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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28.05.2024

+ **W.P.(CRL) 168/2024 & CRL.M.A. 12462/2024**

MOHD JABIR

..... Petitioner

Through: Mr. S.S. Das, Mr. Satya S. Tripathi,
Mr. O.P. Sharma, Ms. Sia Das & Ms.
Ria Das, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr.
Kamal Digpaul, Ms. Ishita Pathak,
Mr. Pushpesh Digpaul, Advocates
and Mr. B.S. Meena, Under Secretary
Insp. Ashok Kumar, Narcotics Cell,
Outer North District

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner seeks quashing of detention order¹.
2. We have heard Mr. S.S. Das, learned counsel for petitioner, Mr. Ajay Digpaul, learned Central Government Standing Counsel and carefully perused the material available on record.
3. We straightway come to detention order dated 19.07.2023 which contains the grounds for detention.

¹ Order dated 19.07.2023 bearing number F.No. U-11011/21/2023-PITNDPS passed by Government of India, Ministry of Finance, Department of Revenue (PITNDPS UNIT)



4. As per such detention order, the Sponsoring Authority i.e. Deputy Commissioner of Police, Outer North District, Delhi had put up a proposal seeking detention of the petitioner.

5. As per the facts presented before the Detaining Authority, petitioner was involved in two cases.

6. First such case happens to be FIR No. 217/2019 under Section 21/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act) PS Crime Branch, Delhi and as per allegations made therein, 200 grams of heroin was recovered from the possession of the accused/petitioner on 25.07.2019. Charge-sheet had been filed and admittedly, the petitioner was released on bail in said case on 25.02.2020.

7. The second case against the petitioner pertains to FIR No. 637/2020 for commission of offences under Section 21/29 NDPS Act, PS Bhalswa Dairy. In said case, he was arrested on 28.10.2020 for being found in possession of 500 grams heroin. In said case also, he had been admitted to bail vide order dated 28.03.2023 passed by this Court, albeit, with the following conditions: -

(a) The applicant shall furnish a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand Only) each with 01 surety in the like amount, to the satisfaction of the Trial Court;

(b) The applicant shall not leave the country and if the applicant has a passport, he shall surrender the same to the Trial Court;

(c) The applicant shall furnish to the IO/SHO concerned his cellphone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

(d) The applicant shall drop a Google pin location from his mobile



phone to the IO concerned so as to show his whereabouts every day;

(e) The applicant shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;

(f) The applicant or his family members/relatives/friends will not contact or try to intimidate the complainants/victims or their family or tamper with any of the evidence in anyway.

8. Besides the abovesaid two FIRs, the Detaining Authority noted that there was a Complaint against the petitioner to the following effect: -

“It is informed by the Sponsoring Authority that a complaint has been received alleging that you i.e. Md. Jabir are promoting, selling drugs and its consumption among the youth in the area thus youth is getting addicted of drugs. On enquiry it has been confirmed and allegations are found to be correct.”

9. After taking note of the aforesaid two FIRs and the aforesaid complaint in particular, the Detaining Authority came to the conclusion that the petitioner was a habitual offender and his presence in the society was a threat to the innocent persons of the locality and that his activities were prejudicial to society. It observed that the gravity of the offence committed by him in a well-planned manner clearly established his continued propensity and inclination to engage in such prejudicial activities and, therefore, there was a need to immobilise him so that he is prevented from engaging himself in such type of activities in future.

10. Detaining Authority also mentioned in the detention order that it considered the disclosure of the source of information about such activities of the petitioner to be ‘*against the public interest*’ and it was in the aforesaid background that detention order was passed, while giving him liberty to make representations before Detaining Authority, Central Government and



Advisory Board.

11. Challenge to the Detention order, during the course of arguments, has been confined to the following grounds: -

(i) *The alleged last incident whereby he was found in possession of heroin took place way back on 28.10.2020 but there is nothing to indicate as to why the detention order was eventually passed on 19.07.2023. Long and undue delay has thus snatched the nexus between purpose of detention and the allegations against the petitioner.*

(ii) *There was no justification in passing the detention order on the basis of stale incident.*

(iii) *Detention order has been passed in order to frustrate the bail granted by this Court and in case there was any such information with the Sponsoring Authority that the petitioner had indulged in such kind of activities again, it could have easily filed an application seeking cancellation of bail. However, instead, without any tangible material, the detention order has been procured and thereby jeopardizing his personal liberty.*

(iv) *The Detaining Authority seems to have swayed by the alleged complaint against him for promoting/selling drugs and its consumption amongst youths but no such material pertaining to any complaint or inquiry was provided to him. These were not even part of the relied upon documents.*

(v) *There is unexplained delay between the dates of release of the petitioner on bail and detention order. If petitioner was indulging in prejudicial activities, Sponsoring Authority should have promptly and swiftly prepared the proposal and delay itself is sufficient to vitiate the detention order.*

12. Reliance has been placed upon *Pramod Singla Vs. Union of India & Ors*² and *Sushanta Kumar Banik Vs. State of Tripura & Ors.*³

13. All such contentions have been refuted by the respondents.

14. It is argued that Detaining Authority had carefully perused the entire

² 2023 SCC OnLine SC 374

³ 2022 SCC OnLine SC 1333



material placed before it and such material clearly indicated that his activities were prejudicial to the society. It is contended that proposal dated 17.05.2023 and email dated 13.06.2023 were received from the Sponsoring Authority and these were forwarded to the Screening Committee. These were duly considered by the Screening Committee in its meeting held on 05.07.2023 and the Committee recommended the proposal as fit for preventive detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short PITNDPS Act) and based on such material, the Detaining Authority eventually passed the impugned order which was served upon the petitioner on 21.07.2023. It is contended that reference was made to Central Advisory Board. Such Board heard the representatives of Sponsoring Authority and Detaining Authority and also heard the petitioner and opined that there existed sufficient cause for his detention and accordingly, impugned order was confirmed on 05.10.2023.

15. It is contended by respondents that since information regarding petitioner indulging in prejudicial activities was confidential in nature, the Detaining Authority was justified in not providing the copy thereof to the petitioner and, therefore, no advantage can be dug out from the same. It is argued that it is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, the object of which is 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 drugs. It is argued that petitioner had indulged in organizing the illicit trafficking of Narcotics Drugs and Psychotropic



Substances and it was felt that if he was not detained under Section 3(1) of the PITNDPS Act, he would continue to so engage himself in future also. It is also argued that considering the magnitude of the operation, the chronicle sequences of events, the well-organized manner in which such prejudicial activities had been carried on, the nature and gravity of the offence, the consequential extent of investigation involved including scanning/examination of papers, formation of grounds, the nexus between the dates of incident and passing of the detention order as well as object of his detention was well-merited.

16. Reliance has been placed upon *Santosh Vs. State of Maharashtra through its Principal Secretary and Others*⁴ and *Phulwari Jagdambaprasad Pathak (Smt) Vs. R.H. Mendonca and Others*⁵.

17. Relevant record was produced during the course of hearing.

18. We have already taken note of the fact that the petitioner was involved in two criminal cases and was on bail in both such matters.

19. As far as second criminal matter i.e FIR No. 637/2020 PS Bhalswa Dairy was concerned, he was arrested on 28.10.2020 and was enlarged on bail on 28.03.2023. It is quite clear from the bail order that such release was on several conditions and one such condition was that he would not indulge in any act or omission which is unlawful, illegal or that would prejudice the proceedings in pending cases, if any. There were further certain restrictions on him and he was also under obligation to keep the police informed about his location, on daily basis.

⁴ 2013 SCC OnLine Bom 515

⁵ (2000) 6 SCC 751



20. It is quite obvious that the Detaining Authority had taken note not only of the aforesaid two cases but also about said subsequent complaint.

21. As per subsequent complaint, petitioner was promoting, selling drugs and its consumption amongst the youths in the area and such allegations were found to be truthful on inquiry.

22. Few things emerge right here.

23. Firstly, if the petitioner had again indulged in such type of activities, there was no one to stop the prosecution concerned from moving application seeking cancellation of bail. No such step was even contemplated by the prosecution.

24. Secondly, information so received could have, easily, resulted in registering a fresh case. If the respondents are to be believed then inquiry was conducted and on the basis of such inquiry, allegations of his selling drugs to youths were found to be confirmed. If the allegations were found to be true then the concerned police authorities should have immediately registered another case against the petitioner. These were, in fact, serious allegations but for the reasons best known to police, these were taken lightly. There is no elucidation as to why registration of another case was not intended by the concerned authorities.

25. Thirdly and more importantly, it is not explained as to how such information was labelled as '*a classified one*', thereby disentiing the petitioner from getting even a copy thereof. Mere bald assertion in the detention order, to said effect, would not make such complaint confidential in nature.



26. In *Phulwari Jagdambaprasad Pathak* (supra), the Detaining Authority had, itself, recorded *in-camera* statements of persons/witnesses and it was held that these could be utilized by the Detaining Authority for arriving at a subjective satisfaction for passing detention order. In that case, it was argued that such detention order passed on the basis of recording of *in-camera* statements of some witnesses could not be said to be sufficient for labelling any person as a *dangerous person* within the scope and ambit of *Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981*. Hon'ble Supreme Court observed that there was no provision in the said Act which expressly and impliedly stipulated that such type of material could not be the basis of the detention order and observed as under:-

“.....

16. Then comes the crucial question whether “*in-camera*” statements of persons/witnesses can be utilized for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under Section 3 of the Act. Preventive detention measure is harsh, but it becomes necessary in the larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve, the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of



materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.

17. From the grounds of detention and the papers enclosed with it, copies of which were served on the detenu, it is clear that the detaining authority based his subjective satisfaction on a series of contemporaneous incidents in which the detenu was involved. The satisfaction was not based on a single or stray incident. In the in-camera statements, separate incidents of criminal activities of the detenu were stated. The assertions are not assailed as untrue nor can they be said to be irrelevant for the purpose of the order. On such materials on record it cannot be said that there was no basis for the detaining authority to feel satisfied that the detenu was either himself or as a member or leader of a gang habitually committed or attempted to commit or abetted the commission of any of the offences stated in Section 2(b-1). Therefore, the contention raised by learned counsel for the petitioner that the conclusion arrived at by the detaining authority that the detenu was a "dangerous person" within the meaning of Section 2(b-1) was vitiated cannot be accepted. In our view the detention order under challenge does not suffer from any infirmity."

27. While the legal position is not in dispute, the important facet in the case in hand is different and distinguishable i.e. - whether the Detaining Authority was justified in not providing with the copy of such complaint to the petitioner on the premise that it was classified and confidential?

28. The details of such complaint were not shared citing that its sharing would be against the public interest. It could have easily withheld the source of information and there was nothing to prevent supplying redacted version of complaint and enquiry.

29. There is one more baffling aspect of the case.



30. In the present case, as per the averments made in the counter-affidavit, the proposal was sent on 17.05.2023. Sponsoring Authority also sent email on 13.06.2023 and these were forwarded to the Screening Committee on 16.06.2023 and were considered by the Committee on 05.07.2023.

31. During course of the arguments, the relevant record was produced by the respondents and it was noticed that some inquiry was conducted by SHO, PS Bhalswa Dairy on the basis of one complaint dated 02.07.2023. Based on such complaint, statements of two local persons were also recorded.

32. Mr. Digpaul, learned CGSC contended that such discreet inquiry report had been sent to the Sponsoring Authority and there was no point or justification in sharing the details of such discreet inquiry with the petitioner at the relevant time and, therefore, it cannot be said that detention order is unsustainable.

33. We, however, do not find any merit in such contention.

34. Reasons are manifold.

35. Firstly, it is not clear as to when and how the material related to such inquiry was sent to Detaining Authority. There is no communication to said effect. Interestingly, as per the admitted case of the respondents, the proposal had been already sent on 17.05.2023 and, therefore, it is quite obvious that when the proposal was sent, there was no such complaint with the police. As noted already, the complaint is of later date i.e. 02.07.2023 which was received by the police on 03.07.2023.

36. Thus, the very basis of proposal stands shattered and flattened.



37. When the matter was forwarded to the Screening Committee on 16.06.2023, even by that point of time, such complaint or inquiry was not in picture.

38. Of course, such inquiry seems to have been forwarded by concerned SHO on 04.07.2023 though some unrevealed mode and the matter was considered by the Screening Committee on 05.07.20023 but fact remains that there is nothing before us which may indicate the manner in which such material was transmitted to the Screening Committee and moreover, as already noticed above, there was not sufficient material for sending the proposal as such complaint was not even in existence at that time. Be that as it may, inquiry, as alleged to have been conducted by the Sponsoring Authority, does not inspire much confidence and it seems to us that an attempt has been made to create a case against the petitioner so as to frustrate the order of bail passed by this Court.

39. Moreover, as petitioner had been arrested in the second case on 28.10.2020 and he remained behind the bars for around two and half years. If his activities were prejudicial in nature, the Sponsoring Authority should have initiated the proposal instantly and the authority concerned should have passed the detention order with alacrity.

40. It is quite obvious that the moment petitioner was able to secure bail on 28.03.2023, the sponsoring authority started devising ways to get him behind the bars again somehow. A proposal, sans the alleged complaint of selling drugs, was sent on 17.05.2023 and the detention order has been passed on 19.07.2023.

41. There is gap of two months between the date of proposal and eventual



date of detention order and such gap has not been explained, much less in an acceptable manner which throws considerable clout on the genuineness of the subjective satisfaction of the Detaining Authority for passing impugned order. In this regard we may refer to *Sushanta Kumar Banik* (supra) wherein the Hon'ble Supreme Court observed 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.

15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the “live & proximate link” between the grounds of detention & the avowed purpose of detention.”

42. It was thus observed by the Hon'ble Supreme Court that it was manifestly clear that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay, unless satisfactorily explained, throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently



render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case. Of course, there can never be a rigid or straight-jacket formula prescribing any time-period but in the given peculiar facts, period of two months seems impenetrable.

43. Needless to emphasize, when the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention and the copies of the relied upon material to enable him to make an effective representation. These have to be supplied in toto and as expeditiously as possible. In *Icchu Devi Choraria v. Union of India*⁶, it is observed that copies of documents, statements and other materials must be, unquestionably, supplied to the detenu without any unreasonable delay, else the detenu would not be able to make an effective representation and the fundamental right conferred on him to be afforded the earliest opportunity of making a representation against his detention would stand defeated. In the case in hand, we have not been offered any compelling reason as to why such copy of complaint or enquiry report was not supplied. There is nothing to treat these or brand these as confidential. If such roving complaints are treated as confidential ones and the courts also start putting its seal of affirmation over the same, then the valuable rights of any such detenu would stand severely impaired, resulting in grave prejudice.

44. Here, as noted, the proposal seems to have been moved simply to

⁶ (1980) 4 SCC 531



defeat the bail given by this Court, which approach we deprecate in context of the given factual matrix. Moreover, when the proposal was sent, there was no complaint regarding his selling and indulging in alleged prejudicial activities. Thus, there was no occasion to have sent any proposal. Delay of two months in passing the detention order becomes imperative in backdrop of the present facts. There is nothing to presume that the complaint was confidential in nature. None of the locals claimed that they were afraid of coming in open and deposing against the petitioner. Thus, neither the delay has been explained nor the copy of such complaint, not even the redacted one, was supplied to the petitioner. The satisfaction recorded by the authority concerned becomes vague, rendering the impugned order unsustainable.

45. As an upshot of our foregoing discussion, we hereby allow the petition and quash the Detention Order dated 19.07.2023 passed by the Joint Secretary, Govt. of India under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance (PITNDPS) Act 1988 vide Detention Order No. U-11011/21/23-PITNDPS. The petitioner be released forthwith, if not required otherwise.

46. The petition stands allowed in aforesaid terms.

SURESH KUMAR KAIT, J

MANOJ JAIN, J

MAY 28, 2024/dr