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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) 1231/2024**

RAJA JASWANT SINGH .....Petitioner
Through: Mr. Pritish Sabharwal, Advocate. (M:9810264114)

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 filed by the Petitioner- Raja Jaswant Singh 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-11011/47/2023-PITNDPS and bearing F. No. U-

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Signing Date:07.08.2024 16:00

11012/28/2023-PITNDPS, 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 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 and 338 bottles of cough syrups)

ii. On the basis of the alleged investigation of the Petitioner in the above cases, the Narcotics Control Bureau, Delhi Zonal Unit, i.e., the Sponsoring Authority (Respondent No. 3) 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 detention order dated 29th November, 2023 was issued under Section 3(1) of the PITNDPS Act, 1988, by the Detaining

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Signing Date:07.08.2024
16:00

Authority, i.e., Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, PITNDPS Unit (Respondent No. 2).

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 Article 22 of the Constitution.

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 above three cases registered by the Sponsoring Authority (Respondent No. 3) have been discussed by the Detaining Authority in the following manner:

*"**1.1 NCB Delhi Crime No. VIII/03/DZU/2021: seizure of 2.77 Kg of Tramadol Capsules***

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By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

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 of 2.770 Kg (commercial quantity) blue coloured Tramadol Capsules having marking We care and the 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 Charanjit 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 he also 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 i.e. you had supplied the boxes of said Tramadol capsules which were further supplied to Charanjit Singh by him.

e) Raja Jaswant Singh Sandhu i.e. you 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 i.e. you along with your associate Amardeep Singh Narang and were supplied to Guldeep Singh resident of Old Mahavir Nagar, Tilak Nagar, Delhi.

f) The CDR analysis revealed that Raja Jaswant Singh Sandhu i.e. you remained connected with Guldeep Singh (8860936492) through voice call and WhatsApp chat over mobile number 9899193705 used by you in this trafficking of Tramadol. CDR analysis also shows strong connection between Charanjit Singh and Guldeep Singh.

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

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

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Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

i) 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 i.e. you obtained the drugs licenses Group in name of Smt Sushila Sharma, further he also stated that Sushila Sharma was way of worried about way of working of Raja Sandhu i.e. you. 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.

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

k) That from the perusal of the bank statements of bank account in the name of Shrijan Group, it is revealed that Raja Jaswant Singh Sandhu i.e. you have deposited amount of Rs. 10,000/- in the said account of Shrijan Group on 29.11.2020. From the perusal of the deposit slips, it is revealed that your mobile no. 9899193705 was mentioned on one of the deposit slip dated 16.12.2020.

l) 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.

m) A chargesheet was filed against Raja Jaswant Singh Sandhu i.e. you and other accused persons on 01.07.2021 in the Court of Special Judge, NDPS Act, Patiala House Courts, New Delhi under section 8, 22, 23 & 29 of NDPS Act, 1985.

n) Raja Jaswant Singh Sandhu i.e. you filed an interim bail application before the High Court of Delhi which vide its order dated 03.02.2023 granted interim bail for 3 weeks on medical grounds. You again filed a regular bail application no. 4378/2021 before the High Court of Delhi. Hon'ble High Court of Delhi vide its order dated 17.10.2023 dismissed the bail petition as withdrawn with permission to file a fresh bail application before the learned Trial Court. You have filed a regular bail application before the trial Court on 25.10.2023 which is pending for disposal.

1.2 NCB Delhi Crime No. VIII/28/DZU/2020: seizure of 5000 (20Kgs) of Tramadol Tablets

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

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By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

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 liven 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 i.e. you, 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 and Raja Jaswant Singh Sandhu i.e. you 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 or Raja Jaswant Singh Sandhu i.e. you. She also stated that it has come to her notice that Amardeep Singh Narang and Raja

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By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

Jaswant Singh Sandhu i.e. you 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 and Raja Jaswant Singh Sandhu i.e. you.

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 of delivery boy situated at main Market, Rajouri Garden owned by Raja Jaswant Singh i.e. you and which was run by your wife Smt. Tanya Sandhu. He further disclosed that due to some altercation with Taniya Sandhu, he left the restaurant. Raja Jaswant Singh Sandhu i.e. you offered him a job of delivery boy in his medicine firm and for which you asked for his documents. He further disclosed that he provided his PAN Card, Aadhar Certificate of Class Tenth, photographs etc. to Raja Jaswant Singh Sandhu i.e. you in presence of Amardeep Singh Narang. 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 i.e. you 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 sometime Amardeep Singh Narang and Raja Jaswant Singh Sandhu i.e. you shut down their shop i.e. M/s.

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Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

Mukta Vision and shifted all goods to Best Enterprises and he continued to undertake delivery of the medicines from that shop.

f) It came to notice that Amardeep Singh Narang was arrested by the NCB, Jodhpur in Case No. 16/2020 and was in judicial custody. On the request of NCB Jodhpur, house search of Amardeep Singh Narang 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 G/F, 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 GIF 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

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

S/o Bhura (used for obtaining drugs license), copy of stock register of Best Enterprises from 01.01.2020 to 19.02.2020.

g) In voluntary statement of Raja Jaswant Sinah Sandhu i.e. you dated 10.01.2021 and 11.01.2021, you disclosed that Amardeep Singh Narang is your associate in illegal business of medicine. You further disclosed that you had obtained drug license in the name of M/s Best Enterprises. You created a forged rent agreement (shop) in the name of Suman Minocha and Ajay, the purported owner of Best Enterprises. You used to misuse the names and identities of the other persons for getting drug license for illegal diversion business of the Medicines. You further disclosed that besides himself, Amardeep Singh Narang and Hardeep Singh are also involved in the illegal diversion of the Narcotics Drugs. You further disclosed that as to how you allured your employee Ajay Kumar far obtaining drug license in his name and for that you misused the ID documents of Ajay. You also disclosed that you used to divert narcotic medicines without proper documentation. You further disclosed that you yourself used to maintain billing account through your computer as well as on the laptop of Amardeep Singh Narang. You further disclosed that you used to operate Bank Account No. 201003979441 of M/s. Best Enterprises maintained by IndusInd Bank having net banking facility enabled.

h) You also stated that Amardeep Singh Narang in association with your brother Amardeep Singh Sandhu started Mukta Vision Enterprise for illegal business of

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

drug. You further disclosed that on your instructions, the account work of Best Enterprises was being done by his CA/Accountant M/s. Kalsi Associates. ***Raja Jaswant Singh Sandhu i.e. you were arrested on 11.01.2021.***

i) That during the house search of the accused Raja Jaswant Singh Sandhu i.e. you, chequebook 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 at the IndusInd Bank cheque book were signed by Ajay, Proprietor, Best Enterprises. Two mobile phones and one computer which was used for billing in Best Enterprises were seized Panchnama dated 11.01.2021 after arrest of accused Raja Jaswant Singh Sandhu i.e. you.

j) 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 its 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 i.e. you it revealed that those bills are having printed mobile phone No. 9891890179 of Amardeep Singh Narang and Mobile No.8573030150 of Hardeep Singh. Besides that, email ID of Amardeep Singh Narang ad_narang@yahoo.com was also mentioned in those bills/GST Invoices, which suggests that all accused persons are the conspirators and indulged in the illegal diversion of the Narcotics

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

Medicines on the drug license of Best Enterprises obtained in the name of Ajay.

k) In voluntary statement of Sh. Puneet Galhotra dated 21.01.2021, he disclosed that Amardeep Singh Narang and Raja Jaswant Singh Sandhu i.e. you 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 and Raja Jaswant Singh Sandhu i.e. you and he was merely an employee in the said firm for Rs. 25,000/- per month and he used to do work as a medical executive on the instructions of Amardeep Singh Narang and Raja Jaswant Singh Sandhu i.e. you. He further disclosed that Amardeep Singh Narang and Raja Jaswant Singh Sandhu i.e. you 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 and Raja Jaswant Singh Sandhu i.e. you.

l) Amardeep Singh Narang was 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 his statement was allowed by the Court vide order dated 19.01.2021, he disclosed that he entered into a criminal conspiracy with Raja Jaswant Singh Sandhu i.e. you and Hardeep Singh for illegal

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

diversion business of Narcotics Medicines and for that they had taken a shop on rent and 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. He further disclosed that he used to procure and distribute/divert the Narcotics Medicines in association with Raja Jaswant Singh Sandhu i.e. you to sell NRx medicines in cash, with and without bills. He also disclosed that he had taken a license for Mukta Vision under the name of Puneet Galhotra and that he used to procure NRx medicines from Neutech Health Care, AKS Farm and OTS. He also disclosed that he maintained accounts of the business with Kotak Mahindra Bank and HDFC Bank, Rajouri Garden and that the maximum of the deposits in these accounts were made by him.

m) 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.

n) A chargesheet was filed against Raja Jaswant Singh Sandhu i.e. you und other accused persons on 09.07.2021 in the Court of Special Judge, NDPS Act, Patiala House Courts, New Delhi under section 8, 22 (c), 27 A & 29 of NDPS Act, 1985.

o) Raja Jaswant Singh Sandhu i.e. you filed an interim bail application before the High Court of Delhi which vide its order dated 03.02.2023 granted

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

interim bail for 3 weeks on medical grounds. You again filed a regular bail application before the Court of ASJ/Special Judge, NDPS, Delhi on 05.04.2023 which is pending for disposal.

1.3. NCB Jodhpur Crime No. VIII(IO)/16/NCB/JZU/2020; seizure of 602300 (314. 62 Kgs) Tramadol Tablets and 338 no. 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 near DPS, Pal Sangaria Bypass Road Jodhpur, Rajasthan and two persons namely Mohit Kumar & Someshwar Singh were apprehended from the spot.

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, Jodhpur 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

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Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

huge amount in our company account on TDS of 2% till opening of livestock firm and the amount 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 HealthCare Pvt Ltd, OTS health care, OKS Global Pvt Ltd.

e) In voluntary statement of Amardeep Singh Narang dated 22.12.2020 & 23.12.2020, he disclosed that he entered into a criminal conspiracy with accused Raja Jaswant Singh Sandhu i.e. you and Hardeep Singh for illegal diversion business of Narcotics Medicines and he also confirmed that be 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 created a firm namely Best Enterprises in association of co-accused Raja Jaswant Singh Sandhu i.e. you and Hardeep Singh for the 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

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Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

confirmed that the samples under reference answered positive test for Tramadol & Codeine Phosphate.
g) A chargesheet was filed against Raja Jaswant Singh Sandhu 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."

4. On the basis of the 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. Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny 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. Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny 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. Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny 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

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

country but to every citizen in the world, besides deleterious effect on the national economy. The offences committed by you i.e., Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny 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. Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny 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 Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny i.e. you to repeat the above serious prejudicial acts. Hence, I am satisfied that in the meantime you i.e. Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny should be immobilized and there is a need to prevent you i.e. Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny 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. Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny 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. Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny would continue to so engage yourself in possessing, purchase,

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

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. Raja Jaswant Singh Sandhu @ Raja Sandhu @ Sunny 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. Raja Jaswant Singh Sandhu @ Raj Sandhu @ Sunny 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."

<u>Submissions on behalf of the Petitioner</u>

5. Learned Counsel appearing on behalf of the Petitioner submits that the alleged involvement of the petitioner in the aforesaid cases are on the basis of disclosure statements made by the co-accused under Section 67 of the NDPS Act. It is submitted that the said statements are inadmissible in view of Section

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Digitally Signed
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Signing Date:07.08.2024
16:00

25 of the Indian Evidence Act and reliance was placed on a judgment of the Hon'ble Supreme Court in ***Tofan Singh vs. State of Tamil Nadu (2021) 4 SCC 1***.

6. The learned counsel for the Petitioner draws attention of this Court on the following dates:

a. The Petitioner was arrested in NCB case Crime No. VIII/28/DZU/2020 (recovery effected on 18th June, 2020 at New Delhi) on 12th January, 2021 (the grounds of detention furnished to the petitioner by the Detaining Authority mentions it as 11th January, 2021) and has been granted bail by the learned Special Court *vide* order dated 9th December, 2023.

b. NCB Crime No. VIII/03/DZU/2021 (recovery effected on 30th January, 2021 at New Delhi), wherein, he was arrested on 22nd March, 2021. In the said case, the bail application of the present petition is pending before the learned Single Judge of this Court for adjudication.

c. NCB Jodhpur Crime No. VIII(IO)/16/NCB/JZU/2020 (recovery effected on 9th September, 2020 at Jodhpur), wherein, the Petitioner was arrested in this case in October, 2023, after a period of 3 years, when the Petitioner was in judicial custody in the aforesaid cases of NCB Delhi.

7. Learned counsel for the Petitioner submits that there is delay of 02 years and 10 months in passing of the detention order from the date of arrest in the present petition. It is submitted that the impugned order passed by the Detaining Authority does not explain the reasons for such delay. Reliance was placed upon ***Ameena Begum vs. State of Telangana and Others, 2023 SCC OnLine SC***

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By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

1106. It was further submitted that the Petitioner was granted bail by the learned Trial Court in Crime No. VIII/28/DZU/2020 on 9th December, 2023. It is submitted that the said order granting bail was passed after the satisfaction of learned Special Court with respect to the embargo under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as 'NDPS Act'*).

8. Learned counsel for the Petitioner, apart from the above, submits that in NCB Crime No. VIII/03/DZU/2021, it is the case of the Sponsoring Authority that a letter dated 31st March, 2021 was sent to the Manager of 'We Care Pharmaceuticals', Gujarat, requesting to provide details in respect of Tramadol Capsules. It is pointed out that We Care through Email dated 2nd April, 2021 informed that the said batch were sold to Vinayak Pharma and further, the full batch was sold to Shrijan Group by the said Vinayak Pharma. It is further submitted that the goods were dispatched from We Care Pharma 15th December, 2020 and were purchased by Vinayak Pharma on 15th December, 2020 in Gujrat. It is stated that the tablets were dispatched to Shrijan Group on 18th December, 2020 and were not received till 31st December, 2020. It is further submitted from the NCB's record, it is reflected that the consignment which is alleged to have been seized in the present case on 31st January, 2021 was in fact in transit as per the tracking report which forms part of the aforesaid record of NCB and was still in the State of Gujrat. It is submitted that in view of the aforesaid the Petitioner has been falsely implicated.

9. It is further submitted that the Petitioner was arrested in Jodhpur case in October, 2023 after a period of 3 years while he was already in custody in the

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

other cases instituted by the same Sponsoring Authority since 12th January, 2021 (the grounds of detention furnished to the petitioner by the Detaining Authority mentions it to be 11th January, 2021.) Reliance is placed on following judgments:

i) ***Ameena Begum vs. State of Telangana and Others (2023) 9 SCC 587***

ii) ***Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence (2018) 8 SCC 271***

iii) ***Kashif vs. Narcotics Control Bureau 2023:DHC:3438***

iv) ***Tofan Singh vs. State of Tamil Nadu (2021) 4 SCC 1***

v) ***D. Gopalakrishnan vs. Sadanand Naik and Others (2005) 1 SCC 85***

vi) ***Mohd. Husain Umar Kochra etc. vs. K.S. Dalipsinghji and Another etc. (1969) 3 SCC 429***

vii) ***Phundreimayum Yas Khan vs. State (GNCT of Delhi) 2023 SCC OnLine Del 135***

viii) ***Ashok Kumar vs. Delhi Administration and Others (1982) 2 SCC 403***

Submissions on behalf of the Respondents

10. *Per contra* 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 Detaining 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

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

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.

11. Learned counsel for the respondents further submits that the present Petitioner had been running an illicit business of narcotics, drugs and psychotropic substances and along with other co-accused persons has been supplying the products in different part of the country. Reliance has been placed on judgment of Supreme Court in ***Union of India v. Ram Samujh and Another (1999) 9 SCC 429***, wherein it was observed that people who are directly or indirectly involved in illicit trafficking of narcotics substances are hazardous to the society at large and are not entitled to any sympathetic consideration. It is further submitted that the mere fact that the contraband was not recovered from the Petitioner cannot be taken into consideration for setting aside the impugned order of detention. It is submitted that preventive detention is distinct from the prosecution and the objective enumerated in both the cases are different. Reliance has been placed on ***Union of India vs. Rattan Malik alias Habul (2009) 2 SCC 624***, wherein it was held that absence of possession of contraband from the person would not absolve it from the level of scrutiny required under Section 37 (1)(b) (ii) of the NDPS Act.

12. It was further submitted that the present Petitioner along with co-detenu Amardeep Singh Narang had created a firm, namely, M/s Best Enterprises and the Detaining Authority relies upon the statements made by the said co-detenu under Section 67 of the NDPS Act. It was further pointed out that co-accused Shakeel also disclosed in his statement that he has deposited 20-25 lakhs for

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

dealing in narcotics in the account of M/s Best Enterprises, which was operated by the present Petitioner with his co-detenu Amardeep Singh Narang. Similarly, statement made by the co-accused persons have been relied upon to show the involvement of the present Petitioner. A statement of the co-accused and CDR call data records to show *inter se* connection between them. It was submitted that the present Petitioner had also opened one M/s Mukta Vision Enterprises with respect to the same illicit business.

Analysis and Findings

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

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

i. 11th January, 2021- Petitioner was 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).

ii. 22nd 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 Delhi case.

iii. 12th September, 2023- Narcotics Control Bureau, Delhi Zonal Unit, i.e., the Sponsoring Authority (Respondent no. 3) sent the proposal for detention to the Ministry (Respondent no. 2).

iv. October, 2023- 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 09th September,

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

2020) while being in judicial custody for the aforementioned two Delhi cases.

v. 25th October, 2023- Filed regular bail application before the learned Special Court (NDPS) in NCB Crime No. VIII/03/DZU/2021, which is pending for disposal.

vi. 29th November, 2023 - The Detaining Authority (Respondent no. 2) passes the impugned order detention bearing F.No. U-11011/46/2023-PITNDPS.

vii. 9th December, 2023- Granted bail by the learned Special Court (NDPS), Patiala House Courts, New Delhi in SC No. 181/2021 arising out of NCB case Crime No. VIII/28/DZU/2020.

15. In the present case the Detaining Authority, while passing the impugned order with respect to the NCB Jodhpur Crime No. VIII (IO)/16/NCB/JZU/2020 case records as under:

> *"g) A chargesheet was filed against Raja Jaswant Singh Sandhu 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."*

16. It is also pertinent to note that the Detaining Authority while recording the facts with respect to the aforesaid case in Jodhpur does not give the date of arrest of the present Petitioner in the said case. In the present writ petition the following averments in para 27 have been made;

> *"27. **It is submitted that the complaint which has been filed before the authority would show that the***

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Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

__Petitioner was not accused in the complaint filed by the NCB Jodhpur however, the detention authority while passing the order has prima facie committed an error, wherein it specifically states that the Petitioner stand charge-sheeted, which is contrary to the material place on record__. It is submitted that the Petitioner has never visited Jodhpur and there is no record to show the nexus that the Petitioner was involved in the crime. However, based on the disclosure statements of the Co-accused under section 67, which is barred from being read as evidence as per Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, the entire case of the prosecution is vitiated. It is submitted that the co-accused have been granted bail, especially Amardeep Singh Narang who had made the disclosure statement against the Petitioner. It is submitted that the statement under section 67 of the NDPS cannot be read against the Petitioner Raja Jaswant Singh."

(emphasis supplied)

17**.** It is pertinent to note that there is a specific assertion of the present Petitioner that at the time of the passing of the detention order, no complaint/chargesheet had been filed against the present Petitioner before the Court of competent jurisdiction. It is also a matter of record that the proposal for detention was moved on 12th September, 2023 and the present Petitioner was arrested in the aforesaid Jodhpur case some time in October, 2023 which is reflected from the corresponding paragraph in the counter-affidavit to the aforesaid para 27 of the writ petition, which is extracted as below:

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

"28. That the contents of Para 27 of the Writ Petition under reply is wrong and denied. It is submitted that the co-accused in the NCB, Jodhpur case, Amardeep Singh Narang has disclosed in his statement that Raja Jaswant Singh Sandhu created a firm namely Best Enterprises and he was authorized signature authority and he was actively involved with Raja Sandhu in illegal diversion of narcotics medicines illegal business of pharmaceutical drugs. Further, accused Shakeel S/o Vaheed disclosed in his statement that he had deposited 20-25 Lakh for illegal narcotics medicines in the account of best enterprises operated by accused Raja Jaswant Singh Sandhu. Accused Bedram and Yogesh Kumar also disclosed incriminating facts about involvement of accused Raja Jaswant Singh Sandhu in illegal diversion/trafficking of narcotics medicines. Moreover, there is CDR evidences that he was actively connected with co accused persons Amardeep Singh Narang, Shakeel, Bedram and Yogesh Kumar. Incriminating Bank transactions of account opened for Mukta vision Enterprises operated by Raja Sandhu along with his Raja Sandhu along with his associates has also been investigated. ***<u>In view of all available evidences against Raja Jaswant Singh Sandhu, investigation was kept open against accused. He was arrested in the matter in October 2023. Sponsoring Authority has informed that a supplementary complaint has been filed in the matter against the accused Raja Jaswant Singh Sandhu</u>.*** *It is further submitted that preventive detention laws are distinct from prosecution. It is reiterated that the Order passed*

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

under the PITNDPS Act, 1988 was passed on the basis of past indulgence of the Petitioner in the act of trafficking of narcotics and his propensity to further commit the offences under the NDPS Act, 1985."

(emphasis supplied)

18. In view of the above, the fact of filing of chargesheet in Jodhpur case *qua* the present Petitioner, as recorded in the detention order, is factually incorrect and the same has been admitted by the Detaining Authority in the counter-affidavit as pointed out hereinabove. However, no explanation had been given with respect to the said error.

19. Another peculiar fact with respect to the present Petitioner that has emerged is that in the Jodhpur case, he was placed under arrest in October, 2023, which was subsequent to the proposal for detention sent by the Sponsoring Authority i.e., on 12th September, 2023. It is the case of the Detaining Authority itself that confessional statement of co-detenu Amardeep Singh Narang was recorded by the sponsoring authority on 22nd December, 2020 and 23rd December, 2020, wherein the name of the present Petitioner has emerged. It is also of matter of record that the present Petitioner was in judicial custody in the other NCB Delhi Crime VIII/28/DZU/2020 on 11th January, 2021 and was also subsequently arrested in the other Delhi case, i.e., NCB Delhi Crime No. VIII/03/DZU/2021 on 22nd March, 2021. The aforesaid facts show that despite the Petitioner's name having emerged in the investigation in the Jodhpur case on 22nd December, 2020 and 23rd December, 2020 and while being in custody since 11th January, 2021 in the first Delhi case, his arrest has been effected only in

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

October, 2023. The fact that he was not arrested in Jodhpur case has again either not been placed before the Detaining Authority or it has been ignored inasmuch as it has not been mentioned in the impugned order. There is no explanation whatsoever as to why the proposal for detention was not moved at contemporaneous point of time when the Petitioner's involvement surfaced in the crimes as mentioned hereinabove.

20. The Hon'ble Supreme Court in ***Rekha vs. State of Tamil Nadu through Secretary to Government and another (2011) 5 SCC 244***, in a similar situation observed and held as under:

> ***"25.*** *In this connection, it may be noted that there is nothing on the record to indicate whether the detaining authority was aware of the fact that the bail application of the accused was pending on the date when the detention order was passed on 8-4-2010. On the other hand, in Para 4 of the grounds of detention it is mentioned that "Thiru. Ramakrishnan is in remand in Crime No. 132 of 2010 and he has not moved any bail application so far".* ***Thus, the detaining authority was not even aware whether a bail application of the accused was pending when he passed the detention order, rather the detaining authority passed the detention order under the impression that no bail application of the accused was pending but in similar cases bail had been granted by the courts. We have already stated above that no details of the alleged similar cases have been given. Hence, the detention***

order in question cannot be sustained."

(emphasis supplied)

21. In view of the above, the present detention order cannot be sustained.

22**.** There is yet another ground for setting aside of the present impugned order, which is similar to the case of the co-detenu Amardeep Singh Narang, whose petition ***W.P.(CRL) 848/2024*** is being disposed of by this Court by a judgment of even date.

23**.** 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*

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

> *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."*

24. 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, the Petitioner was in judicial custody since the date of his arrest for the first time in NCB Delhi Crime VIII/28/DZU/2020 on 11th January, 2021. 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 10 months (approximately). It is a matter of record that the last seizure in this case was on 30th January, 2021 at Delhi for which the Petitioner was arrested on 22nd March, 2021.

25. At this stage, it will be apposite to refer to judgment of the Hon'ble Supreme Court in ***Rajinder Arora v. Union of India, (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*

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

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*

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

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."

26. 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 of the Petitioner and 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 on 3rd February, 2023 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.

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

27. 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.

28. The 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 (supra)***, observed and held as under:

> *"**30.** **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.** 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.*

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

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. ***<u>It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary</u>***

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

<u>criminal law (the Penal Code or other penal statutes) will not be able to deal with the 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."*

<u>35. 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. Bhaurao Punjabrao 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*

Signature Not Verified
Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

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)*

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Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

"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)

29. In the present case, the Petitioner is being prosecuted under the provisions of the NDPS Act and is facing trial and was already in custody since 11th January, 2021. There is absolutely no explanation in the detention order as to the requirement of the passing of the same despite the passage of nearly 2 years and 10 months of incarceration of the present Petitioner.

30. 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.

31. In view of the above, the orders dated 29th November, 2023 and 19th February, 2024 are hereby set aside.

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

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

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Digitally Signed
By:DHIRENDER KUMAR
Signing Date:07.08.2024
16:00

34. 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.

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

AMIT SHARMA
JUDGE

PRATHIBA M. SINGH
JUDGE

AUGUST 07, 2024
bsr/sn/dn/PC

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