

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

CRWP-12490-2023 (O&M)

Reserved on: 24.04.2024

Date of Pronouncement: 30.04.2024

Sunaina

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gurinder Singh Goraya, Advocate
for the petitioner.

Mr. Rajiv Sidhu, D.A.G., Haryana.

HARKESH MANUJA, J.

By way of present Crl. 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 for the release of detinue from the custody of respondent Nos. 1 to 5 and further for the issuance of writ in the nature of Certiorari to quash the order dated 20.10.2023 passed by Addl. Chief Secretary, Department of Home Affairs Haryana (Annexure P-1) being illegal, arbitrary, unjust and violative of Article 19 and 21 of the Constitution of India..

2. Briefly stated, facts of the case are that a proposal was sent by respondent No. 4 to respondent No. 2 - Director General of Police, Haryana vide letter dated 31.08.2023 under Section 3 of the **“Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988”** (hereinafter referred as 1988 Act) for detention of detinue - Smt. Balwinder Kaur @ Bindu wife of Amarjit

Singh C/o Daler Singh resident of Gali no.11, Saraswati Colony, Khadi Markanda, Police Station Sadar Thanesar District Kurukshetra Haryana. Subsequently, on 08.09.2023, screening committee consisting of Chief of Narcotic Control Bureau, CID representative, State Crime Bureau representative and the District Attorney, Police Headquarters, Haryana after examining the relevant aspects of the case also recommended the detention of Mrs. Balwinder Kaur @ Bindu.

2.1 Accordingly, the final proposal was sent on 10.10.2023 by respondent No 2 to respondent No 1 along with the file, which included letter from the SHO Kurukshetra, copies of FIR, seizer Memo, confession memo, inventory report, F.S.L reports, statements of witnesses and copies of bail orders passed by the concerned courts etc. In view of proposal dated 10.10.2023, respondent no.1 passed the detention order dated 20.10.2023 which was issued on 30.10.2023 to detain the mother of the petitioner-detenu. On 30.10.2023, detenu was taken into custody and since then she is detained in District Jail, Kurukshetra. It is the detention order dated 20.10.2023 which has been impugned by way of present writ petition.

3. Primary basis for issuing detention order against the mother of the petitioner was her continuous and repeated involvement in sale of Narcotics to the people of her locality which more than *prima facie* established from the four FIRs against her, details of which are given below:-

i) FIR No. 168 dated 12.02.2020 u/s 21/61/85 of NDPS Act, registered at PS City, Thanesar, wherein, petitioner was

arrested on 15.05.2020 on account of recovery of 29.05 gram of Smack/Heroin and was released on bail on 23.07.2020.

ii) FIR No. 247 dated 14.05.2020 u/s 21/61/85 of NDPS Act, registered at PS City, Thanesar, wherein, petitioner was arrested on 14.05.2020 on account of recovery of 8.7 gram of Smack/Heroin and was released on bail on 17.11.2020.

iii) FIR No. 39 dated 19.01.2022 u/s 21/61/85 of NDPS Act, registered at PS City, Thanesar, wherein, petitioner was arrested on 19.01.2022 on account of recovery of 9 gram of Smack/Heroin and was released on bail on 24.02.2020.

iv) FIR No. 626 dated 03.10.2022 u/s 21/61/85 of NDPS Act, registered at PS City, Thanesar, wherein, petitioner was arrested on 03.10.2022 on account of recovery of 10 gram of Smack/Heroin and was released on bail on 16.11.2022.

4. Learned counsel for the petitioner submitted that though four cases of NDPS Act were registered against detenue/Balwinder Kaur @ Bindu but all were false and she was not convicted in any case. He further submitted that in all cases trial was still pending and the detenue was on bail, therefore, the detention order was invalid and illegal.

5. On the other hand, learned State Counsel submitted that detenue was habitual of committing crime and was kingpin of the chain of supplying the drugs in her area and to break the chain of smuggling of drugs, the accused, namely Balwinder Kaur alias Bindu was detained as per order dated 20/30.10.2023 passed by the competent authority i.e. Additional Chief Secretary Government Haryana. It was also submitted that detenue/ mother of the petitioner was detained in District Jail Kurukshetra in compliance of order dated 30.10.2023 and intimation was given to her family members and copy

of order dated 30.10.2023 was supplied to them as per law, which was even responded to by them through representation dated 18.12.2023.

5.1 It was also argued by learned State counsel that the present petition was not maintainable as per law because the appeal/representation filed on behalf of detainee already stood dismissed by the Additional Chief Secretary (ACS), Home Department Haryana vide order dated 03.01.2024. He further submitted that on 04.01.2024, detainee was produced through Video Conference before the Advisory Board Human Rights, Chandigarh and on the basis of its report, the ACS Home issued the order dated 16.01.2024 for detaining the detainee - mother of petitioner for eleven months. In view of these further developments, learned State Counsel submitted that once the detention order was affirmed by competent authority on the basis of recommendations received from the advisory board, only remedy available to the petitioner was to challenge the order dated 16.01.2024 before this Court under civil writ jurisdiction and writ of habeas-corpus was not maintainable at this stage.

6. Ld. Counsel for the petitioner, despite being made aware about these developments insisted that the writ of habeas-corpus was maintainable as the detention order dated 20/30.10.2023 was ex-facie illegal and void *ab initio*, and therefore, was liable to be set aside. In support of his contentions, he also supplied synopsis and placed reliance upon the following judgments:

- i. **"Lahu Shrirang Gatkai Vs. State of Maharashtra"**, reported as 2017 (2) Law Herald (SC) 1576

- ii. **"Sushanta Kumar Banik Vs. State of Tripura & Ors"**, reported as 2022 (4) Law Herald (SC) 2882
- iii. **"State of Manipur & Ors. Vs. Buyamayum Abdul Hanan @ Anand"**, reported as 2022 (4) Law Herald (SC) 3185
- iv. **"Mallada K Sri Ram Vs. State of Telangana & Ors."**, reported as 2022 (3) Law Herald (SC) 1977
- v. **"Mondira Das, D/o. Late Jharu Das And Anr. Versus The Union Of India, Through The Secretary To The Govt. Of India And Ors"**, reported as 2023 4 GauLT 422; 2023 0 Supreme (Gau) 545

7. After hearing learned counsel for the parties and going through the paper-book of the case, I do not find substance in the submissions made on behalf of the petitioner.

8. A Division Bench of Karnataka High Court in **"Smt. Alisha v. Under Secretary to the Government Home Administration Department"**, bearing case number WPHC No. 100008 of 2023, after discussing catena of judgments of the Hon'ble Apex Court, held that once confirmation order was passed after receiving the recommendation from the advisory board, a writ petition in the nature of habeas corpus was not maintainable. Relevant paras from this judgment are reproduced hereunder:-

"7. Having regard to these settled position, we find that in the present case a prayer is made seeking writ of certiorari to quash the order dated 02.03.2023 passed by the State Government confirming the order of detention passed by the competent authority on 30.01.2023. That being the position, since the petitioner is challenging the detention order and the confirmation order, which is passed under the Bootleggers, Drugs Offenders, Gamblers, Goonda, Immoral Traffic Offenders and Slum Grabbers Act, 1985, a writ petition in the nature of habeas corpus is not maintainable. No doubt the petitioner is entitled to challenge the order of detention or

order of confirmation, but that will be a writ petition seeking a writ of certiorari. Liberty is accordingly granted.

8. For the reasons stated above, we uphold the objections raised at the hands of the respondent-State through learned AAG. The writ petition (habeas corpus) stands dismissed as not maintainable.”

9. It is not in dispute that vide order dated 16.01.2024, competent authority on the basis of recommendations received by the advisory board confirmed the detention order dated 20.10.2023. Relevant part of confirmation order is reproduced here under:

***** The Advisory Board, after providing an opportunity of hearing to the detainee Smt. Balwinder Kaur @ Bindu through video conference on 04.01.2024, submitted its report dated 08.01.2024, which was received vide letter dated 09.01.2024. The Advisory Board, in its report dated 09.01.2024 has concluded that sufficient cause is made out for the preventive detention of Smt. Balwinder Kaur @ Bindu. And now, therefore, In exercise of the powers conferred by section 9 (f) read with section 11 of the Act, 1988, the detention order of Smt. Balwinder Kaur @ Bindu issued vide Endst. No. 5/43/2023-2HC dated 30.10.2023 is hereby confirmed and it is further directed that the period of detention of Smt. Balwinder Kaur @ Bindu wife of Amarjit Singh C/o Daler Singh resident of Gall No.11, Saraswati Colony, Kheri Markanda, Police Station Sadar Thanesar, Kurukshetra, Haryana in pursuance of the aforesaid detention order shall be 11 (eleven) months from the date of her detention i.e. 30.10.2023. *****

10. In view of these further developments, there is substance in the argument made by the Id. State Counsel that petition is not maintainable as petitioner is also required to challenge the confirmation order dated 16.01.2024 passed by the competent authority. Once the detention order dated 20.10.2023 has been confirmed by the competent authority after receiving the recommendations from the advisory board, and that too after affording the detenue an opportunity to represent herself before the

advisory Board, the obligation on the petitioner in present circumstances is higher to show that the detention order is ex-facie illegal or substantial procedural requirements have not been complied with. However, neither any illegality has been pointed out to this effect by the learned counsel for the petitioner nor any material procedural irregularity has been brought to the notice of this Court. Moreover, no merit can be found in the submission that the detainee has not been convicted so far in either of the trials being faced by her. The object of preventive detention is not to punish an individual for having done something illegal but to intercept him before he does it and to prevent him from doing it. The justification of such detention is based on reasonable probability of the impending commission of unlawful and prejudicial act and not the conviction.

11. Even if, the above discussed technicalities are given a go by yet, while appreciating the comparative rights of the detainee and the public in general at large, not only the detainee is facing trial in four cases under NDPS Act, she has also remained in prison for various periods in these cases. Apart from the involvement of the detainee, involvement of his relatives in similar cases has also not been disputed by the learned counsel for the petitioner. The FIRs registered against his son Gagandeep @ Aman s/o Daler Singh are as under:-

I).FIR No. 13 dated 06-01-2019 u/s 21-61-85 NDPS Act at PS City Thanesar district Kurukshetra.

II). FIR, No. 168 dated 12-02-2020 u/s 21-61-85 NDPS Act at PS City Thanesar district Kurukshetra

III). FIR No. 308 dated 14-07-2021 u/s 21-61-85 NDPS Act at PS Sadar Thanesar district Kurukshetra

IV), FIR No. 361 dated 24-11-2021 u/s 21-61-85 NDPS Act at PS City Thanesar district Kurukshetra

V). FIR No. 578 dated 25-11-2021 u/s 21-61-85 NDPS Act at PS Sadar Thanesar District Kurukshetra

Similarly, FIRs registered against Daler Singh, with whom the detainee allegedly resides and who is father of Gagandeep, are as under:-

I) FIR No. 1135 dated 30-12-2017 u/s 21-61-85 NDPS Act at PS City Thanesar district Kurukshetra

II) That FIR No. 141 dated 08-04-2021 u/s 21-61-85 NDPS Act at PS Sadar Thanesar district Kurukshetra

III) That FIR No. 308 dated 14-07-2021 u/s 21-61-85 NDPS Act at PS Sadar Thanesar district Kurukshetra

IV) That FIR No. 532 dated 19-08-2022 u/s 21-61-85 NDPS Act at PS Sadar Thanesar district Kurukshetra

12. In view of the above, merely on account of the fact that detainee has not been convicted in any of the cases yet, it cannot be stated that the prevention order is without any reasonable basis and devoid of any merit. Judgments cited by the Ld. Counsel for the petitioner are not applicable in the facts and circumstances of the present case. It is not the case of the petitioner that there has been any concealment of material facts by the authority. Proposal for detention in this case was made on 31.08.2023 and after being forwarded by respective authorities, detention order was finally passed on 20.10 2023, i.e. approximately within 1 ½ months, which cannot be stated to be on higher side. Rest of the prepositions held in

the judgments relied upon by the learned counsel for the petitioner are not applicable in the factual position of the present case. The judgment in **Lahu Shrirang Gatkal’s** case (supra) relied upon by learned counsel for the petitioner to contend that no specific period was mentioned in the detention order is also not applicable in view of the judgment of larger Bench of the Hon’ble Apex Court in "**T. Devaki vs. Government of Tamil Nadu & Ors.**", reported as (1990) 2 SCC 456, wherein, it was held that if the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification. It is relevant to note here that above mentioned judgment has been followed by the Hon’ble Apex Court recently in "**Pesala Nookaraju vs The Government Of Andhra Pradesh & Ors.**", reported as 2023 INSC 734 as well.

13. Resultantly, present petition is dismissed being devoid of any merit.
14. Pending miscellaneous application(s), if any, shall also stand disposed of.

April 30, 2024

sanjay

(HARKESH MANUJA)

JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No