected with HIV +ve, however, his condition was stable and he was being taken care of by the medical staff in the prison.

6. After hearing learned counsel for the parties and going through the paperbook of the case, I find substance in the submissions made on behalf of the petitioner.

7. Proposal for detention of petitioner was initiated on 25.07.2023, while the impugned detention order was passed by respondent No. 1 u/s 3 of 1988 Act on 17.10.2023 i.e. approximately after 3 months. Petitioner was last arrested in FIR No. 309 dated

02.06.2022 and was released on bail on 03.06.2022 and since then approximately 5 months passed before he was detained. At the same time, no explanation came forward by the detaining authority regarding the delay caused in issuing the detention order. In **"Hemlata Kantilal Shah v. State of Maharashtra"**, reported as 1981(4) SCC 647, the Hon'ble Supreme Court has observed as below:

"Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority."

8. Relying upon **Hemlata's case** (supra), the Hon'ble Apex Court in **"Pradeep Nilkanth Paturkar v. S. Rama-murthi"**, reported as 1993 Supp (2) SCC 61, quashed the detention order after taking into consideration the unexplained delay. Relevant paras from this judgment are reproduced below:

"13. Coming to the case on hand, the detention order was passed after 5 months and 8 days from the date of the registration of the last case and more than 4 months from submission of the proposal. What disturbs our mind is that the statements from the witnesses A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him, that too in the later part of March, 1991. These statements are very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the Act.

14. Under the above circumstances, taking into consideration of the unexplained delay whether short or long especially when the appellant has taken a specific plea of delay, we are constrained to quash the detention order. Accordingly we allow the appeal, set aside the judgment of the High Court and quash the impugned detention order. The detenu is directed to be set at liberty forthwith."

9. Similarly in “**Savita Shankar Lokhande vs. M. N. Singh**”, reported as 2001(2) Mh.LJ 410, a Division Bench of Bombay High Court observed that inaction on the part of State authorities clearly raises a doubt about the genuineness of the subjective satisfaction recorded by the Detaining Authority and would indicate that the real purpose of detention was punitive and not preventive. In such circumstances, live link between the prejudicial activities of the detenu and the rationale of clamping the detention order is snapped and thus detention order cannot stand the test of judicial scrutiny. Relevant paras from this judgment are reproduced below:

*“9. ***In other words, there is absolutely no explanation for the inaction between 13-6-2000 till 31-7-2000. From the aforesaid facts we are more than convinced that the authorities were absolutely inactive and observed laxity between 26-4-2000 to 15-5-2000 and again between 20-5-2000 to 5-6-2000 and lastly from 13-6-2000 till 31-7-2000. This inaction clearly doubts the genuineness of the subjective satisfaction recorded by the Detaining Authority. If the Detaining Authority was really keen to detain the detenu at the earliest opportunity, there is no reason for the inaction between the aforesaid periods which are unquestionably quite significant. We cannot countenance the attitude of the authorities to remain inactive for such a long time and yet claim that it is imperative to detain a person who was admittedly on bail since 18-1-2000. The stand taken by the respondents would only reflect of the double standards adopted by the Detaining Authority. More than that it would indicate that the real purpose of detention was punitive and not preventive. The learned APP vehemently argued before us that the Detaining Authority while recording the subjective satisfaction has taken into account the past criminal background of the detenu and therefore it cannot be assumed or remotely suggested that the live link had snapped. It was contended that once subjective satisfaction is recorded, it is not open for the Court to sit over the same and observe that the subjective satisfaction so recorded was not genuine. We are afraid, this argument, though appears to be attractive at the first blush but is riddled with various other difficulties. If we accept this submission, then, necessarily, in no case the detenu would be entitled to assail the order of detention on the ground of delay in passing of the detention order. In our view,*

the issue of delay in passing of the order to some extent overlaps with the issue of staleness of the ground. It is not necessary for our purpose to elaborate this aspect of the matter as we are inclined to hold that there is absolutely no explanation offered by the Detaining Authority for the substantial periods which inevitably affects the genuineness of the subjective satisfaction recorded by the Detaining Authority for passing the detention order. In the present case it is seen that the Detaining Authority accepted the proposal to detain on 13-6-2000 but the formal order came to be passed only on 5-8-2000 and no explanation is offered for such delay. In our view, if it was so essential to detain the detenu so as to prevent him from indulging in any act of prejudicially affecting the maintenance of public order, surely the authorities were expected to act with utmost dispatch and not with such laxity. The principle enunciated by the Apex Court in catena of decisions is that : the delay ipso facto in passing of the order may not be fatal but if the Detaining Authority fails to offer satisfactory explanation it would surely reflect upon the genuineness of the subjective satisfaction recorded by the Detaining Authority. Instead of multiplying the authorities we would prefer to rely on the decision reported in 1993 Supp (2 SCC 61 : (1994 CriLJ 620, which was under the same Act viz. MPDA Act. Besides the said decision we may also refer to the two decisions of our High Court relied by the petitioner where the abovesaid principle has been reiterated by this Court, while following the decision of the Apex Court. The legal position is that if the delay is unexplained, whether short or long especially when a specific plea of delay in issuance of the detention order has been taken, is sufficient to quash the detention order, as observed by the Apex Court in 1993 Suppl (2 SCC 61 : (1994 CriLJ 620.

10. In the present case we have no hesitation in recording that the Detaining Authority has failed to furnish any satisfactory explanation with respect to delay in issuance of the detention order. As a necessary corollary, we will have to assume that the subjective satisfaction recorded by the Detaining Authority was not genuine and that the live link between the prejudicial activities of the detenu and the rationable of clamping the detention order, which is a draconian action, qua the detenu, cannot stand the test of judicial scrutiny. If we were not to quash such a detention order, the detention under the said order would cease to be preventive but assume the colour of being a punitive action, which cannot be countenanced in law. In the circumstances, we would prefer to quash the impugned detention order. Hence the following order.”

10. In **Sushanta Kumar Banik's case** (supra), in addition to observing that there was no "live and proximate link" between the grounds of detention and detention order, another factor was also taken into consideration by the Hon'ble Apex Court that petitioner was on bail in all the cases and no challenge was made by the State authorities to the said orders. Relevant para from this judgment is reproduced below:

"23. A plain reading of the aforesaid provision would indicate that the accused arrested under the NDPS Act, 1985 can be ordered to be released on bail only if the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. If the appellant herein was ordered to be released on bail despite the rigours of Section 37 of the NDPS Act, 1985, then the same is suggestive that the Court concerned might not have found any prima facie case against him. Had this fact been brought to the notice of the detaining authority, then it would have influenced the mind of the detaining authority one way or the other on the question whether or not to make an order of detention. The State never thought to even challenge the bail orders passed by the special court releasing the appellant on bail."

11. In the present case as well, the proposal for detention of petitioner was issued by respondent No 4 vide memo No. 2544-P dated 25.07.2023 which was finally forwarded to respondent No 1, vide letter dated 05.09.2023 by respondent No 2. Proposal took more than a month to reach before the detaining authority i.e. respondent No 1, however no explanation come forward in any letter regarding this delay. Similarly, detention order was also passed by respondent No 1 on 17.10.2023 i.e. after approximately one and a half month but again there was no explanation for such laxity. Even detaining authority was conscious of the staleness of the matter and

accordingly, a specific report was also sought in this regard which finds mentioned in the detention order as well, relevant part of which is reproduced below:

“ specific report has been sought to whether Sh. Hari Om is still active in illicit trafficking of narcotic drugs and psychotropic substances and in response thereto, the Director General of Police, Haryana vide letter dated 10.10.2023 has forwarded the report of Deputy Commissioner of Police: NIT, Faridabad 05.10.2023 alongwith a Source Report. wherein it has been reported that 03 cases under the provision of NDPS Act have been registered against Sh. Hari Om and he is still active in illicit trafficking of narcotic drugs and psychotropic substances and it is necessary to deter him in the interest of general public and it is necessary to deter him in the interest of general as public.”

12. However, it is interesting to note here that there was no new material on record in report dated 05.10.2013 prepared by Deputy Commissioner of Police: NIT, Faridabad and again on the basis of same 3 FIRs, which were already specified in proposal, it was stated that petitioner was still active in illicit trafficking of narcotic drugs and his detention was recommended. Accordingly, by way of this specific report, the proposal form was given a fresh lease of life without there being any new material on record, which in the considered opinion of this Court cannot be permitted. While pursuing drastic measures of preventive detention against an individual, the requirement of “live and proximate link”, has to be satisfied in letter and spirit as it affects the liberty of an individual which has been protected by Article 21 of Constitution of India.

13. Even arrest of the petitioner was carried out after 15 days of the passing of the detention order. It is not in dispute that the petitioner has been granted bail in all the 3 cases and no challenge

has been made to these bail orders. It is also an admitted fact that petitioner is a stage 2 HIV +ve patient and requires medical treatment. Therefore, in view of the position of law discussed as above and taking into consideration the factual matrix of this case, detention order dated 17.10.2013 is liable to be quashed.

14. There is another independent factor as well in favour of the petitioner. Detention order is dated 17.10.2023 and the petitioner was arrested on 31.10.2023. In view of section 11 of 1988 Act, maximum period for which petitioner can be detained is 3 months and only after his case is recommended by the advisory board as stipulated in section 9, petitioner can be detained further. However, nothing has come on record to suggest that proceeding has been initiated before the advisory board as mandated u/s 9(b) of the Act. In these circumstances, in any case, petitioner is liable to be released on 31.01.2024 as maximum period of 3 months would end on 30.01.2024.

15. Resultantly, present petition is allowed and the impugned detention order dated 17.10.2023 passed by respondent No. 1 is set aside. Accordingly, petitioner is ordered to be released.

16. Pending miscellaneous application(s), if any, shall also stand disposed of.

January 31, 2024
Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>