



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

% *Judgment reserved on: December 18, 2023*
Judgment pronounced on: February 20, 2024

+ W.P.(CRL) 2778/2023, CRL.M.A. 26003/2023

NAUSHAD ALI THROUGH PEROKAR SAHAJAD ALI

..... Petitioner

Through: Ms. Priyanka Kapoor, Ms. Smriti
Asmita, Advocates.

versus

UOI & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr.
Kamal R. Digpaul and Mr. B.S.
Meena, Under Secretary, PITNDPS
Cell for UOI.

Mr. Subhash Bansal, Sr. Standing
Counsel (NCB) with Mr. Shashwat
Bansal, Advocate for
respondent/NCB.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE SHALINDER KAUR

JUDGMENT

SHALINDER KAUR, J.

1. Under assail is the preventive detention order dated 25.02.2022 issued by the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Cell [in short "PITNDPS Cell"], under Section 3(1) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 [in short "PITNDPS Act"] and confirmed by Central Government, fixed the period of detention of one year from the date of detention i.e., 25.02.2022 under the provisions of Section 9(6) of PITNDPS Act so as to



prevent the petitioner from engaging in illicit trafficking of Narcotics Drugs and Psychotropic Substances in future.

Detention order and proceedings therein:-

2. After passing of the detention order F. No. U-11011/03/2022-PINTNDS dated 25.02.2022 by Mr. Ravi Pratap Singh, Joint Secretary, Government of India, Ministry of Finance, Department of Revenue (PITNDPS Unit), Sh. Naresh Kumar Deputy Secretary (PITNDPS Unit) informed Director General of Police, Uttarakhand, Dehradun to take immediate necessary action to serve the detention order upon Naushad Ali S/o Late Noor Hasan R/o Bahari Kila, Kasba-Landhora Teh-Roorkee, District-Haridwar (Uttarakhand). The said communication also contained other directions with respect to the detention of the petitioner. On 25.02.2022, the Joint Secretary had also formulated the grounds on which detention order had been issued to the petitioner wherein he specifically mentioned that he had gone through the facts and other material presented by the sponsoring authority, Narcotics Control Bureau ((hereinafter referred as 'NCB'), Sub Zonal Unit, Dehradun.

3. The facts submitted before the Joint Secretary are as under:

4. On 31.01.2021, at around 19:30 hrs, an information was received by NCB Dehradun, from Drug Inspector, Haridwar that they had recovered a significant number of medicines restricted under NDPS Act from M/s Shaad Medical Store, Landhaura, Roorkee and detained one person namely Naushad Ali. The case was to be handed over to NCB for further investigation. Thereafter a team of officers from NCB reached the Police Station Kotwali, Mangalour at around 22:30 hours. The Drug Inspector handed over the petitioner and the recovered narcotic drugs along with a



detailed inspection report to NCB at Police Station Kotwali. Drug Inspector disclosed that at the time of search of Shaad Medical Store, the petitioner failed to produce a stock register and sale bills of the drugs. The report further disclosed that huge quantities of narcotic drugs and psychotropic substances were recovered from the possession of the petitioner which was in contravention of Section 8 of the NDPS act punishable under Section 22/27A/29 of NDPS Act, the details of which are reproduced below:-

Sl. No.	Narcotic Drugs/Psychotropic Substances/Controlled Substances/Conveyances	Quantity (Kgs.)
01.	Buprenorphine Injection I.P.2ml each	875 Injections
02.	Phenergan Injection (Promethazine), 2ml each	900 Injections
03.	Diazepam Injection I.P 2ml each	3900 Injections
04.	Tramadol HCL 2ml each	790 tablets
05.	Tramadol HCL+Paracetamol USP 37.5+325mg Tramadol	1950 tablets
06.	HCL Injection 100mg 2ml each	395 Injections
07.	Tramadol HCL Actaminophen and Dicyclomine HCl Capsules	7920 Capsules
08.	Tramadol HCL and Acetaminophen Tablets USP (37.5+325mg)	5280 Tablets
09.	Pentazocine Lactate Injections I.P 2ml each	88 Injections
10.	Tramadol HCL, Tablets Sp-100 SR (100mg) Batch no-T-443	28000 tablets
11.	Tripolidine Hydrochloride and Codeine Phosphate (125+10mg Syrup)	2389 Bottles
12.	Tramadol HCL, Tablets SP-100 SR (100 mg) Batch No-43	6,04,500 tablets

5. Voluntary statement of petitioner was recorded under Section 67 of the NDPS Act. Based on the recovery of the narcotic drugs and psychotropic substances and acceptance by the petitioner of his involvement in trafficking of the same, on 01.02.2021, he was arrested by NCB officers. During the investigation, it was revealed that petitioner is a proprietor of Shaad Medical Store and Kenway Pharmaceuticals Pvt. Ltd. and had been involved in the illegal/trafficking business of medical medicines covered under NDPS Act. Details were further obtained with respect to the other cases pending against the petitioner under NDPS Act and a letter dated 26 March 2021 was sent to



SHO Sadar, Tohana and SHO Ratia, District Fatehabad, Haryana. Reports received from both the police stations disclosed that a case FIR number 233/2022 had been lodged in Police Station Ratia under Section 22C, 27A, 29, 61, 85 NDPS Act dated 24.09.2020 against Kuljinder Singh and others and FIR No. 297/20 was lodged in the Police Station Tohana under Section 22(C), 27A, 29, 61, 85 dated 25.10.2022 against Sunny and others wherein name of the petitioner was disclosed by the co-accused persons, so the petitioner was arrested in both the FIRs.

6. On examining the material produced, the Joint Secretary for issuance of detention order, came to the conclusion, which is as under:-

“(xviii) During the investigation it is revealed that Naushad Ali i.e., you (Proprietor of Shad Medical Store & Kenway Pharmaceuticals Pvt. Ltd) are involved in the illegal/trafficking business of medicines the illegal/trafficking business of medicines covered under NDPS Act, 1985, because at the time of seizure Naushad Ali i.e. you failed to produce any bill.

(xix) You i.e. Naushad Ali filed a bail petition before Hon'ble Court of ADJ, Roorkee on 11.02.2021. NCB filled reply to the bail petition. The Hon'ble Court rejected the bail application vide Order dated 27.02.2021. You i.e. Naushad Ali again filed another bail application before Hon'ble High Court of Uttarakhand, Nainital. The NCB filed counter reply to the above bail petition. The Hon'ble High Court vide Order dated 21.05.2021 allowed the bail application and ordered that applicant be released on bail on his executing a personal bond and furnishing two reliable sureties in the like amount to the satisfaction of the Court concerned.

(xx) Samples of seized contraband was sent to CRCL, Delhi vide NCB letter dated 3.2.2021. The CRCL, New Delhi vide letter dated 16.03.2021 reported that sample A1 tests positive for Buprenorphine Hydrochloride, sample B1 tests positive for Promethazine Hydrochloride, sample C1 tests positive for Diazepam, sample D1 and E1 tests positive for Tramadol Hydrochloride, sample F1 tests positive for

(xxi) A Complaint has been filed in the Court of Special Judge (NDPS Act), Roorkee under the NDPS Act, 1985 against Naushad Ali i.e. you.

2. After going through the facts and circumstances in all the cases mentioned above, it is clearly established that Naushad Ali ie. you are involved in trafficking of Narcotics Drugs and Psychotropic Substances



many times and you are a habitual offender. The cases registered against you under NDPS Act, 1985 demonstrates your continued propensity and deep involvement in trafficking of narcotic drugs and psychotropic substances in a repeated manner.

3. In view of the facts mentioned above, I have no hesitation in arriving at the conclusion that you i.e. Naushad Ali 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 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. Naushad Ali 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. Naushad Ali 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 Naushad Ali i.e. you to repeat the above serious prejudicial acts. Hence, I am satisfied that in the meantime you i.e. Naushad Ali should be immobilised and there is a need to prevent you i.e. Naushad Ali 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.

4. In view of the overwhelming evidences discussed in foregoing paras, detailing how you i.e. Naushad Ali have indulged in organising 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. Naushad Ali 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 licit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988 in future also. am, therefore, satisfied that there is full justification to detain you i.e. Naushad Ali under section 30 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 with a view to preventing you ie Naushad Ali from engaging in above illicit traffic of narcotics and psychotropic substances specified under schedule to the NDPS Act, 1985.

5. 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 satisfied that the nexus between the dates of incident and passing of the Detention Order as well as object of your detention has been well maintained.

6. 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. Aggrieved by the aforesaid detention order, the petitioner, through Perokar Sahajad Ali, invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India claiming illegal detention and quashing of preventive detention order dated 25.02.2022.

8. Ms. Priyanka Kapoor, learned counsel for the petitioner submitted that the aim of the detention of the petitioner was not to preserve public order or security of the State, as the petitioner did not pose any such threat, but to illegally detain the petitioner after he was granted bail in all the three cases for which the respondents acted malafidely and outside the scope of the Act.

9. Learned counsel submitted that the petitioner was illegally arrested under NDPS Act even though the petitioner holds valid licenses issued by the Drug Licensing Authority for both his medical stores. The licenses were renewed from time to time by the Drug Licensing Authority and the petitioner is authorised to run the medical stores for wholesale purchase, sale and to stock or distribute all types of drugs by virtue of the licences. He is authorised to sell, stock, or exhibit or offer for sale or distribute wholesale drugs other than those specified in scheduled, C, C (1) and X. For the said purpose, forms No. 20-B and 21-B were issued to the petitioner and he has a valid GST Registration Certificates for his both medical stores.

10. Learned counsel submitted that on 31.01.2021, without giving any



notice or assigning reason, the premises of the petitioner i.e., Shaad Medical Store was raided and the Drug Inspector had seized the record and register for the purchase and sale of 12 different types of Narcotic Psychotropic medicines from the store of the petitioner.

11. The petitioner was brought to the Police Station and was kept in illegal custody from 31.01.2021 to 02.02.2021 without being produced before any Court till 02.02.2021 and was remanded to judicial custody on the same day by the Special Judge, NDPS, Roorkee.

12. Learned counsel submitted that there were many procedural lapse relating to arrest of the petitioner as, at the time of raid at his premises, no independent person was made a witness by the raiding party and neither the inspection report nor the seizure report of the alleged recovered drugs are signed by any independent witness which creates a major doubt on the legality of the raid. Moreso, the petitioner was falsely implicated in two other NDPS cases on the basis of disclosure statements made by co-accused persons, although no recoveries were effected from him.

13. To proceed the arguments further, the learned counsel submitted that the petitioner has been falsely implicated in Case Crime No. 3/2021 by one Mr. Dilshad Khan, who is one of the informers of NCB. Due to personal animosity, as the petitioner was involved in a dispute with Mr. Khan regarding settlement of accounts for the medicines purchased by petitioner from Mr. Khan, he got him falsely implicated in the said case. On an earlier occasion, Mr. Khan had threatened the petitioner that he would get him implicated in false cases. Due to the said threat, the petitioner and his brother had filed complaints against Mr. Khan before SSP, Roshanabad, Haridwar and to various other authorities. However, no action had been



taken by any of the authorities in the said complaints.

14. It was submitted that apart from aforesaid lapse, the detention order perse is illegal and liable to be quashed on the face of it. Also, the learned counsel while placing reliance on the case of **Pramod Singla v. Union of India & Ors**; 2023 SCC OnLine SC374 submitted that as preventive detention laws are extremely powerful laws, the Court must analyze such cases with extreme caution and ensure every procedural rigidity must be followed in entirety by the Government and the benefit of every lapse should be given to the detenu. It was submitted that detention order is liable to be set aside even after expiry of the period of detention, if the same does not confirm in rigidity to the procedure.

15. The contentions on behalf of the petitioner were strongly confuted and debated by learned counsels for the respondents. It was submitted that during investigations of the three FIRs registered against the petitioner, it came to light that he was involved in illegal trafficking of business of sale of medicines covered under NDPS Act. Prior to arrest of petitioner in FIR No. 3/2021 under Sections 22(C)/27(A)/29 of the NDPS Act, registered at Police Station Kotwali, Mangalore, District Haridwar, two more FIRs i.e., FIR No. 233/20 under Section 22C/27A/29/61/85 NDPS Act dated 24.09.2020 at PS Ratia, Fatehabad, Haryana and FIR No. 297/20 under Section 22C/27A/29/61/85 NDPS Act dated 25.10.2020, PS Tohana, Fatehabad, Haryana were registered against him. A proposal dated 11.01.2022 from sponsoring authority was received by the respondents, which was forwarded to the Screening Committee on 18.01.2022. After considering the proposal, Screening Committee in its meeting held on 22.02.2022, recommended the proposal as fit for preventive detention of petitioner. Accordingly, an order



of detention dated 25.02.2022 was issued.

16. It was submitted that there was no violation of procedure in conducting raid at the premises of petitioner on 31.01.2021. The narcotic drugs were seized by NCB, Dehradun in presence of two independent witnesses and the official of NCB also showed their identity cards to the petitioner as well as to the independent witnesses. The detention proceedings were initiated against the petitioner after taking note and examining all the facts and circumstances, thereafter the detention order was issued against him. The learned counsel refuted the argument that detention order is bad in law and needs to be quashed.

17. Prior to venturing to decide the issue as to whether, there is violation of fundamental rights of the petitioner and contravention of statutory provisions rendering the detention order illegal, it is necessary to consider the purpose and ambit of preventive detention laws.

18. The main purpose of preventive detention laws is to prevent individuals from engaging in activities that are considered prejudicial to State security or maintenance of public order which by itself is not considered an infringement of any of the fundamental rights of a detainee. However, preventive detention is subject to the limitation provided in Article 22(5) of the Constitution of India. Thus, striking a balance between the need for national security and protection of individual rights has always remained a challenge for the Courts. The fundamental rule is, whenever there is deprivation of any of the fundamental rights mentioned in Part III of the Constitution, the authorities responsible for this must satisfy the Court that it has acted within the purview of law. In certain cases, it may be necessary for detaining a person without trial, such cases require strict



observance of the rules as the use of preventive detention is a sensitive issue and there have been concerns about its potential misuse thereby invading personal liberty.

Delay in execution of the Order of Detention

19. Multiple submissions have been made on behalf of the petitioner challenging the justifiability of the impugned detention order. One of the main concerns of the petitioner, is that respondents executed the detention order after about a period of 9-10 months since his release on bail which vitiates the purpose of the detention laws, clearly exhibiting that the grounds for the detention of the petitioner were false.

20. It was contended that there is a clear distinction between preventive detention of a detenue and criminal prosecution of an accused. The legal qualification of preventive detention laws are to be interpreted strictly. It is to be ensured that preventive detention is not used as an added tool to curtail judicial decisions allowing bail to a person. Reliance is placed on judgments **Haradhan Saha v. The State of West Bengal & Ors.** (1975) 3 SCC 198 and **Heisnam Chaoba Singh v. Union of India & Ors;** 2021 SCC OnLine Cal 2691.

21. Be it noted, the detention order was passed on 25.02.2022, however the petitioner was detained on 23.05.2023, there has been an apparent myriad delay in arresting the petitioner after of passing the order of detention. The law is well settled that an unreasonable and unexplained delay in executing and detaining a detenue will vitiate the detention order, unless the said delay is sufficiently explained by the detaining authority. The Hon'ble Supreme Court through its various judgments has laid down, if a detenue satisfies the court that there has been an unexplained delay in



detention after passing of the detention order, then such an order will be interpreted as breaking the 'live-proximity link' in between the event of detention and passing of detention order.

22. The postulation of 'live and proximity link' has been explained by Hon'ble Supreme Court in the following cases-

23. In **S. K. Nizamuddin v. State of West Bengal**; (1975) 3 SCC 395, the necessity of securing the arrest of the detenu immediately after the order of detention has been examined by Hon'ble Supreme Court and it was held as under:

"It would be reasonable to assume that if the District Magistrate was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude in securing the arrest of the petitioner immediately after the making of the order of detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine."

24. In **Bhawarlal Ganeshmalji v. State of Tamil Nadu**; (1979) 1 SCC 465, the Hon'ble Supreme Court has observed as follows:-

"It is further true that there must be a "live and proximate link" between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is "snapped" if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the



result of the recalcitrant or refractory conduct of the detenue in avoiding arrest there is warrant to consider the “link” not snapped but strengthened.”

25. In **T.A Abdul Rahman v. State of Kerala**, AIR 1990 SC 225 – The Hon’ble Supreme Court emphasized that *“determining the proximity of prejudicial activities to the time of issuing a detention order depends on the specific facts of each case. There is no strict rule or fixed timeline, and the test of proximity is not merely a mechanical calculation of months. However, undue and prolonged delays between prejudicial activities and the detention order or between the order and the detenu's arrest warrant scrutiny. In such cases, the court must assess the detaining authority's satisfactory explanation for the delay and ensure that the causal connection between the activities and the detention remains intact in each instance.”*

26. It would be manifest from the above decisions that when ‘live and proximity link’ between the passing of detention order and arresting the detenue is mangled, it will render the detention order invalid unless such delay is satisfactorily explained. Whether, the delay is reasonable and well explained will depend on the facts and circumstances of each case.

27. Now we proceed to examine the issue, whether, the snapping of “live and proximity link” in the present case has been reasonably explained by the respondents or not.

28. The respondents have indicated that after passing of the detention order, they had ordered for its immediate compliance but since the petitioner was absconding and was hiding himself for more than a year, the respondents could not initiate the detention proceedings against him. Respondents tried to secure his presence by conducting raids and keeping a



watch outside the Court of Special Judge, NDPS, Roorkee where Case Crime No. 3/2021 was pending. In the said proceedings, his NBWs were issued as the petitioner had failed to appear even before the Court. Further, as the petitioner was not traceable, a Gazette Notification under Section 8(1)(b) of the PITNDPS Act was got issued on 08.09.2022 requiring the petitioner to appear before the Director General of Police, Uttarakhand and a Look Out Notice was also issued against him after making number of attempts by NCB as well as State Police to locate him.

29. It was submitted that from the conduct of the petitioner, it is apparent that the petitioner knew about detention order being operating against him, therefore, he absconded to avoid execution of the same and when the pressure of arrest mounted upon him, the petitioner filed an application for surrendering before the Court at Roorkee, which was rejected.

30. It was vehemently submitted that the petitioner being an absconder cannot take the benefit of “*live proximate link*”. It was due to the conduct of the petitioner that the detention order could not be executed although the NCB made serious efforts to trace him. Reliance placed on the case of **Addl. Secy. To the Govt. of India v. Alka Subhash Gadia (Smt.)**; 1992 Supp (1) SCC 496.

31. The learned counsel for the petitioner in rebuttal negated the submissions of the respondents and contended that issuance of a notification in official gazette is an internal arrangement about which the petitioner had no knowledge. The proceedings to declare the petitioner, a proclaimed offender were not initiated by the respondents so as to declare him an ‘absconder’. Therefore, to say the petitioner was absconding is contrary to the law. If the respondents were serious to serve the detention order, they



could have done so by providing a copy of the order to the advocates of the petitioner who were regularly appearing in the courts where his cases were listed. Moreover, for securing a copy of the preventive detention order, an RTI application was made by the petitioner via letter dated 20.07.2022 before the PIO, STF, Dehradun, Uttarakhand on 21.07.2022. However, copy of detention order was refused to him vide reply dated 30.08.2022. The petitioner had filed a surrender application in March 2022, in the court, whereas, he was detained in May 2023 in clear violation of his fundamental rights.

32. Insofar as the above submissions are concerned, we also examined the original records which were placed before us. From the records, we find that the Additional Director General of Police had submitted a compliance report to the Under Secretary, PITNDPS Division, Department of Revenue, Ministry of Finance with respect to the execution of detention order of the petitioner vide written communication dated 08.07.2022. In the said report, it has been specifically mentioned that the NCB had conducted multiple raids at various places to trace the petitioner, but he was not to be found after being released on bail. Written communication further shows that on 03.03.2022, a joint raid of STF/ADTF Haridwar and NCB Dehradun was conducted at the residence and medical store of the petitioner Naushad Ali who was not found to be present at the aforementioned locations. Efforts were made to arrest him on the basis of location of his mobile number but the same was not traceable as was found continuously switched off since 03.02.2022. Thereafter, on 06.03.2022, the aforementioned team conducted a raid at petitioner's in-laws place, but the petitioner was not found available there, a house search memo was prepared by the police for the raid.



Thereafter, on 07.03.2022, a search operation for the arrest of the petitioner was again conducted by the same team at the probable locations in and around the areas surrounding the place of inhabitation of in laws of petitioner, but no information could be gathered about him. On 12.03.2022, the STF/ADTF received information that the petitioner was using another mobile number. On the basis of said information, a raid was conducted at the address of the person in whose name the said mobile number was registered but the petitioner was not found to be present there. The raiding team was informed that the petitioner was a relative of the said person and had come to see him few days ago but had left his house. On the basis of the statement of the said person, the STF/ ADTF team conducted a search operation in nearby areas but the petitioner could not be arrested. Kotwali, Muzaffarpur, Uttar Pradesh was also informed of the detention order of the petitioner for necessary action.

33. The report, further states that on 15.03.2022, the STF/ADFT team conducted search operation in and around the surrounding BT Ganj, Gang Nahr, Roorkee for arrest of the petitioner but he could not be traced there also. The report details that the STF/ADTF received an information that there was a possibility of petitioner of escaping to a foreign nation pursuant to which on 23.03.2022, the team forwarded a report to Director, NCD Dehradun regarding issuing a look out circular for petitioner. On 24.03.2022, Bureau of Immigration issued a look out circular for the petitioner. Furthermore, the petitioner also stopped appearing before the Court of Special Judge, NDPS, Roorkee. The Court had set dates i.e. 31.03.2022, 13.04.2022, 18.04.2022 and 13.05.2022, for appearance of the petitioner in the Court in relation to the case Crl. No. 03/2021 filed by the



NCB, Dehradun, but on account of non-appearance of the petitioner on the aforementioned dates, the Court had issued his NBWs to secure his presence.

34. As per report, the Uttarakhand Police/ STF's drives for the arrest of the petitioner were not successful. Pertinently, the respondents further invoked the provision of Section 8(1)(b) of the PITNDPS Act by ordering for a Notification in Official Gazette directing appearance of absconding petitioner to secure his presence before Director General of Police, Uttarakhand.

35. It is not disputed that, in the meanwhile, on 08.03.2022, the petitioner had filed a surrender application before the Court of ADJ Ist, Special Judge, NDPS, Roorkee, apprehending undue arrest and harassment and use of third degree method against the petitioner, which was rejected by the Court.

36. In view of the above, the respondents have satisfactorily explained the non-execution of detention order against the petitioner after passing of the order on 25.02.2022. The delay of about 15 months is clearly attributable to the petitioner who has avoided the service of the detention order on him by concealing his presence. Therefore, we find ourselves unable to sustain the submission of the petitioner that test of proximity with respect to the issuance of detention order and detention of the petitioner in the present case has not been met by the respondents. However, the respondents have validly explained the delay in execution of the detention order.

37. We may observe here, the petitioner seriously defaulted by not making himself available to allow the service of detention order on him. The contention of the petitioner that he was trying to secure the grounds of detention through RTI is fallible as petitioner may not have got copy of the



detention order and documents unless he submitted to the order of detention or would not have concealed his presence.

38. Looking from another prospective, since the detention order has been executed beyond the period of detention (one year) on account of delay of about 15 months from the date when it was passed, undisputedly, the issue with respect to '*live and proximity link*' has emerged.

39. We, thus, proceed to examine the issue, whether the detention order is liable to be quashed on this count. The learned counsels for the respondents submitted that an 'absconder' cannot take advantage of such a situation which will result in anomalous situation, whereby, any proposed detenu will defeat detention order against him by first simply escaping and then challenge its validity on the test of '*live and proximity link*'. Supplementing the submissions, reference to the case of **Subhash Popatlal Dave v. Union of India & Anr.**; (2014) 8 SCC 280 is made.

40. In the aforesaid case, the question arose before the Hon'ble Supreme Court, whether a detention order can be quashed merely because there is a long delay in execution of detention order beyond the period of detention and whether detention order can be quashed at pre-execution stage because of delay in implementing it. The Hon'ble Supreme Court examined the issue in detail and observed as under:-

“16. Thus, if it is held that howsoever the grounds of detention might be weighty and sustainable which persuaded the authorities to pass the order of detention the same is fit to be quashed merely due to long lapse of time specially when the detenu is to challenge the order of detention even before the order of detention is served on him, he would clearly be offered with a double-edged weapon to use to his advantage circumventing the order of detention. On the one hand, he can challenge the order of detention at the pre-execution stage on any ground, evade the detention in the process and subsequently would be allowed to raise the plea of long pendency of the detention order which could not be served and finally seek



its quashing on the plea that it has lost its live link with the order of detention. This, in my view, would render the very purpose of preventive detention laws as redundant and nugatory which cannot be permitted. On the contrary, if the order of detention is allowed to be served on the proposed detenu even at a later stage, it would be open for the proposed detenu to confront the materials or sufficiency of the material relied upon by the authorities for passing the order of detention so as to contend that at the relevant time when the order of detention was passed, the same was based on non-existent or unsustainable grounds so as to quash the same. But to hold that the same is fit to be quashed merely because the same could not be executed for one reason or the other specially when the proposed detenu was evading the detention order and indulging in forum shopping, the laws of preventive detention would surely be reduced into a hollow piece of legislation which is surely not the purpose and object of the Act.

17. Therefore, in my view, the order of detention is not fit to be quashed and should not be quashed merely due to long lapse of time but the grounds of detention ought to be served on him once he gains knowledge that the order of detention is in existence so as to offer him a plank to challenge even the grounds of detention after which the courts will have to examine whether the order of detention which was passed at the relevant time but could not be served was based on sufficient material justifying the order of Remedy to this situation has already been offered by this Court in *Union of India y. Parasmal Rampuriall* wherein it was observed as under: (SCC p. 403, para 5)

"5.... the proper order which was required to be passed was to call upon the respondent first to surrender pursuant to the detention order and then to have all his grievances examined on merits after he had an opportunity to study the grounds of detention and to make his representation against the said grounds as required by Article 22(5) of the Constitution of India."

18. The consequence that follows from the above is that each individual/ proposed detenu will have to be served with the order of detention which had been passed against him along with the grounds and the materials relied upon by the authorities to pass the order of detention leaving it open to him to challenge the correctness of the order by way of a representation before the appropriate authority or court as per procedure prescribed. It is no doubt true that the materials relied upon at the relevant time would be on the basis of which the order of detention was passed so as to hold whether the materials were sufficient and justified or not but when the correctness of the order of detention is challenged in a court of law at the pre-execution stage, then setting aside the order of detention merely on the ground of long lapse of time might lead to grave consequences which would clearly clash with the object and purpose of the preventive detention laws.



20. It is also not possible to lose sight of the fact that if the petitioners and the appellants had preferred not to challenge the order of detention at the pre-execution stage or had not evaded arrest, the grounds of detention would have been served on them giving them a chance to challenge the same but if the petitioners and the appellants have taken recourse to the legal remedy to challenge the order of detention even before it was executed, it is not open for them to contend that it should be quashed because there is no live link between the existing/subsequent situation and the previous situation when the order of detention was passed overlooking that they succeeded in pre-empting the order by challenging it at the pre-execution stage never allowing the matter to proceed so as to examine the most crucial question whether there were sufficient material or grounds to pass the order of detention.

21. Subsequent events or conduct in any view would be a matter of consideration for the authorities before whom the representation is filed after the grounds are served on the detenu and cannot be gone into when the only question raised is regarding the correctness and legality of the order of detention. The alternative view is bound to operate as a convenient tool in the hands of the law-breakers which has not been approved earlier by this Court in the decisions referred to earlier.

22. A fallout and consequence of the aforesaid discussion, therefore, in my view, is that the order of detention cannot be quashed and set aside merely due to long lapse of time on the specious plea that there is no live link between the order of detention and the subsequent situation. I am, therefore, of the considered opinion that the order of detention is not fit to be quashed merely due to long lapse of time specially when the orders of detention have been allowed to be challenged at the pre-execution stage on any ground.

23. It is, therefore, legally appropriate to serve the order of detention on the proposed detenu leaving it open to them to challenge the same, after the grounds are served on them so as to appreciate whether there had been sufficient materials before the detaining authorities to pass the orders of detention which were existing at the relevant time and approve or disapprove the same.

41. The Hon'ble Supreme Court further observed as under:-

“39. Whether the test of live nexus developed by this Court in the context of examining the legality of the order of preventive detention can be automatically applied to the question of the legality of the execution of the preventive detention orders where there is a considerable time-gap between the passing of the order of preventive detention and its execution is the real question involved in these matters.

40. To answer the question, we must analyse the probable reason



for the delay in executing the preventive detention orders. There could be two reasons which may lead to a situation by which the preventive detention order passed by the competent authorities under the various enactments could remain unexecuted:

- (1) the absconding of the proposed detenu from the process of law,
- (2) the apathy of the authorities responsible for the implementation of the preventive detention orders.

42. It is distinctly clear from the above observations, that by delaying the execution of the detention order, the petitioner cannot be allowed to use the same to his advantage to circumvent the detention order. This would mean to await the detention order and to finally seek the quashing of the detention order on the ground of '*live and proximity link*' test. However, in such a situation the Apex Court still gave an option to the proposed detenu who absconded from the process of law to challenge the detention order after the grounds of detention were served on him seeking its approval or disapproval.

43. This leads us to next challenge proposed by learned counsel for the petitioner to the validity of impugned detention order on other focal points and procedural aspects.

Legal acceptability of the detention order

44. The learned counsel for the petitioner submitted that the detention order has been mechanically passed without noting the fact that the petitioner held valid licenses for both his medical stores issued by Drug License Authority and other relevant documents, thus, the detaining authority passed an illegal detention order. Moreover, the petitioner was granted bail in all the three criminal cases against him and petitioner had not breached any of his bail conditions, still the passing of a detention order was



in complete violation of his fundamental rights guaranteed under Article 21 & 22 of the Constitution. Emphasis was laid on the following judgments:-

- **Yumman Ongbi Lembi Leima v. State of Manipur & Ors;** (2012) 2 SCC 176
- **Alia Begum v. State of Assam, Rep. By Commissioner and Secretary to the Govt. of Assam and Ors;** 2022 SCC OnLine Gau 1261
- **Vijay Narain Singh v. State of Bihar;** 1984 SCC (Cri.) 361
- **Ameena Begum v. State of Telangana;** (2023) 9 SCC 587

45. It is clear on plain reading of language of Section 3(1) of PITNDPS Act, that the exercise of the power of detention is made on the subjective satisfaction of the detaining authority with a view of preventing a person from acting in a pre-judicial manner. The ‘subjective satisfaction’ of the detaining authority constitutes the premise for the exercise of the power of detention. We are not oblivious to the fact that the ordinarily the Court cannot consider the ‘sufficiency’ of the grounds on which the satisfaction of the detaining authority is based. However, the position of law is now well settled that ‘when the liberty of the subject is involved, it is the bounden duty of the court to satisfy itself with all the safeguards provided by the law have been scrupulously observed and the subject is not deprived of his person liberty otherwise than in accordance with law’ (*Khudi Ram Dass v. State of Bengal and Ors.*), 1975 (2) SCC 81).

46. Necessarily, the mandatory ‘subjective satisfaction’, which is the genesis to passing of a detention order will get vitiated, if the material which would have bearing on the issue are either withheld or suppressed by the sponsoring authority or ignored by the detaining authority before issuing the detention order.



47. It is relevant to note the observations made in case of *Asha Devi v. Additional Chief Secretary to the Government of Gujarat and Anr.*, 1979 CrL LJ 203, which are as follows:-

“.....if material or vital facts which would influence the minds of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal.”

48. In due consideration of the above laid principles of law and reverting back to the detention order, it is observed that the Joint Secretary on 25.02.2022, while passing the detention order against the petitioner and dealing the grounds of detention, considered the various reports filed by the authorities providing the details of distributors of 12 kinds of drugs seized from the medical stores of the petitioner. It is not disputed that the petitioner possessed a valid licenses to purchase, store and sell drugs according to conditions of the license but he misused the licenses by selling some drugs for which he could not produce valid sale bills. It was found that recovered and seized drugs from the premises of the petitioner were in huge quantity and for the quantity of drugs sold by him, he failed to produce sale bills, for which the petitioner was found to be in illegal/trafficking business of medicines covered under NDPS Act, which are as under:-

Sl. No.	Name of the Drug	Number Supplied	Number Seized	Bills produced. not
1.	Tripolidine Hydrochloride & Codine Phosphate 100 ml	2500 Bottles	2389 bottles	111 bottles
2.	Tramadol Hydrochloride & Peracetamol Tablets	600 strips	195 strips	405 strips
3.	Ampoules of Tramadol Hydrochloride	500	395	105



	Injections			
4.	Tramawin Injections	1500	790	710
5.	Dizepam Injections	13400	3900	9500
6.	Pentazocine Lactate Injection	2000	88	1912
7.	Tramadol Hydrochloride and Acetaminophen Tablets	6600	5280	1320
8.	Actaminophen & Dicyclomine HCL Capsules	28800 Capsules	7920 Capsules	20880

49. The Joint Secretary considered the report of CRCL, New Delhi, two FIRs registered at Police Station Ratia, Fatehabad, Haryana and Police Station Tohana, Fatehabad, Haryana.

50. It is clear from the grounds of detention that the Joint Secretary after going through the entire facts and circumstances of the information/material produced before him, in view of the cases registered against the petitioner, came to the conclusion that the petitioner was involved in trafficking of Narcotic Drugs and Psychotropic Substances many a times and is habitual offender. He also considered the fact that the petitioner had filed a bail petition before Special Judge NDPS, Roorkee on 11.02.2021 which was rejected, however, the petitioner was granted bail by the High Court of Uttarakhand on 21.05.2021. On finding overwhelming evidence available on record against the petitioner, the Joint Secretary concluded that the petitioner indulged in illicit trafficking of Narcotic Drugs and Psychotropic Substances as well as a high propensity to engage in this illicit activity, thus, conclusively felt that the petitioner is required to be detained under Section 3(1) of PITNDPS Act.

51. It was submitted on behalf of the respondents that the petitioner could not produce the sale bills even during the course of investigation after the



raid was conducted at his premises. Moreso, the activities of the petitioner were not localised to Nainital only. To the contrary, it had spread to Haryana where in two FIRs registered in two different police stations, he was also one of the accused person though he was subsequently released on bail and the proposal for detention was promptly considered by the detaining authority. It is true that the petitioner appeared to be involved in unexplained sale of drugs, its misuse could be unbridled leading to public disorder.

52. After going through the grounds set out by the Joint Secretary on which the detention order is based, it is clear in our mind that the detaining authority had formulated the requisite 'subjective satisfaction' before passing the detention order against the petitioner.

53. Further, the arguments raised on behalf of the petitioner is meritless that the petitioner had not flouted any condition of bail. Admittedly, after being released on bail, the petitioner absconded and NBWs were issued by the Special Judge, NDPS, Roorkee, to secure his presence. The NCB had to issue a gazette notification against him being an absconding person and further got issued a Look Out Circular for him as he attempted to flee from the country.

54. From his own admission, it is further clear that the petitioner was aware about the detention order having been passed against him as he had applied for its copy through RTI on 20.07.2022, still he was not making himself available for submitting to the detention order for further procedure to be followed, to the contrary he compromised with the bail conditions and thereby absconded. Such a situation resounds the principles of law laid down in the case of **Bhawarlal Ganeshmalji v. State of Tamil Nadu** (supra) observing:-



"But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the "link" not snapped but strengthened."

55. It was next submitted that the delay in issuing the detention order emphasises that there was no proximity between the prejudicial activities and the detention order. In the matters of depriving personal liberty, the authority is obliged to act swiftly and diligently. Therefore, there is a valid ground for quashing the detention order as there was a long gap when the last FIR was registered against the petitioner and when the detention order was issued against him. To consolidate the argument, learned counsel placed reliance on the case of ***Pradeep Nilkanth Paturkar v. S. Ramamurthi & Ors***; 1993 Supp (2) SCC 61.

56. The position of law is settled that each case is to be decided on the facts and circumstances appearing in that particular case depending on nature of 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. The case of ***Pradeep Nilkanth Paturkar v. S. Ramamurthi*** (supra), relied upon by learned counsel being in factual context of the case is not applicable to the facts of the present case. In the aforesaid case, the detenu was granted bail in all the cases on the very same day of his arrest or the registration of cases. Moreover, the statement of witnesses were obtained only after detenu was released on bail which were referred before the detaining authority and relied upon by it.

57. In the present case, it is revealed that enquiries were made by the authorities from various Distributors of the drugs with respect to drugs



seized from the premises of the petitioner to assess the source and quantity of drugs supplied to the petitioner and only after receiving their responses, the sponsoring authority could gather about the actual quantity of drugs purchased by the petitioner from a particular distributor of drugs and subsequently the quantity of drugs sold by the petitioner without sale bills, moreso, when the petitioner could not produce any stock register also.

58. Therefore, the efforts made by the detaining authority cannot be undermined in collecting the entire information which would have taken considerable time keeping in mind the huge quantity of seized drugs and list of Distributor as mentioned in the detention grounds. Pertinently, the petitioner was lastly granted bail as per the Bail Order dated 20.09.2021 of the High Court of Punjab and Haryana. The sponsoring authority had sent the proposal to the respondents on 11.01.2022 for initiating the preventive detention of the petitioner. The said proposal was promptly considered by the Screening Committee and vide its meeting held on 22.02.2023, recommended the proposal as fit for preventive detention of the petitioner. Therefore, in the given circumstances, there is no exceptional delay in passing the detention order. Thus, we do not find merit in the submissions advanced on behalf of the petitioner that passing of detention order suffered the vice of delay.

59. It is worth to mention, during the course of arguments, it was contended on behalf of the petitioner, that the learned counsel was not pressing the issue that grounds of detention were not explained to the petitioner in Hindi which is the only language known to the petitioner so the detention order was invalid. It was admitted that the petitioner being 12th pass has knowledge of the English language also.



Delay in providing a copy of the detention order and consequences thereof.

60. The next argument placed before us on behalf of the petitioner is that immediately on his surrender, the petitioner was not served with a copy of the detention order which was only handed over to him while he was already in custody. A serious objection was raised about non compliance of Section 3(3) of the PITNDPS Act by submitting that the petitioner was first detained and then a copy of the detention order was supplied to him. Further, the petitioner was not informed regarding his right to make a representation. Reliance was placed on **State of Bombay v. Atma Ram Shridhar Vaidya**; 3 (1951) SCR 167.

61. In this regard, it is worth to consider the provisions of Article 22(5) of the Constitution which confers two rights on the detainee, firstly, the right to be informed of the ground on which order of detention succeeded and secondly to be yielded an earliest opportunity to make a representation against the detention. It is also necessary to note Section 3(3) of the PITNDPS Act, which is reproduced hereinbelow:-

“For the purposes of Cl. (5) of Art. 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.”

62. On a plain reading of clause 5 of Article 22 read with Section 3(3) of PITNDPS Act, it is evident that the documents and other material relied upon in the grounds and detention order should be furnished to the detainee



in any event not later than 5 days and in exceptional circumstances and for the reasons to be recorded in writing not later than 15 days from the date of detention. The purpose behind making available the grounds for composition of detention order primarily is that the right of personal liberty of a person may not be arbitrarily taken away from him/her without following the procedure prescribed by law. The grounds so provided will indicate the kind of prejudicial act of which the detainee is suspected and will give a sufficient opportunity to enable him to make a representation to banish the suspicion against him.

63. It was submitted on behalf of the respondents that the petitioner was provided with the copy of the detention order, grounds of detention and relied upon documents on 22.05.2023 when he was detained which has been duly acknowledged by him.

64. It was further submitted that the petitioner did not make any representation against the order of detention, however, the reference was made to the State Advisory Board, Uttarakhand vide letter dated 31.05.2023. The State Advisory Board (PITNDPS and PS), Uttarakhand took the matter up for hearing on 18.07.2023 and heard the petitioner in person, who was produced from the jail. The Board submitted its report dated 31.07.2023 informing that there was sufficient cause for detention of the petitioner and fixed the date of detention w.e.f 22.05.2023 for a period of one year from the date of detention. It is submitted that the petitioner in the meanwhile had also instituted the present writ petition.

65. The petitioner has not disputed that he did not receive the copy of the detention order or other documents but has pleaded that the same were provided to him at a belated stage while he was in custody after his



detention in the jail, which is in contravention to Section 3(3) of the PITNDPS Act. It is worth to be noted, that after not being available for more than a year before the authorities, the petitioner on his own accord had surrendered in the court before Special Judge NDPS on 03.05.2022 as non bailable warrants had been issued against him and there was pressure on the petitioner to submit to law, from where he was taken in judicial custody and was sent to Jail at Roorkee. However, pursuant to the detention order, the petitioner had not appeared before the Director General of Police. Therefore, as the petitioner was already in the custody of the Court and lodged in the jail, he was served with the copy of the detention order in the jail on 22.05.2023 which has been duly acknowledged by him.

66. Thus, the petitioner was already in custody with respect to the criminal case pending against him and according to the respondents, he was detained on 22.05.2023 while being in judicial custody and was accordingly served with copy of detention order in jail. Therefore, there is not much force in the argument raised on behalf of the petitioner that he was detained first and then was provided with the copy of the detention order so he was not aware about the grounds of his detention. In fact, the detention period of the petitioner is being reckoned from 22.05.2023 and not from 03.05.2023. It was also submitted that the petitioner received a fair chance of making his representation against the detention order, when he was produced before the Advisory Board, where he was given a personal hearing by the Board.

67. The learned counsel for the respondents further submitted that the law is settled that the detention order can be served on a detainee in the custody also. Reliance has been placed on **Union of India v. Ankit Ashok Jalan;** (2020) 16 SCC 185 and **Union of India v. Dimple Happy Dhakad;** (2019)



20 SCC 609.

68. To clarify further, it is not disputed that detention order cannot be passed or served on a detenu when he is in the custody, however, it is subject to the condition that detaining authority should be mindful of the fact that the detenu is likely to be released on bail and that if released, he would continue to indulge in prejudicial activities. Relevant portion of the case titled as **Union of India v. Dimple Happy Dhakad** (supra) is reproduced hereinbelow:-

“38. In the light of the well-settled principles, we have to see, in the present case, whether there was awareness in the mind of the detaining authority that detenu is in custody and he had reason to believe that detenu is likely to be released on bail and if so released, he would continue to indulge in prejudicial activities. In the present case, the detention orders dated 17-5-2019 record the awareness of the detaining authority:

- (i) that the detenu is in custody;
- (ii) that the bail application filed by the detenus have been rejected by the Court.

Of course, in the detention orders, the detaining authority has not specifically recorded that the "detenu is likely to be released". It cannot be said that the detaining authority has not applied its mind merely on the ground that in the f detention orders, it is not expressly stated as to the "detenu's likelihood of being released on bail" and "if so released, he is likely to indulge in the same prejudicial activities". But the detaining authority has clearly recorded the antecedent of the detenus and its satisfaction that detenus Happy Dhakad and Nisar Aliyar have the high propensity to commit such offences in future.”

69. We are afraid that the position is different in the present case. Pertinently, when the detention order was passed against the petitioner, he was already enlarged on bail. Therefore, since the petitioner was not in custody so, the detaining authority was not required to consider the scenario regarding his likelihood to be released on bail. In the present situation, the petitioner has jumped bail, and successfully hid himself for 15 months and



circumvented not only the detention order but also the trial before the learned Special Judge NDPS, therefore, the apprehension that petitioner will continue to indulge in such prejudicial activities cannot be ruled out.

Conclusion

70. In the light of the views expressed by us hereinabove, the conduct of the petitioner and role of the authorities, in the present case, we find ourselves unable to sustain the submissions made on behalf of the petitioner. Consequently, the petition along with pending application is dismissed.

SHALINDER KAUR, J.

SURESH KUMAR KAIT, J.

FEBRUARY 20, 2024
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