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

Reserved on :18th July 2024
Date of Decision:7th August 2024

\+ **W.P.(CRL) 848/2024 & CRL.M.A. 7932/2024**

AMARDEEP SINGH NARANG .....Petitioner

Through: Mr. Nitin Joshi, Mr. Harsh Singh, Mr. Hitendra Singh, Mr. Vaibhav Thaledi, Mr Keshav Kant Sharma & Mr. Harsimran Singh, Advocates (M:7988489742).

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr Anurag Ahluwalia CGSC, Mr Kaushal Kait, Mr Gaurav Dua, Mr Daksh Gupta, Mr Jatin Yadav, Advocates for R-1 and R-2 (M:9818004978).

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

Background Facts

1. The present petition under Article 226 of the Constitution of India seeks quashing of the preventive detention orders dated 29th November, 2023 and 19th February, 2024, issued by Government of India, Ministry of Finance,

Department of Revenue, PITNDPS Division, bearing F.No. U-11011/46/2023-PITNDPS and bearing F.No. U-11012/28/2023-PITNDPS respectively, under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 *(hereinafter referred to as 'PITNDPS Act')*, thereby ordering the detention of the Petitioner for one year from the date of his detention, i.e., 1st December, 2023.

2. The relevant facts for the purpose of adjudication of the present petition are as under:

i. The present Petitioner is alleged to have been involved in the following cases:

a. NCB Delhi Crime No. VIII/28/DZU/2020 (seizure of 50,000 Tablets, i.e., 20 kgs. of Tramadol)

b. NCB Delhi Crime No. VIII/03/DZU/2021 (seizure of 2.77 kgs. of Tramadol Capsules)

c. NCB Jodhpur Crime No. VIII (IO)/16/NCB/JZU/2020 (seizure of 6,02, 300 Tablets (314.62 kgs.) of Tramadol tablets and 338 bottles of cough syrups)

ii. On the basis of the alleged involvement of the Petitioner in the aforesaid cases, the Narcotics Control Bureau, Delhi Zonal Unit, i.e., the Sponsoring Authority (Respondent no. 5) submitted a proposal dated 12th September, 2023, which was forward to the Screening Committee on 12th October, 2023. The proposal was considered by the Committee on 6th November, 2023 and the same was held to be fit for preventive detention under the PITNDPS Act, 1988.

iii. Thereafter, the aforesaid detention order dated 29th November, 2023 was issued under Section 3(1) of the PITNDPS Act, 1988, by the Detaining Authority, i.e., Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, PITNDPS Unit (Respondent No. 3).

iv. Thereafter, the said order dated 29th November, 2023 was executed upon the Petitioner on 1st December, 2023. The grounds of detention, the Relied Upon Documents *('RUDs')* and list thereof were served to the Petitioner on 1st December, 2023 itself under the provisions of clause (3) of Section 3 of the PITNDPS Act, 1988.

v. A reference to the Central Advisory Board, Delhi was made on 19th December, 2023 under Section 9(b) of the PITNDPS Act for the purposes of 4(a) and 7(c) of the Article 22 of the Constitution of India.

vi. The Central Advisory Board held their meetings on 23rd January, 2024 and 30th January, 2024. Considering the representation made by the Petitioner and the respondents, the Advisory Board *vide* report dated 13th February, 2024 confirmed the detention of the Petitioner. Subsequently, a confirmation order dated 19th February, 2024 was issued by Deputy Secretary, Government of India, Department of Revenue, Ministry of Finance and was served upon the Petitioner in the Tihar Jail on 20th February, 2024. The detention order was for a period of one year with effect from 1st December, 2023.

3. The facts with respect to the aforesaid cases registered by the Sponsoring Authority (Respondent No. 5) have been discussed by the Detaining Authority in the following manner:

*"**<u>1.1 NCB Delhi Crime No. VIII/28/DZU/2020; seizure of 50000 Tablets (20 Kgs) of Tramadol</u>***

a) On the basis of information, NCB, Delhi Zonal Unit seized 50000 Tramadol, Hydrochloride 100 mg tablets (weight 20 Kg) on 18.06.2020 at DTDC Express Ltd. Khasra No. 16/06 telephone exchange road, near Smalkha Village Kapashera, New Delhi from the parcel airway bill No. D59471081. The seized parcel was booked by one Mohd. Tahir and was to be destined to one Bajwa Medical Hall, Shergarh Cheema, Malerkotla, Sangrur, Punjab but upon verification neither said Mohd. Tahir was found available anywhere nor said Bajwa Medical Hall was available at its given address. After verification, it was found that this address does not exist.

b) That the seized medicine was manufactured by Neutech Health Care. As per details by Neutech health care, they supplied 497500 tablets to M/s Best Enterprises at shop no- 4 G/F property no- B-3 shopping centre, Tagore Garden New Delhi-110027.

c) That the proprietor of M/s Best Enterprises is Ajay S/o Bhura but all business was managed and financed by accused persons namely Raja Jaswant Singh Sandhu, Amardeep Singh Narang and Hardeep Singh. On physical verification of Best Enterprises, it was found that the same shop has closed since 18 July 2020.

d) Statements of Smt. Suman Minocha, Shop owner was recorded on 28.12.2020, 13.01.2021 & 20.01.2021, In voluntary statements of Smt. Suman Minocha, she identified accused Amardeep Singh Narang i.e. you and Raja Jaswant Singh Sandhu as *same persons who met her for taking her shop on rent for the business of Generic Medicines at shop no- 4 G/F property no- B-3 shopping Centre, Tagore Garden New Delhi-110027. She also stated that the rent of the said shop was paid by either Amardeep Singh Narang i.e. you or Raja Jaswant Singh Sandhu. She also stated that it has come to her notice that Amardeep Singh Narang i.e. you and Raja Jaswant Singh Sandhu have forged her signature to create a fake rent document in favour of Best Enterprise and Ajay. She further stated that a complaint to this effect has already been lodged in Hari Nagar PS against Amardeep Singh Narang i.e. you and Raja Jawant Singh Sandhu.*

e) In voluntary statement of Ajay dated 09.01.2021 and 10.01.2021, he disclosed that he was residing in the Jhuggi Cluster Area Uttam Nagar and was working with Subway restaurant as delivery boy situated at main Market, Rajouri Garden owned by Raja Jaswant Singh Sandhu and which was run by his wife Smt. Taniya Sandhu. He further disclosed that due to some altercation with Tamiya Sandhu he left the restaurant. Raja Jaswant Singh Sandhu offered him a job of delivery boy in his medicine firm and for which he asked for his documents. He further disclosed that he provided his PAN Card Aadhar Card, Certificate of Class Tenth, photographs etc. to Raja Jaswant Singh Sandhu in presence of Amardeep Singh Narang i.e. you. He started job of delivery boy at their shop i.e. M/s. Mukta Vision Enterprises where another person Puneet was also working as delivery boy. He further disclosed that Amardeep Singh Narang and Raja Jaswant Singh Sandhu apprised him that since he is working as delivery boy of the medicines, therefore in order to save from any police *action a drug license was required and introduced him with a person Sarvesh for obtaining drug license. He further disclosed that after some time Amardeep Singh Narang and Raja Jaswant Singh Sandhu shut down their shop i.e. M/s. Mukta Vision and shifted all goods in Best Enterprises and he continued to undertake delivery of the medicines from that shop.*

f) Amardeep Singh Narang i.e. you used to manage a Pharma company namely M/s. Best Enterprises in name of Mr. Ajay with co-accused Raja Jaswant Singh Sandhu and Hardeep Singh. During the investigation, it came into notice that Neutech Pharma supplied the recovered consignment of Tramadol Tablets to M/s Best Enterprises and payments thereof were received from Bank Account Number 6813223698 of Kotak Mahindra Bank, Rajouri Garden. This account was in the name of Best Enterprises and was operated by Amardeep Singh Narang i.e. you as you had operational mandate in this account.

g) It came to notice that Amardeep Singh Narang i.e. you were arrested by the NCB, Jodhpur in Case No. 16/2020 and were in the judicial custody. On the request of NCB Jodhpur, house search of Amardeep Singh Narang i.e. you was conducted on 04.01.2021 by officers of NCB, Delhi Zone in NCB Jodhpur Crime and during the house search various incriminating documents related to Best Enterprises i.e. particulars of registered Pharmacist/competent person approved license in form no - 20B,21, site plan of M/s Best Enterprises at shop no- 4 GIF, property no B-3 shopping Centre, Tagore Garden, New Delhi-110027, grade sheet of Ajay s/o Bhura, self-declaration for competent person address to

Licensing Authority Rajouri Garden, Rent agreement of shop no-4 G/F property no- B-3 shopping Centre, Tagore Garden New Delhi-110027 between Suman Minocha and Ajay (which was subsequently found as fake document),Rent agreement of shop no- 4 G/F property no- B-3 shopping centre, Tagore Garden, New Delhi-110027 between Suman Minocha and Banti Karira, copy of drug license no DL-RJG-132739 of Best Enterprises in the name of Ajay, Fee payment receipt of Drug license of Best Enterprises, Form 19 of Best Enterprises, GST Invoice of Best Enterprises, copy of bank statement of IndusInd Bank account no. 201003190617 of Mukta Vision Enterprises, copy of PAN card of Banti Karira, experience certificate of Khera Medicos issued to Ajay S/o Bhura (used for obtaining drags license), copy of stock register of Best Enterprises from 01.01.2020 to 19.02.2020. On analysis of documents and other information received during investigation, it revealed that Amardeep Singh Narang i.e. you was one of the conspirator and handler of the business of Best Enterprises and Muka Vision Enterprise.

h) In voluntary statement of Raja Jaswant Singh Sandhu dated 10.01.2021 and 11.01.2021, it was disclosed that Amardeep Singh Narang i.e. you are his associate in illegal business of medicine. He further disclosed that besides himself, Amardeep Singh Narang i.e. you and Hardeep Singh are also involved in the illegal diversion of the Narcotics Drugs. He also disclosed that they used to divert narcotic medicines without proper documentation. He further disclosed that he himself used to maintain billing account through his computer as well as on the laptop of Amardeep Singh Narang i.e. you. He also stated that Amardeep Singh Narang i.e. you in *association with his brother Amarjeet Singh Sandhu started Mukta Vision Enterprise to do illegal business of drugs. He further disclosed that on his instructions, the account work of Best Enterprises was being done by his CA/Accountant M/s. Kalsi Associates. In year 2019 he opened a Pharma company namely M/s Mukta Vision in the name of Punit Galhotra with co-accused Amardeep Singh Narang i.e. you and started doing business in narcotic based medicines like Tramadol Codeine based syrups alprazolam etc. He sold about 50-60% in cash bills. In month of November, 2019, the Central Bureau of Narcotics seized medicines sold in the Mukta Vision which were sold without bills in Delhi and Gwalior. After that they closed the firm Mukta Vision Enterprise and start a new firm Namely Best Enterprises with co accused Amardeep Singh Narang i.e. you.*

i) Raja Jaswant Singh Sandhu along-with Amardeep Singh Narang i.e. you had taken the shop of Smt Suman Minocha on rent on the ID documents of Banti Karira. He further disclosed that as to how he allured his employee Ajay Kumar for obtaining drug license in his name and for that he misused the ID documents of Ajay Kumar. He further disclosed that he had obtained drug license in the name of Best Enterprises after misusing the ID documents of Ajay Kumar. He further disclosed that the shop of Smt. Suman Minocha was taken on rent on the ID Documents of Banti Karira S/o Sh. Parshuram Karira R/o 31/37, Gulab Khana, Kala Mahal Agra (U.P.) and subsequently he created a forged rent agreement in the name of Suman Minocha and Ajay Kumar, the purported owner of Best Enterprises. He was arrested on 11.01.2021.

j) That during the house search of the accused Raja Jaswant Singh Sandhu, cheque book of Best Enterprises of Kotak Bank and IndusInd Bank and 02 (Two) signed blank cheque leaves signed by Ajay, Proprietor, Best Enterprises were recovered. 07 (Seven) blank leaves of the IndusInd Bank cheque book were also signed by Ajay. Proprietor, Best Enterprises. Two mobile phones and one computer which was used for billing in Best enterprises were also seized vide Panchnama dated 11.01.2021 after arrest of accused Raja Jaswant Singh Sandhu.

k) That the data from the computer CPU which was seized was analyzed which revealed that there are number of documents related to M/s Best Enterprises for the sale of Narcotics Medicines. From the perusal of the print out of the sale-purchase bills of Best Enterprises which was retrieved from the Computer Data of Raja Jaswant Singh Sandhu it revealed that those bills are having printed mobile phone No. 9891890179 of Amardeep Singh Narang i.e. you and mobile No: 8573030150 of Hardeep Singh. Besides that, email ID of Amardeep Singh Narong i.e. youad_narang@yahoo.com was also mentioned on those bills/GST Invoices, which suggests that all accused persons are the conspirators and indulged in the illegal diversion of the Narcotics Medicines on the drug license of Best Enterprises obtained in the name of Ajay.

l)In voluntary statement of Sh. Puneet Galhotra dated 21.01.2021, he disclosed that Amardeep Singh Narang i.e. you and Raja Jaswant Singh Sandhu contacted him and they obtained drug license in the name of M/s. Mukta Vision by misusing his ID Documents. He further disclosed that though he is *technically the owner of M/s Mukta Vision but practically entire business and activities of M/s Mukta Vision was being done and operated by Amardeep Singh Narang i.e. you and Raja Jaswant Singh Sandhu and he was merely an employee in the said firm for Rs. 25,000/- per month and be used to do work as a medical executive on the instructions of Amardeep Singh Narang i.e. you and Raja Jaswant Singh Sandhu. He further disclosed that Amardeep Singh Narang i.e. you and Raja Jaswant Singh Sandhu were the persons who financed the entire business of M/s. Mukta Vision and entire business dealings were carried out by them only. He further disclosed that after receiving a notice from Central Bureau of Narcotics, the business of M/s. Mukta Vision was closed by Amardeep Singh Narang i.e. you and Raja Jaswant Singh Sandu.*

m) ***Amardeep Singh Narang i.e. you were in judicial custody in Jodhpur Jail in Case No.16/2020. An application for remand of Amardeep Singh Narang filed by NCB Delhi for recording of your statement was allowed by the Court vide order dated 19.01.2021. In your voluntary statement dated 19.01.2021, you disclosed that you entered into a criminal conspiracy with Raja Jaswant Singh Sandhu and Hardeep Singh for illegal diversion business of Narcotics Medicines and for that they had taken a shop on rent after misusing the ID documents of Ajay.*** *They obtained drug license in the name of Best Enterprises of which Ajay was the official owner in the documents. However, the entire business of the said firm was managed by them. You further disclosed that you used to procure and distribute/divert the Narcotics Medicines in association with Raja Jaswant Singh Sandhu to sell*

NRx medicines in cash, with and without bills. You also disclosed that you had taken a license for Mukta Vision under the name of Puneet Galhotra and that you used to procure NRx medicines from Neutech Health Care, AKS Farm and OTS. You also disclosed that you maintained accounts of your business with Kotak Mahindra Bank and HDFC Bank, Rajouri Garden and that the maximum of the deposits in these accounts were made by yourself.

n) That account No. 13431600001297 in HDFC Bank of accused Amardeep Singh Narang i.e. you, joint account No. 02921000027847 in HDFC bank of Kawaljeet Kaur Narang W/o Amardeep Singh Narang and Amardeep Singh Narang i.e. you was used for huge amounts of cash deposit and further transferred to co-accused Hardeep Singh and his family members account No. 083201002207 in ICICI Bank account of Gurshan Kaur W/o Hardeep Singh, account No. 13827101001998 in Canara Bank, account of accused Hardeep Singh, account No. 3827101004591 in Canara Bank, account of Tarandeep Singh S/o Hardeep Singh, accounts where frequent huge transactions (Cash deposit/transferred) were made and used for amounts transferred to Best Enterprises in Kotak bank account number 6813223698.

o) The samples of seized contraband were forwarded to the CRCL, New Delhi for chemical examination. The chemical examination report dated 24.07.2020 confirmed that the samples under reference answered positive test for Tramadol Hydrochloride.

p) ***<u>A chargesheet was filed against Amardeep Singh Narang i.e. you and other accused persons on</u>***

<u>09.07.2021 in the Court of Special Judge, NDPS Act, Patiala House Courts, New Delhi under section 8, 22 (c), 27A & 29 of NDPS Act, 1985</u>.

q) ***<u>Amardeep Singh Narang i.e. you filed an interim bail application before the Court of ASJ/Special Judge, NDPS, Delhi which vide its order dated 06.04.2022 granted interim bail for 7 days on the ground of marriage of your son. You again filed an interim bail application before the Court of ASJ/Special Judge, NDPS, Delhi which vide its order dated 09.01.2023 granted interim bail for 15 days on the ground of death of your mother. You again filed a regular bail application before the Court of ASJ/Special Judge, NDPS, Delhi on 04.09.2023 which is pending for disposal.</u>***

<u>1.2 NCB Delhi Crime No. VIII/03/DZU/2021; seizure of 2.77 Kg of Tramadol Capsules</u>

a) On the basis of secret information, one parcel bearing AWB no 8635449421 was examined at DHL express Pvt Ltd, 71/3, Rama Road, Near Kirti Nagar, New Delhi on 30.01.2021 which led to recovery of2.770 Kg (commercial quantity) blue coloured Tramadol Capsules having marking We+ We care and same were seized vide Panchnama dated 30.01.2021.

b) During preliminary enquiry, it was revealed that the parcel in question was booked by one person namely Charanjjt Singh at Rajouri Garden branch of DHL on 29.01.2021. On the basis of reliable information dated 03.02.2021, the said Charanjit Singh was intercepted on 03.02.2021 at DHL, Rajouri Garden branch where he came to enquire about the booked parcel.

c) In his statement dated 03.02.2021,Charanjit Singh disclosed that he had concealed the recovered Tramadol capsules in Haldiram Namkeen packets and booked the parcel for his known United Kingdom based Didar Singh alias Dildar Singh. Further heal so disclosed that he received the boxes of recovered Tramadol capsules from one Guldeep Singh alias Gagan as told by Didar Singh.

d) In voluntary statement of Guldeep Singh dated 04.02.2021, he disclosed that Raja Sandhu had supplied 1the boxes of said Tramadol capsules which were further supplied to Charanjit Singh by him.

e) Raja Jaswant Singh Sandhu used to operate and manage a pharma company namely Shrijan Group in name of Smt. Sushila Sharma. During investigation it came into notice that Vinayak Pharma supplied the recovered consignment of Tramadol Capsules to Shrijan Group which were further illegally diverted by Raja Sandhu along with his associate Amardeep Singh Narang i.e. you and were supplied to Guldeep Singh.

f) Smt. Sushila Sharma, License holder of the firm Srijan Group, in her voluntary statement dated 09.07.2021 under section 67, NDPS Act, stated that Raja Sandhu used to operate and manage sale and purchase of the firm Shrijan Group. She also provided screenshots of WhatsApp chat between Raja Sandhu and her. She also stated that when she knew about something wrong in working of Raja Sandhu, she discussed the matter with Raja Sandhu and asked him to stop illegal activities but Raja Sandhu threatened her. Then, she met Sarvesh Singh for surrender of her licenses.

g) Shri Anil Gambhir, shop owner, in his voluntary statement dated 09.07.2021 tendered under section 67, NDPS Act, identified Raja Sandhu who used to come to the shop and stated that Raja Sandhu was also present during the rent agreement of the shop which shows his active role in the firm.

h) Sarvesh Singh, who acted as facilitator in getting Drug License of Shrijan Group in name of Smt Sushila Sharma had tendered his voluntary statement dated 13.07.2021 under section 67, wherein he stated that Raja Sandhu obtained the drugs licenses of Shrijan Group in name of Smt Sushila Sharma; further he also stated that Sushila Sharma was worried about way of working of Raja Sandhu. Further he suggested Smt. Sushila Sharma to surrender the licenses and then she applied for the same and finally licenses were cancelled on 4th January 2021.

i) In his statement dated 22.03.2021, Raja Jaswant Singh Sandhu disclosed that he had supplied the boxes of recovered Tramadol capsules to Guldeep Singh @ Gagan which were supplied to him (Raja Sandhu) by Amardeep Singh Narang i.e. you. He also disclosed that he used to create pharmaceutical firm and used to divert illegally NRx medicines in association with Amardeep Singh Narang i.e. you. He also disclosed mobile number of Guldeep Singh and Amardeep Singh Narang i.e. you. He was arrested on 22.03.2021.

j) In his statement dated 22.03.2021, Amardeep Singh Narang i.e. you, disclosed that you are actively associated with Raja Jaswant Singh Sandhu to create firms and used to manage financial matters of created *firm and he was actively associated with Raja Jaswant Sindhu in illegal diversion of NRx medicines.* ***You admitted your association with Raja Jaswant Singh Sandhu in illegal diversion of NRx medicines, accordingly you were arrested on 24.03.2021****.*

k) The samples of seized contraband were forwarded to the CRCL, New Delhi for chemical examination. The chemical examination report dated 16.03.2021 confirmed that the samples under reference answered positive test for Tramadol, Paracetamol and Dicyclomine.

l) ***A chargesheet was filed against Amardeep Singh Narang i.e. you and other accused persons on 31.07.2021 in the Court of Special Judge, NDPS Act, Patiala House Courts, New Delhi under section 8, 22, 23 & 29 of NDPS Act, 1985****.*

m) ***Amardeep Singh Narang i.e. you filed a regular bail application before the Court of ASJ/Special Judge, NDPS, Delhi which vide its order dated 03.08.2023 granted regular bail to you on furnishing bail bonds and fulfilling other conditions****.*

1.3 NCB Jodhpur Crime No. VIII(IO)/16/NCB/JZU/2020; seizure of 602300 (314.62 Kgs) Tramadol Tablets and 338 bottles of cough syrups

a) Based on information, NCB Jodhpur Seized 602300 Tramadol Tablets/ Capsule (weight 314.620 kg), and 338 numbers of cough syrups (weight 33.800 Kg) on 09 09.2020 from the vehicle No RJ 07 CC 1614 and two persons namely Mohit Kumar &

Someshwar Singh were apprehended near DPS, Pal Sangaria Bypass Road Jodhpur, Rajasthan.

b) In voluntary statement of Someshwar Singh, he disclosed that seized NRx medicines were taken from go-down Shop No- 809 at Motor merchant market on instruction of his known person namely Rohit Chaudhary@ Khiya Ram (still not arrested) and was to be delivered to one Mahender Kumar S/o Krishna Ram Bishnoi (Still not arrested). The same was also confirmed by accused Mohit Kumar in his statement. He also disclosed that he had deposited amount of Rs. 1,95,000 in account No.919020080548839 Axis bank of Al Zaid Marketing & AMP Trading Company.

c) In voluntary statement of Mukhtyar Ahmed, C.A of Al Zaid Marketing & AMP Trading Company, he disclosed that 2 persons namely Shakeel and Shahrukh Khan came to him and told that they want to create a firm based on Live Stock Business and they deposited huge amount in our company account on TDS of 2 % till opening of live stock firm and the amount was further transferred to account No 6813223698 of Best Enterprises on being told by accused Shakeel.

d) In voluntary statement of Shakeel Ahmed dated 12.01.2021, it was disclosed that after sales proceedings of illegal NRx medicine, the amount was transferred to Al Zaid Marketing AMP trading company and further transferred to the Best Enterprise's Bank Account Number -6813223698 of Kotak Bank and which was further transferred to Neutech Health Care Pvt Ltd, OTS health care, OKS Global Pvt Ltd.

e) In voluntary statement of Amardeep Singh Narang i.e. you dated 22.12.2020 & 23.12.2020, you disclosed that you entered into a criminal conspiracy with accused Raja Jaswant Singh Sandhu and Hardeep Singh for illegal diversion business of Narcotics Medicines and you also confirmed that you transferred the amount to Neutech Health Care Pvt Ltd, OTS health Care, OKS Global Pvt Ltd to purchase NRx medicine from these firms. Amardeep Singh Narang i.e. you created a firm namely Best Enterprises in association of co-accused Raja Jaswant Singh Sandhu and Hardeep Singh for 6 the purpose of illegal diversion of Narcotics medicines and he was the authorized signatory of the bank account used for financial transactions of the firm.

f) The samples of seized contraband were forwarded to the GOAW, Neemuch, MP for chemical examination. The chemical examination report dated 26.10.2020 confirmed that the samples under reference answered positive test for Tramadol & Codeine Phosphate.

*g) **A chargesheet was filed against Amardeep Singh Narang i.e. you and other accused persons on 06.03.2021 in the Court of Special Judge, NDPS Act, Jodhpur under section 8, 21, 22, 27A & 29 of NDPS Act, 1985**.*

*h) **Amardeep Singh Narang i.e. you filed a regular bail application before the High Court of Jodhpur which vide its order dated 16.02.2021 rejected the bail petition. You again filed a regular bail application before the High Court of Jodhpur which vide its order dated 01.08.2022 granted bail on fulfilling bail bonds and other conditions**."*

4. On the basis of the aforesaid facts and circumstances, the Detaining Authority observed and recorded as under:

> *"2. After going through the facts and circumstances in all above-mentioned cases, it is clearly established that you i.e. Amardeep Singh Narang are actively involved in trafficking of Narcotics Drugs and Psychotropic Substances and you are a habitual offender. Your presence in the society is a threat to innocent person to the locality/State/Nation and your activities are prejudicial to society.*
>
> *3. **I am aware that at present you i.e. Amardeep Singh Narang are in judicial custody. However, considering your conscious involvement in illegal trafficking of drugs and psychotropic substances in a repeated manner to the detriment of the society, you have a high propensity to be involved in the prejudicial activities in future on being released on bail**.*
>
> *4. In view of the facts mentioned above, I have no hesitation in arriving at the conclusion that you i.e. Amardeep Singh Narang through your above acts engaged yourself in prejudicial activities of illicit traffic of narcotics and psychotropic substances, which poses serious threat to the health and welfare not only to the citizens of this country but to every citizen in the world, besides deleterious effect on the national economy. The offences committed by you i.e., Amardeep Singh Narang are so interlinked and continuous in character and are of such nature that these affect security and health of the nation. The grievous nature and gravity of offences committed by you i.e. Amardeep Singh Narang in a well-planned manner clearly establishes your continued propensity*

and inclination to engage in such acts of prejudicial activities. Considering the facts of the present case mentioned in foregoing paras, I have no hesitation in arriving at the conclusion that there is ample opportunity for Amardeep Singh Narang i.e. you to repeat the above serious prejudicial acts. ***Hence, I am satisfied that in the meantime you i.e. Amardeep Singh Narang should be immobilized and there is a need to prevent you i.e. Amardeep Singh Narang from engaging in such illicit traffic of narcotic drug and psychotropic substances in future by detention under Section 3(1) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988****.*

5. In view of the overwhelming evidences discussed in foregoing paras, detailing how you i.e. Amardeep Singh Narang have indulged in organizing the illicit trafficking of Narcotic Drugs and Psychotropic substances as well as have a high propensity to engage in this illicit activity, it is conclusively felt that if you are not detained under section 3(1) of the PITNDPS Act, 1988, you i.e. Amardeep Singh Narang would continue to so engage yourself in possessing, purchase, sale, transportation, storage, use of narcotics and psychotropic substances illegally and handling the above activities, organizing directly in the above activities and conspiring in furtherance of above activities which amount to illicit trafficking of psychotropic substances under section 2(e) of the Prevention of Illicit Traffic of Narcotic Drugs and Psychotropic Substances (PITNDPS) Act,1988 in future also. I am, therefore, satisfied that there is full justification to detain you i.e. Amardeep Singh Narang under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic

Substances Act, 1988 with a view to preventing you i.e. Amardeep Singh Narang from engaging in above illicit traffic of narcotics and psychotropic substances specified under schedule to the NDPS Act, 1985.

6. Considering the magnitude of the operation, the chronicle sequence of events, the well-organized manner in which such pre-judicial activities have been carried on, the nature and gravity of the offence, ***the consequential extent of investigation involved including scanning/examination of papers, formation of grounds, I am satisfied that the nexus between the dates and incident and passing of the Detention Order as well as object of your detention has been well maintained****."*

(emphasis supplied)

Submissions On Behalf Of The Petitioner

5. Learned Counsel appearing on behalf of the Petitioner submits that the latter ran a company as a director, in the name and style of Amardeep and Devender Trading Alliances in Bur Dubai, UAE till 2016 and thereafter moved to India and started assisting his son in the running of a gymnasium. It is submitted that in March, 2020, lockdown ensued and the gym got closed. It is the case of the Petitioner that during that time on account of financial adversity, Petitioner was coaxed by one longtime family friend, namely, Amarjeet Singh Sandhu to assist his brother, namely, Raja Jaswant Singh Sandhu (co-detenu) in his legitimate business of medicines, who was having difficulty in managing the vast business because of dearth of workers/staff during the pandemic. It is thus submitted that upon such representation and allurement of Raja Jaswant

Singh (co-detenu), the Petitioner in May, 2020 had agreed to assist him in managing the financial operations of M/s Best Enterprises.

6. It is also the case of the Petitioner that it was also represented by Raja Jaswant Singh Sandhu that since the Petitioner would be engaged in managing the finances of the company, his email ID and mobiles numbers would be mentioned in the bills, memos etc. to enable the debtors/creditors of the company to make direct communication with the Petitioner and the said details would also create a basis for showing experience in the pharmaceutical sector which would help the Petitioner in opening his own pharmaceutical company in future.

7. The case of the Petitioner is that he did not have requisite knowledge, intent or *mens rea* with regard to the illegal trade carried on by co-detenu, Raja Jaswant Singh Sandhu. It is further submitted that the Petitioner had only worked for 3 months on an agreed salary of Rs. 25,000/- every month, which was given in cash.

8. Learned counsel for the Petitioner challenges the aforesaid detention order on the following grounds:

A) <u>No recovery from the Petitioner</u>

i. No recovery was effected from the Petitioner in any of the three cases mentioned hereinabove. It is submitted that the Detaining Authority proceeded in a mechanical manner without appreciating that the contraband recovered in all the three cases was not at the instance or from the possession of the present Petitioner. It was also argued that the Detaining Authority did not appreciate the following sequences of events:

a) On 9th September, 2020, a recovery of 6,02,300 of Tramadol Tablets/Capsule (weight 314.620 kgs.) and 338 numbers of cough syrups (weight 33.800) was effected at Jodhpur *vide* Crime case No. VIII(IO)/16/NCB/JZU/2020.

b) On 23rd December, 2020, the Petitioner appeared before the Investigating Officer, Jodhpur Zone Unit, on receipt of notice under Section 67 of the NDPS Act and was arrested in the said case.

c) While the Petitioner was in custody, he was arrayed as an accused in case Crime No. VIII/28/NCB/DZU/2020 (in which recovery of 50,000 tablets of Tramadol was effected on 18th June, 2020 at New Delhi) and arrested on 19th January, 2021.

d) On 30th January, 2021, the recovery of 2.770 kgs. of Tramadol capsules was effected in New Delhi and registered as Crime No. VIII/03/NCB/DZU/2021 and the Petitioner was again arrested on 24th March, 2021 in the said case while being already in custody.

B) <u>Non-Application of Mind</u>

i. Learned counsel appearing on behalf of the Petitioner submits that that the Petitioner was granted bail in the case registered in Jodhpur by the Hon'ble High Court of Judicature for Rajasthan at

Jodhpur in ***CRL. M. BAIL NO. 2777/2022*** *vide* order dated 1st August, 2022. It is submitted that the said order was not challenged by the department. It is further submitted that subsequent thereto, the Petitioner was also granted bail in recovery effected from Delhi in NCB Delhi Crime No. VIII/03/DZU/2021 on 30th January, 2021, by the learned Special Judge, *vide* order dated 3rd August, 2023. The Petitioner thereafter was again granted bail in the third case of recovery effected in Delhi in NCB Delhi Case Crime No. VIII/28/DZU/2020, on 18th June, 2020, by the learned Special Court on 2nd December, 2023. It is the submission of learned counsel for the Petitioner that the embargo under Section 37 of the NDPS Act has been satisfied with respect to the Petitioner in all the 03 cases mentioned hereinabove. It is submitted that in view of the provisions of Section 37 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as 'NDPS Act'*), bail can only be granted where there are reasonable grounds to believe that the Petitioner is not guilty of the alleged offence and is not likely to commit such offence, if granted bail. The aforesaid position in law has not been considered at all by the Detaining Authority while passing the impugned order.

ii. It is further submitted that out of 03 orders granting bail, only one order dated 2nd December, 2023 has been challenged by

Sponsoring Authority that too after 05 months of passing of the bail order and during the pendency of the present petition.

iii. Reliance has been placed on the following judgments:

a. ***Alia Begum vs. the State of Assam [W.P. (Crl.) 20/2022, Hon'ble Gauhati High Court, dated 5th September, 2022 (para 17)]***

b. ***Sushanta Kumar Banik v. State of Tripura and Others [2022 SCC OnLine SC 1333 (paras. 24, 27)]***

c. ***Heisnam Chaoba Singh v. Union of India and Others [2021 SCC OnLine Cal 2691]***

iv. It is further pointed out that the High Court of Rajasthan, while granting bail to the present Petitioner, had taken into account that the Petitioner was an employee of the co-detenu Raja Jaswant Singh Sandhu and the same was not considered by the Detaining Authority while passing the impugned order.

C) <u>No Report of misuse of concession on Interim bail or preparation of crime during interim bail</u>

i. Learned counsel for the Petitioner submits that the latter was released on interim bail and after complying the condition(s) of the same, he surrendered on time. It is submitted that nothing has been brought on record to show that the Petitioner indulged in any single criminal activity while on interim bail. This, as per learned counsel for the Petitioner, demonstrates that the Petitioner has due regards to the law of the land and that the same was not considered by the Detaining Authority.

D) <u>No live and proximate link</u>

i. It is the contention of the learned counsel for the Petitioner that the latter has been in custody since 23rd December, 2020 and 03 cases mentioned hereinabove, relate to recoveries on 18th June, 2020, 9th September, 2020 and 30th January, 2021. It is pointed out that the recoveries mentioned hereinabove are old and stale and no allegations and material have been placed on record on which the Detaining Authority has come to the conclusion that the Petitioner if released on bail, would indulge in the same activities. In these facts and circumstances, it is submitted that the Petitioner is already facing trial under the ordinary law of land, i.e., NDPS Act and therefore there was no requirement to pass any detention order.

Reliance has been placed on the following judgments:

a) ***Sama Aruna vs. State of Telangana and Another [(2018) 12 SCC 150 (para 16)]***

b) ***Farukh vs. Union of India and Another [2024 SCC OnLine Del 3132 (paras. 26, 27)]***

c) ***Shahid Khan vs. Union of India and Another [2024 SCC OnLine Del 2796 (paras. 22,23)]***

d) ***Taimoor Khan @ Bhola @ Tamoor vs. Union of India and Another [2024:DHC:397-DB (para 22)]***

Submissions On Behalf Of The Respondents

9. Learned counsel appearing on behalf of the respondents submits that the Petitioner has not been able to show any ground demonstrating any illegality in the detention order under challenge and the same has been rightly and legally passed by the Competent Authority after considering the material supplied by the Sponsoring Authority. It is submitted that the said detention order was passed by appreciating the material evidence available on record with respect to the involvement of the Petitioner with respect to the illicit trade of tablets/ capsules and his involvement in other criminal cases of the NDPS Act in which huge quantities of narcotics and psychotropic substances had been recovered. It is further submitted that, from the material on record, it is apparent that the Petitioner was a part of the group, who ran the illicit business of narcotics and with the help of other accused persons had been supplying the same in different parts of the country. Reliance has been placed upon a judgment of Hon'ble Supreme Court in ***Union of India v. Ram Samujh and Another (1999) 9 SCC 429***.

10. It was further submitted by learned counsel for the respondents that the Petitioner used to manage a pharmaceutical firm namely, M/s Best Enterprises in the name of one Mr. Ajay with co-detenu Raja Jaswant Singh Sandhu and one, Hardeep Singh. It is further submitted that seized contraband were received by the M/s Best Enterprises from a manufacturer namely, Neutech Healthcare and the payment thereof were transferred by the present Petitioner to the said manufacturer. It is alleged that the medicines were sold without bills/proper documents and that a HDFC Bank account bearing no.

02921000027847 (registered under the name of Petitioner's wife) and HDFC Bank account bearing no. 13431600001297 (registered in the name of Amardeep Singh Narang) were used for frequent deposits. Similarly, it is pointed out that huge sum of money was transferred into the accounts of the other accused Hardeep Singh and his family members, from the accounts of M/s Best Enterprises, which was operated by the present Petitioner, as he managed all the financial matters of said firm. It is further submitted that from the house search of the present Petitioner, various documents relating to the said firm were recovered which revealed that the present Petitioner was one of the conspirator and handler of the business of the said firm and also of one, M/s Mukta Vision Enterprise.

11. Learned counsel for the respondents took this Court to the Relied Upon Documents (*'RUDs'*) to show that drug licenses used by M/s Best Enterprises and M/s Mukta Vision Enterprise were obtained in the name of persons, who had nothing to do with the said businesses. It is further submitted the Petitioner was arrested on 23rd December, 2020 and out of 3 cases mentioned hereinabove, 02 recoveries have been made prior to his arrest and 01 recovery immediately after 01 month of his arrest. It is thus argued that the contention of learned counsel for the Petitioner that the latter was arrested while being in judicial custody holds no ground.

12. In order to show involvement of the present Petitioner, learned counsel for the respondents relied upon a statement of Suman Minocha, which is a part of the Relied Upon Documents (*'RUDs'*), to show that the present Petitioner along with Raja Jaswant Singh had met her for taking her shop on rent for

running a business of generic medicines. She further stated that the rent of the said shop was paid either by Petitioner or by aforesaid co-detenu. She further stated that the Petitioner and the aforesaid co-detenu also forged her signatures to create a fake rent document in favour of M/s. Best Enterprises and Ajay for which, she had already filed a complaint with P.S. Hari Nagar. Similarly, learned counsel for the respondent took this Court through various statements made by witnesses to demonstrate the deep-rooted involvement of the present Petitioner in the aforesaid crimes. It was submitted that the fact that the Petitioner is on bail has been duly noted by the Detaining Authority in the impugned order. It is submitted that the Detaining Authority was also aware of the pending application of bail before the learned Special Court when the order of detention was passed on 29th November, 2023. So far as the order granting bail is concerned, learned counsel for the respondents submits that the preventive detention laws are distinct from prosecution. It is submitted the impugned order was passed on the basis of the past involvements of the Petitioner in the act of trafficking of narcotics and to his propensity of committing the same acts under the NDPS Act. Reliance was placed upon a judgment of the Hon'ble Supreme Court in ***Haradhan Saha vs. the State of West Bengal and Others (1975) 3 SCC 198***.

Analysis and Findings

13. Heard learned counsel for the parties and perused the record.

14. The following the list of dates and events would be relevant for determining the validity of the impugned order, which are set out as below:

i) 23rd December, 2020 - the Petitioner was arrested in NCB Jodhpur Crime No. VIII (IO)/16/NCB/JZU/2020 (Seizure of 6,02,300 Tablets, i.e., 314.62 kgs. of Tramadol and 338 bottles of cough syrups on 9th September, 2020).

ii) 19th January, 2021- the Petitioner was formally arrested in NCB Delhi Crime No. VIII/28/DZU/2020 (Seizure of 50,000 Tablets, i.e., 20 kgs. of Tramadol on 18th June, 2020) while he was already on Judicial Custody in Jodhpur case.

iii) 24th March, 2021- the Petitioner was formally arrested in NCB Delhi Crime No. VIII/03/DZU/2021 (Seizure of 2.77 kgs. of Tramadol Capsules on 30th January, 2021) while he was in Judicial Custody in the aforementioned Jodhpur and Delhi case.

iv) 1st August, 2022- Granted bail by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in Crl. (M) Bail no. 2777/2022 with respect to NCB Jodhpur Crime No. VIII(IO)/16/NCB/JZU/2020

v) 3rd August, 2023- Granted regular bail by Learned Special Court (NDPS Act), Delhi in SC No. 192/2021 with respect to NCB Delhi Crime No. VIII/03/DZU/2021.

vi) 12th September, 2023- Narcotics Control Bureau, Delhi Zonal Unit, i.e., the Sponsoring Authority (Respondent no. 5) sent the proposal for detention to the Ministry (Respondent no. 3).

vii) 6th November, 2023 - The Screening Committee approves of the aforesaid proposal sent and the matter is referred to the Detaining

Authority, i.e., Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue (Respondent no. 3).

viii) 29th November, 2023 - The Detaining Authority (Respondent no. 3) passes the impugned order detention bearing F.No. U-11011/46/2023-PITNDPS.

ix) 2nd December, 2023- Granted bail in SC No. 181/2021, arising out of NCB Delhi Case Crime No. VIII/28/DZU/2020 through recovery on 18th June, 2020 by the learned Special Court (NDPS), Patiala House Courts, New Delhi.

15. Admittedly the Petitioner was in judicial custody when the impugned order of detention was passed. The Hon'ble Supreme Court in ***N. Meera Rani vs. State of Tamil Nadu and Another (1989) 4 SCC 418,*** after reviewing various decisions on the subject held as under:

> ***"22.*** *We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody;* ***the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be***

> ***detained in order to prevent him from indulging in such prejudicial activities****, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position."*

(emphasis supplied)

16. It is thus a settled principle of law that a person in judicial custody can be directed to be detained, however, there must be proper application of mind and the Detaining Authority must be subjectively satisfied that there is reason to believe that the detenu would in all probability indulge in prejudicial activities if released on bail. In the present case, as noted hereinabove, the present Petitioner had already been ordered to be released on bail in the two aforementioned cases of Jodhpur and Delhi and the Detaining Authority records that in one of the cases, an application for regular bail for the other Delhi case is pending before the learned Special Court (NDPS Act). It is further pertinent to note that the Petitioner was in judicial custody since the date of his arrest for the first time in Jodhpur case on 23rd December, 2020. Thus, at the time of the passing of the impugned order of detention, the Petitioner had already been in custody for a period of nearly 3 years, i.e., 2 years 11 months (approximately). It is also a matter of record that the last seizure in this case was on 30th January, 2021 at Delhi in NCB Delhi Crime No. VIII/03/DZU/2021, for which the Petitioner was arrested on 24th March, 2021.

17. At this stage, it will be apposite to refer to a judgment of the Hon'ble Supreme Court in ***Rajinder Arora v. Union of India and Others (2006) 4 SCC 796***. In the said case, the Petitioner therein was arrested on 28th May, 2004 and

order of detention was issued on 31st March, 2005. The Hon'ble Supreme Court while taking note of the same, observed and held as under:

> ***"20.*** *Furthermore no explanation whatsoever has been offered by the respondent as to why the order of detention has been issued after such a long time. The said question has also not been examined by the Authorities before issuing the order of detention.*
>
> ***21.*** *The question as regards delay in issuing the order of detention has been held to be a valid ground for quashing an order of detention by this Court in T.A. Abdul Rahman v. State of Kerala [(1989) 4 SCC 741 : 1990 SCC (Cri) 76 : AIR 1990 SC 225] stating: (SCC pp. 748-49, paras 10-11)*
>
> > *"10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard-and-fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the*

court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."

***22.** The delay caused in this case in issuing the order of detention has not been explained. In fact, no reason in that behalf whatsoever has been assigned at all."*

18**.** A perusal of the detention order as highlighted hereinabove, reflects that the Detaining Authority does not record its satisfaction that despite being in incarceration for the aforesaid term, there were compelling reasons to pass the detention order. Keeping in view the period from the date of incarceration and passing of the detention order, it was incumbent upon the Detaining Authority to have recorded such satisfaction while giving reasons to arrive at such satisfaction. It is also the admitted case that the Petitioner had been released on interim bail by the learned Special Court on two occasions, i.e., on 6th April, 2022 and 9th January, 2023 in NCB Delhi Crime No. VIII/28/DZU/2020 and nothing has been brought on record to suggest that while being given the aforesaid liberty, the Petitioner carried on any activity similar to the nature for which he had been apprehended for.

19. Further, as noted hereinabove, out of three cases relied upon by the Detaining Authority, the Petitioner has already been granted bail in two of them, before passing of the detention order on 29th November, 2023. Although, the Detaining Authority makes a reference to such bail orders, however, the Detaining Authority does not take into consideration the fact that the Petitioner had been granted regular bail under the NDPS Act despite the rigours of Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

> *"**37. Offences to be cognizable and non-bailable.**— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*
>
> *(a) every offence punishable under this Act shall be cognizable;*
>
> *(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—*
>
> > *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

> *(ii) where the Public Prosecutor opposes the application, the court is satisfied* ***that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail****.*
>
> *(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."*
>
> ***(emphasis supplied)***

20. A plain reading of the aforesaid Section would indicate that if the Petitioner had been ordered to be released on bail after satisfaction of the requirements of Section 37 of the NDPS Act, the same would be a relevant factor to indicate that the Court concerned, had satisfied itself that there are reasonable grounds for believing that the Petitioner is not guilty and that he would not likely to commit the offence(s) again. Thus, the lack of propensity is one of the reasons for grant of bail. Therefore, the same would be a relevant factor for the Detaining Authority to have dealt with. It is pertinent to note that during the course of the hearing, it was pointed out that one of the orders granting bail dated 3rd August, 2023 passed by the learned Special Judge (NDPS Act), Delhi with respect to NCB Delhi Crime No. VIII/03/DZU/2021 has been now challenged by the Sponsoring Authority (Respondent no. 5); however, the same was not relied upon by the Detaining Authority at the time of passing of the impugned order. The bail orders are although part of the Relied Upon Documents (*'RUDs'*), however, the Detaining Authority has not

dealt with the same at all. In the considered opinion of this Court, the same would assume importance as in the circumstances of the present case, when there is already a gap of 3 years from the date of incarceration of the Petitioner to the passing of the detention order; the aforesaid circumstances, which were in favour of the Petitioner should have been dealt with. The words used in Section 37 (b) (ii) of the NDPS Act, i.e., *"and that he is not likely to commit any offence while on bail"* assumes significance with respect to passing of detention order under the PITNDPS Act.

21. As mentioned earlier, one of the requirements for passing of the detention order would be that if released on bail, the detenu would indulge in prejudicial activities and therefore, it is necessary to detain him in order to prevent such engagement. The Hon'ble Supreme Court in ***Sushanta Kumar Banik vs. State of Tripura and Others 2022 SCC OnLine SC 1333***, while dealing with a case where the order granting bail to the detenu therein under the NDPS Act was not placed before the Detaining Authority, observed and held as under:

> "**27.** *From the above decisions, it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of* ***a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order****.*

> ***28.*** *It is clear to our mind that in the case on hand at the time when the detaining authority passed the detention order, this vital fact, namely, that the appellant detenu had been released on bail by the Special Court, Tripura despite the rigours of Section 37 of the NDPS Act, 1985, had not been brought to the notice and on the other hand, this fact was withheld and the detaining authority was given to understand that the trial of those criminal cases was pending.*
>
> ***29. The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to.***"

(emphasis supplied)

In the present case, as discussed hereinbefore, the bail orders although mentioned by the Detaining Authority, were ignored, and not considered while passing the detention order.

22**.** The Courts would normally hesitate to substitute the *"subjective satisfaction"* with its own opinion and interfere with the order of detention; however, such satisfaction should be after proper application of mind. In case, the Court finds the same being passed on account of non-application of mind by ignoring vital circumstances, then the same can be set aside by this Court while exercising its power under Article 226 of the Constitution of India. The

Hon'ble Supreme Court while dealing with the issue of legality of detention orders while a prosecution was pending and as well as regarding consideration of technicalities, in ***Rekha vs. State of Tamil Nadu through Secretary to Government and Another (2011) 5 SCC 244***, observed and held as under:

> *"**30.** **<u>Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal</u>**. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.*
>
> ***31.** In this connection, it may be noted that it is true that the decision of the two-Judge Bench of this Court in Biram Chand v. State of U.P. [(1974) 4 SCC 573 : 1974 SCC (Cri) 609] was overruled by the Constitution Bench decision in Haradhan Saha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] (vide para 34). However, we should carefully analyse these decisions to correctly understand the legal position.*
>
> ***32.** In Biram Chand case [(1974) 4 SCC 573 : 1974 SCC (Cri) 609] this Court held that the authorities cannot take recourse to criminal proceedings as well as pass a preventive detention order on the same facts (vide para 15 of the said decision). It is this view which was reversed by the Constitution Bench decision in Haradhan Saha case [(1975) 3 SCC 198 :*

1974 SCC (Cri) 816] . This does not mean that the Constitution Bench laid down that in all cases the authorities can take recourse to both criminal proceedings as well as a preventive detention order even though in the view of the Court the former is sufficient to deal with the situation. This point which we are emphasising is of extreme importance, but seems to have been overlooked in the decisions of this Court.

33. *No doubt it has been held in the Constitution Bench decision in Haradhan Saha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] that even if a person is liable to be tried in a criminal court for commission of a criminal offence, or is actually being so tried, that does not debar the authorities from passing a detention order under a preventive detention law. This observation, to be understood correctly, must, however, be construed in the background of the constitutional scheme in Articles 21 and 22 of the Constitution (which we have already explained). Article 22(3)(b) is only an exception to Article 21 and it is not itself a fundamental right. It is Article 21 which is central to the whole chapter on fundamental rights in our Constitution. The right to liberty means that before sending a person to prison a trial must ordinarily be held giving him an opportunity of placing his defence through his lawyer.* ***It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law (the Penal Code or other penal statutes) will not be able to deal with the***

<u>situation, then, and only then, can the preventive detention law be taken recourse to</u>.

34. *Hence, the observation in SCC para 34 in Haradhan Saha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] cannot be regarded as an unqualified statement that in every case where a person is liable to be tried, or is actually being tried, for a crime in a criminal court a detention order can also be passed under a preventive detention law."*

35. ***<u>It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a "jurisdiction of suspicion"</u>*** *(vide State of Maharashtra v. BhauraoPunjabrao Gawande [(2008) 3 SCC 613 :(2008) 2 SCC (Cri) 128] , SCC para 63). The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest.* ***<u>To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is, in our opinion, mandatory and vital</u>.***

36. *It has been held that the history of liberty is the history of procedural safeguards. (See Kamlesh kumar Ishwardas Patel v. Union of India [(1995) 4*

SCC 51 : 1995 SCC (Cri) 643] vide para 49.) These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. As observed in Rattan Singh v. State of Punjab [(1981) 4 SCC 481 : 1981 SCC (Cri) 853] : (SCC p. 483, para 4)

> *"4. ... May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus."*

***   ***   ***

39. *Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in Thomas Pelham Dale case [(1881) 6 QBD 376 (CA)]: (QBD p. 461)*

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by

> *the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue.""*
>
> ***(emphasis supplied)***

23. In the present case, the Petitioner is being prosecuted under the provision of NDPS Act and is facing trial and was already in custody since 23rd December, 2020. There is absolutely no explanation in the detention order as to the requirement of the passing of the same despite the passage of nearly 3 years of incarceration of the present Petitioner. From the facts it appears that the Sponsoring Authority moved the proposal for detention after the Petitioner was granted bail in the Delhi case, i.e., NCB Delhi Crime No. VIII/03/DZU/2021 on 3rd August, 2023.

24. In the present circumstances, this Court is of the opinion that there is no live or proximate link between the alleged prejudicial activities of the Petitioner and the detention order.

25. In view thereof, the orders dated 29th November, 2023 and 19th February, 2024 are hereby set aside.

26. The present petition is allowed and disposed of accordingly.

27. Pending application(s), if any, also stand disposed of.

28. It is made clear that observation(s) made are with respect to the present petition only and not with respect to any cases pending trial against the Petitioner.

29. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

PRATHIBA M. SINGH
JUDGE

AUGUST 07, 2024*/bsr/sn/PC/dn*