



\$~4

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

% ***Date of decision: 10.01.2024.***

+ **W.P.(CRL) 1343/2023**

TAIMOOR KHAN @ BHOLA @ TAMOOR Petitioner

Through: Mr. Urooj Ahmad Khan with
Mr. Tushar Upadhyaya and
Ms. Rizwan Khan, Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Sanjay Lao, Standing
Counsel (Criminal), Ms. Priyam
Agarwal,
Mr. Abhinav Kumar Arya &
Mr. Shivesh Kaushik, Advs.
SI OM Parkash, Anti- Narcotics
Crime Branch.
Mr. Anurag Ahluwalia, CGSC
for UOI with Mr. Abhigyan
Siddhant, GP and Mr. Kishore
Bandopadhyay, Deputy
Secretary, PITNDPS.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T

1. Petitioner has been detained so as to prevent him from engaging in illicit trafficking of Narcotic Drugs and Psychotropic Substances in



future and a detention order has been passed by Joint Secretary to the Government of India on 03.02.2023 exercising powers under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as said Act). Such order has, eventually, been confirmed vide order dated 21.04.2023 issued by the Deputy Secretary to the Government of India exercising power under Section 9 (f) of the said Act.

2. The above said detention order dated 03.02.2023 and confirmation order dated 21.04.2023 are under challenge before us.

3. We may, first, analyze the basis on which such detention order was passed.

4. According to such detention order dated 03.02.2023, the sponsoring authority i.e. DCP, Anti-Narcotics Task Force, Crime Branch, Delhi Police had brought to the attention of the Government of India that detenu, who was involved in ten cases, was actively indulged in trafficking of Narcotics Drugs and Psychotropic Substances on multiple occasions and that he was a habitual offender.

5. It will be worthwhile to refer to such ten cases in which detenu was involved at the time when detention order was passed. The brief details of these cases, as noted in the detention order, are as under:-

<i>S. No.</i>	<i>FIR No.</i>	<i>PS</i>	<i>Under Section</i>	<i>Remarks</i>
1	159/2021	Crime Branch	21/29 NDPS Act	Bail was granted on 16.01.2023
2	106/2018	Crime Branch	21/29 NDPS Act	Discharged on 31.10.2022



3	94/2018	Crime Branch	21/29 NDPS Act	Discharged by the trial court on 15.10.2022
4	45/2017	Special Cell	--	Charges have been ascertained and prosecution evidence is being recorded. Accused is in JC.
5	16/2013	Special Cell	21/29 NDPS Act	Supplementary charge-sheet has been filed
6	26/2012	Special Cell	21/29 NDPS Act	Charge-sheet has been filed. Status of bail not clear
7	353/2008	Welcome, Delhi	21/61/85 NDPS Act	Acquitted by learned trial court on 29.09.2010
8	300/2020	Farid Pur, Bareilly, UP	8/21/29/61 NDPS Act	Status of bail not clear
9	304/2020	Farid Pur, Bareilly, UP	8/21/29/61 NDPS Act	Status of bail not clear
10	327/2020	Farid Pur, Bareilly, UP	8/21/29/61 NDPS Act	Status of bail not clear

6. Reasons given in the impugned order are as under:-

“From the facts and circumstances in the cases mentioned above, it is clearly established that you i.e. Taimoor Khan @ Bhola @ Tamoor are actively involved in trafficking of Narcotics Drugs and Psychotropic on multiple occasions and that you are a habitual offender.

I am aware that at present you i.e. Taimoor Khan @ Bhola @ Tamoor 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 high propensity to be involved in the prejudicial activities in future on being released on bail.

In view of the facts mentioned above, I have no hesitation in arriving at the conclusion that you i.e. Taimoor Khan @ Bhola @ Tamoor 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. Taimoor Khan @ Bhola @ Tamoor 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. Taimoor Khan @ Bhola @ Tamoor in a well-planned manner clearly establishes your continual 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 Taimoor Khan @ Bhola @ Tamoor i.e. you to repeat the above serious prejudicial acts. Hence I am satisfied that in the meantime you i.e. Taimoor Khan @ Bhola @ Tamoor should be immobilized and there is a need to prevent you i.e., Taimoor Khan @ Bhola @ Tamoor from engaging in such illicit traffic of narcotic drug and psychotropic substances in future by detention under section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988.

In view of the overwhelming evidences discussed in foregoing paras, detailing how you i.e. Taimoor Khan @ Bhola @ Tamoor have indulged in organizing the illicit trafficking of Narcotics 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. Taimoor Khan @ Bhola @ Tamoor 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 in 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. Taimoor Khan @ Bhola @ Tamoor 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. Taimoor Khan @ Bhola @ Tamoor from engaging in above illicit traffic of narcotics and psychotropic substances specified under schedule to the NDPS Act, 1985.

Considering the magnitude of the operation, the chronicle sequence of events, the well-organized manner in which such prejudicial 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 next between the dates of incidents and passing of the Detention Order as well as object of your detention has been



well maintained.

I consider it to be against public interest to disclose the source of information at the relevant paragraphs of the grounds of detention above.

7. Let us note the grounds on which the detenu seeks quashing of said detention order. These can be summarized as under: -

(i) No exceptional or compelling circumstance was placed before the detaining authority and, therefore, there was no reason or occasion to have passed any detention order.

(ii) The detaining authority has passed the detention order in a mechanical manner without going through and verifying the facts.

(iii) It failed to take note of the fact that in most of the cases, detenu had already been discharged and acquitted.

(iv) The detenu, in almost all the cases, had been made accused merely on the basis of disclosure made by his alleged co-accused which had no evidentiary value in the eyes of law and thus there was no material which could have depicted that he was engaged or likely to engage in future in illicit traffic in such type of drugs and substances.

(iv) Detaining authority also did not take note of the fact that detenu was already in custody when the order was passed as he was languishing in jail for last more than 15 months and there was no material which could have compelled such authority to have passed any detention



order, particularly in absence of the fact that there was nothing to suggest that he was indulging in such type of illicit traffic, even from behind the bars.

(v) The alleged propensity of committing offence after release from jail, is absolutely misconceived as there is nothing which could have even remotely suggested that once he was released in near future, he would again indulge in any illegal and prejudicial activity.

(vi) Since detenu was already in custody, the sponsoring authority could have easily opposed the bail plea as and when it was filed and moreover in cases, where the accused had been released on bail or discharged or acquitted, sponsoring authority did not take any further recourse to law, which indicates innocence of detenu.

8. Learned counsel for detenu has, *inter alia*, placed reliance upon *Pramod Singla v. Union of India & Ors.* 2023 SCC OnLine SC 895, *Dharmendra Suganchand Chelawat and Another v. Union of India & Others* (1990) Cri.L.J. 1232, *Sama Aruna v. State of Telangana* (2018) 12 SCC 150 and *T.A. Abdul Rahaman v. State of Kerala* (2018) 12 SCC 150.

9. All such contentions have been refuted by Respondent No. 1/Union of India.

10. It is submitted that detenu was indulged in number of cases and, therefore, it was a fit case where after appreciating the nature of his



involvement, the detention order was very much warranted. It is claimed that detenu had made representation on 11.04.2023 before the Central Advisory Board wherein he requested for revoking/setting aside of the detention order and the Central Advisory Board heard him and vide its order dated 19.04.2023 opined that, as per majority, there existed sufficient grounds for his detention and based on such opinion, the Central Government confirmed the detention order and fixed the period of detention as one year reckoned from the date of detention. It is submitted that preventive action has been chosen so that detenu does not get any opportunity to further indulge in smuggling activity or indulge in illicit traffic of Narcotic Drugs and Psychotropic Substances. It is argued that there was sufficient material before the detaining authority which was of the clear view that in case he was released on bail, he would indulge in prejudicial activities again. Reliance has been placed upon *Union of India v. Ankit Ashok Jalan* (2020) 16 SCC 185, *Union of India v. Dimple Happy Dhakad* (2019) 20 SCC 609 and *Haradhan Saha v. The State of West Bengal and Others & Madan Lal Agarwala Vs. The State of West Bengal and Others* (1975) 3 SCC 198.

11. It is not in dispute that when the detention order was passed on 03.02.2023, detaining authority took note of ten cases in which he was allegedly involved. It is not in dispute that in one case, he was on bail, in one case he had already been acquitted way back in the year 2010 and in two cases, he had been discharged.

12. According to the information, which had been laid before the



detaining authority by the sponsoring authority in remaining six cases, it seemed that he was in custody in such remaining cases. We feel that, qua these six cases, exact status was not placed before the detaining authority.

13. In view of the material placed before us, it is quite obvious that in three such cases mentioned at serial no. 8, 9 & 10 of the aforesaid table, the detenu had already been released on bail by the concerned Ld. Trial Court on 18.01.2023. Qua the case mentioned at serial no. 4, detenu had already been discharged on 28.02.2023, observing that no case under NDPS Act was made out against him. As far as case mentioned at serial no. 6 is concerned, he was enlarged on bail on 18.03.2023 i.e. after the detention order but before the confirmation order dated 21.04.2023.

14. Thus, all in all, when the detention order was confirmed, there was only one case in which the detenu was in custody. Such case is mentioned at serial no. 5 and even therein, he was, admittedly, released on bail as late as on 21.12.2023. Such bail was granted by learned Single Judge of this Court while observing that the case of prosecution was merely on the basis of disclosure statement of co-accused and moreover the voice sample of the accused did not match with the intercepted phone calls.

15. There is no dispute that detention order can be passed even if any such person is in custody. To that extent, we agree with the contention made by learned counsel for Union of India and the fact



that power of preventive detention is a precautionary one which can be exercised on reasonable anticipation. Respondents have relied upon *Union of India v. Ankit Ashok Jalan (supra)* and even in that case, Hon'ble Supreme Court has observed that even when a person is in judicial custody, he can be directed to be detained, supplementing further that there must be proper application of mind and detaining authority must be subjectively satisfied that there is a reason to believe that detenu would, in all probability, indulge in prejudicial activities if released on bail and that such authority should also form a view that there is a "real possibility" of such detenu being released on bail.

16. Thus, when a person is already in custody, the detaining authority needs to be mindful of such facts and should record that he is likely to be released on bail and that if released, he would continue to indulge in such prejudicial activities. Thus, the apprehension should be based on some cogent and tangible material, as opposed to one based on mere apprehension. The reason should be specific and clearly decipherable. It should not be left for imagination. Mere expressing apprehension, without any material, is also not justifiable.

17. Here, as already noted above, the material, which was placed before the detaining authority, was perhaps portraying that detenu was in custody in six cases. Viewed thus, its unclear as to on what basis, such authority felt that he was likely to be released on bail in all such cases. Curiously and as already noted, sponsoring authority did not apprise the detaining authority that out of six cases, detenu had



already been enlarged on bail in three cases. Be that as it may, if he was in custody in various cases, it was *sine qua non* on the part of detaining authority to record compelling reasons, particularly in light of the fact that such detenu was already languishing in jail for last around 15 months.

18. Moreover, there was nothing before the detaining authority which could have suggested that there was imminent possibility of his being released in near future and indulging in prejudicial activities. We may refer to the observations made by Hon'ble Supreme Court in *Dharmendra Suganchand Chelawat and Another v. Union of India & Others* (1990) Cri.L.J. 1232 which read as under:-

In Binod Singh v. District Magistrate, Dhanbad [(1986) 4 SCC 416 : 1986 SCC (Cri) 490] it has been laid down:

“If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent.”

In Smt Shashi Aggarwal v. State of U.P. [(1988) 1 SCC 436 : 1988 SCC (Cri) 178] this Court while referring to the decision in Rasmesh Yadav v. District Magistrate, Etah [(1985) 4 SCC 232 : 1985 SCC (Cri) 514] has observed:

“What was stressed in the above case is that an apprehension of the detaining authority that the accused if enlarged on bail would again carry on his criminal



activities is by itself not sufficient to detain a person under the National Security Act.”

This Court has further observed:

“Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order.”

In Vijay Kumar v. Union of India [(1988) 2 SCC 57 : 1988 SCC (Cri) 293] it has been held that two facts must appear from the grounds of detention, namely: (1) awareness of the detaining authority of the fact that the detenu is already in detention, and (2) there must be compelling reasons justifying such detention, despite fact that the detenu is already under detention.

Shetty, J. in his concurring judgment, has posed the question: what should be the compelling reason justifying the preventive detention, if the person is already in jail and where should one find it? The learned Judge has rejected the contention that it can be found from material other than the grounds of detention and the connected facts therein and has held that apart from the grounds of detention and the connected facts therein, there cannot be any other material which can enter into the satisfaction of the detaining authority. The learned Judge has also observed that if the activities of the detenu are not isolated or casual and are continuous or part of the transaction or racket, then, there may be need to put the person under preventive detention, notwithstanding the fact that he is under custody in connection with a case. The learned Judge has quoted the following observations from the judgment of this Court in Suraj Pal Sahu v. State of Maharashtra [(1986) 4 SCC 378 : 1986 SCC (Cri) 452] :

“... but where the offences in respect of which the detenu is accused are so interlinked and continuous in character



and are of such nature that these affect continuous maintenance of essential supplies and thereby jeopardize the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract from the order being passed for preventive detention.”

In N. Meera Rani v. Government of Tamil Nadu [(1989) 4 SCC 418 : 1989 SCC (Cri) 732] the legal position has been summed up as under :

“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.”

In this case this Court has pointed out that there was no indication in the detention order read with its annexure that the detaining authority considered it likely that the detenu could be released on bail and that the contents of the order showed the satisfaction of the detaining authority that there was ample material to prove the detenu's complicity in the bank dacoity including sharing of the booty in spite of absence of his name in the FIR as one of the dacoits. The court held that the order for detention was invalid since it was made when the detenu was already in jail custody for the offence of bank dacoity with no prospect of his release.

The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the



detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression “compelling reasons” in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

19. As noticed above, detenu was already in custody for more than 15 months and, therefore, there was obvious time-lag between his alleged last offending act and the date of order of detention and, therefore also, it was incumbent on the part of detaining authority to have recorded its satisfaction that despite his being in incarceration for such considerable period, there were enough compelling reasons to pass detention order, while also elaborating such reasons.

20. We may also refer to observations made by Hon’ble Supreme Court in *T.A. Abdul Rahaman v. State of Kerala (2018) 12 SCC 150* which read as under:-

“There is no denying the fact that the impugned order has been passed after lapse of 11 months from the date of seizure of the eleven gold biscuits from the back courtyard of the house of the detenu. As repeatedly pointed out by this Court that there is no hard and fast rule that merely because there is a time lag between the offending acts and the date of order of detention, the causal link must be taken to be snapped and the satisfaction reached by the detaining authority should be regarded as unreal, but it all depends upon the facts and circumstances of each case and the nature of the explanation offered by the detaining authority for the delay that had occurred in passing the order. There is a catena of decisions on this point, but we feel that it is not necessary to recapitulate all those



decisions except a salient few. This Court in Gora v. State of W.B. [(1975) 2 SCC 14 : 1975 SCC (Cri) 391 : (1975) 2 SCR 996] wherein there was a time lag of six months between the incident and the date of order of detention while answering a similar contention relied on the following passage from Golam Hussain v. Commissioner of Police, Calcutta [(1974) 4 SCC 530, 534

“No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.”

and laid down the ratio of proximity as follows:

“There is, therefore, no hard and fast rule that merely because there is a time lag of about six months between the ‘offending acts’ and the date of the order of detention, the causal link must be taken to be broken and the satisfaction claimed to have been arrived at by the District Magistrate must be regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction must depend on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the ‘offending acts’ and the order of detention. It is a subsidiary test evolved by the court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu and its utility, therefore, lies only insofar as it subserves that purpose and it cannot be allowed to dominate or drown it. The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a part of an organised operation of a



complex of agencies collaborating to clandestinely and secretly carry on such activities and in such a case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely or secretly carried on by the detenu and it is, therefore, necessary to detain him with a view to preventing him from indulging in such activities in the future.”

In Hemlata Kantilal Shah v. State of Maharashtra [(1981) 4 SCC 647 : 1982 SCC (Cri) 16] this Court held:

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

See also Sk. Serajul v. State of W.B. [(1975) 2 SCC 78 : 1975 SCC (Cri) 425] , Rekhaben Virendra Kapadia v. State of Gujarat [(1979) 2 SCC 566 : 1979 SCC (Cri) 543 : (1979) 2 SCR 257] , Harnek Singh v. State of Punjab [(1982) 1 SCC 116 : 1982 SCC (Cri) 121] , Shiv Ratan Makim v. Union of India [(1986) 1 SCC 404 : 1986 SCC (Cri) 74] , K. Aruna Kumari v. Government of Andhra Pradesh [(1988) 1 SCC 296 : 1988 SCC (Cri) 116] and Rajendrakumar Natvarlal Shah v. State of Gujarat [(1988) 3 SCC 153 : 1988 SCC (Cri) 575] .

In a recent decision in Yogendra Murari v. State of U.P [(1988) 4 SCC 559 : 1988 SCC (Cri) 992] , this Court has reiterated the earlier view consistently taken by this Court observing:

“... it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay.... It is necessary to consider the circumstances in each individual case to find out whether the delay has been satisfactorily explained or not.”

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.

21. In *Sama Aruna v. State of Telangana (2018) 12 SCC 150*, it is observed that only those activities so far back in the past which lead to conclusion that such person was likely to engage in such activities again in the immediate future could be taken into account. Undoubtedly, there cannot be any hard and fast rule or rigid formula or mechanical test but detaining authority must accord its subjective satisfaction after due consideration.

22. In the case in hand, we have no hesitation in holding that live-link got severed as the detenu was already in custody for more than 15 months. The exact facts were not placed before the detaining authority. Thus, the detaining authority was neither in a position to hold that he was likely to be released in near future nor had any compelling reason to observe that if released, he would indulge in prejudicial activities. We may hasten to add that though we, normally, do not interfere with subjective satisfaction of detaining authority but, in the case in hand, there was no material to have returned such satisfaction.



23. In view of our foregoing discussion, we hereby allow the petition and the detenu is directed to be released from the detention centre forthwith unless required in any other case.

24. This order be also uploaded.

25. The petition stands disposed of in aforesaid terms.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

JANUARY 10, 2024/dr