



2024:DHC:8798-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 4th November, 2024**Date of Decision: 14th November, 2024*

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W.P.(CRL) 2114/2024

PABBAR GIRI @ VIJAY

.....Petitioner

Through: Ms. Sia Das and Ms. Ria Das,
Advocates (M-9810941474).

Versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Kaushal Jeet Kait, GP
(M- 9811418995) for R-1 & R-2.
Ms. Nandita Rao, ASC (Crl.) for
GNCTD.
Insp. Parveen Kumar, Crime Branch &
SI Ravinder Singh, Spl. Staff Outer
Distt.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Articles 226 and 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') seeks the following prayers:

"i. a writ of Habeas corpus and/or any other appropriate writ, order and/or direction in the nature thereof may kindly be issued thereby directing the respondents to release the petitioner from his illegal detention in pursuance of the detention order dated 21.02.2024 passed by respondent no. 2 in file no. 11011/07/2024-PITNDPS under



section 3(1) of the PIT NDPS Act, 1988 and to set the petitioner at liberty forthwith, and,

ii. Issue Writ of mandamus and/or any other appropriate writ, order and/or direction in the nature thereof, thereby directing the respondents to place on record both the sets of original relied upon documents i.e., Hindi and English, which were provided to the petitioner while detaining him under section 3(1) of the prevention of illicit traffic in narcotic drugs and psychotropic substances act, 1988 by the respondents.”

iii. any other order, as may be deemed fit and proper under the facts and circumstances of the case may also be passed in the matter in favour of the petitioner and against the respondents.”

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

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

a.) FIR No. 72/2012 under Sections 20/25/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as ‘NDPS Act’), registered at PS: Crime Branch, Delhi for the effected recovery of 88 kgs. Of *Ganja* (from the possession of the Petitioner and the co-accused therein). The Petitioner was convicted *vide* order dated 30th August, 2014 and was sentenced to undergo rigorous imprisonment for 2 years 5 months and 15 days, i.e., the period undergone alongwith a fine of Rs. 10,000/- *vide* order dated 2nd September, 2014, passed by the Learned Additional Sessions Judge (NDPS), West District, Delhi.

b.) FIR No. 202/2016 under Sections 20/25/29 of the NDPS Act, registered at PS: Crime Branch, Delhi for the effected recovery of 81.25 kgs. Of *Ganja* (from the possession of the Petitioner and the co-



accused therein). The Petitioner was acquitted *vide* order dated 18th October, 2018, passed by the Learned Special Judge (NDPS), Dwarka Courts, Delhi.

c.) FIR No. 157/2023 under Section 20(b)(ii)(C) of the NDPS Act, registered at PS: Ranhola, Delhi for the total effected recovery of 101.65 kgs. of *Ganja* (35 kgs. and 250 grams of *Ganja* was recovered from the possession of the Petitioner himself). The chargesheet in this matter was filed against the Petitioner and the co-accused(s) and the Petitioner filed a bail application, which was dismissed *vide* order dated 23rd September, 2023 by the Learned Special Judge (NDPS), West, Delhi.

- ii. On the basis of the alleged involvement of the Petitioner in the aforesaid cases, Deputy Commissioner of Police, Delhi Police, ANTF, Delhi, i.e., the Sponsoring Authority submitted a proposal dated 8th December, 2023 to the Joint Secretary (PITNDPS) to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, i.e., the Detaining Authority (Respondent no. 2) under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as 'PITNDPS Act'). Further information and documents were received from the Sponsoring Authority by Respondent no. 2 on 25th January, 2024; who subsequently forwarded the proposal to the Screening Committee on 29th January, 2024. The said proposal was considered by the Screening Committee on 8th February, 2024 and the same was held to be fit for preventive detention under the PITNDPS Act.
- iii. Thereafter, Respondent no. 2 on 21st February, 2024 issued the



detention order bearing F. No. U-11011/07/2024-PITNDPS under Section 3(1) of the PITNDPS Act, which along with the ‘grounds of detention’ and Relied Upon Documents (‘RUDs’) were served upon the Petitioner in jail on 27th February, 2024 following the mandate of Section 3(3) of the PITNDPS Act.

- iv. A reference to the Central Advisory Board (PITNDPS), Delhi (hereinafter referred to as ‘Advisory Board’) was made *vide* letter dated 27th March, 2024 by the Respondents under Section 9(b) of the PITNDPS Act for the purposes of Clauses 4(a) and 7(c) of Article 22 of the Constitution of India.
- v. The matter was taken up by the Advisory Board and considering the representation made by the Petitioner, the Sponsoring Authority and the Detaining Authority (Respondent no. 2), the Advisory Board *vide* report dated 10th May, 2024 confirmed the detention of the Petitioner. Subsequently, considering the confirmation from the Advisory Board, the Deputy Secretary, Government of India, Department of Revenue, Ministry of Finance *vide* order bearing no. F. No. U-11012/07/2024-PITNDPS dated 16th May, 2024 confirmed the detention order dated 21st February, 2024 and ordered for the Petitioner to be detained for a period of one year with effect from 27th February, 2024, i.e., his effective date of detention.
- vi. The Petitioner through his Counsel made a representation dated 18th March, 2024 to the Detaining Authority (Respondent no. 2) for revocation of the detention order dated 21st February, 2024, which after consideration was rejected by Respondent no. 2 *vide* Memorandum bearing no. F. No. U-11013/14/2024-PITNDPS dated



1st April, 2024.

vii. Further, the Petitioner had also made a representation on the even date, i.e., 18th March, 2024 to the Secretary, Government of India, Department of Revenue, Ministry of Finance (Respondent no. 1) for revocation of the detention order dated 21st February, 2024, which after consideration was rejected by them *vide* Memorandum bearing no. F. No. U-11013/15/2024-PITNDPS dated 3rd April, 2024.

3. The facts with respect to the aforesaid cases registered by the Sponsoring Authority have been discussed by the Detaining Authority (Respondent no. 2) in the following manner:

a) FIR No. 72/2012 under Sections 20/25/61/85 of the NDPS Act registered at PS Crime Branch, Delhi:

i) Based on a secret information, the Petitioner alongwith co-accused Anil Yadav were apprehended near the slum area in Raghuvir Nagar, Delhi with an effected recovery of 88 kgs. of *Ganja* (from the possession of the Petitioner and the co-accused therein) and accordingly the aforementioned FIR came to be registered.

ii) The Petitioner alongwith the co-accused were arrested on 22nd March, 2012 and the chargesheet was filed before the Learned Additional Sessions Judge, Tis Hazari Courts, Delhi against both of them.

iii) The Petitioner was convicted in the aforementioned case *vide* order dated 30th August, 2014 and was sentenced to undergo rigorous imprisonment for 2 years 5 months and 15 days, i.e., the period undergone alongwith a fine of Rs. 10,000/- *vide* order dated 2nd September, 2014.

b) FIR No. 202/2016 under Sections 20/25/29 of the NDPS Act registered at PS Crime Branch, Delhi:



i) Based on a secret information, the Petitioner alongwith co-accused Sumit@ Golu were apprehended near Dwarka Mod, Delhi with an effected recovery of 81.25 kgs. of *Ganja* (from the possession of the Petitioner and the co-accused therein) and accordingly the aforementioned FIR came to be registered.

ii) The Petitioner alongwith the co-accused were arrested on 17th December, 2016 and the chargesheet was filed before the Learned Chief Metropolitan Magistrate, Dwarka Courts, Delhi against both of them.

iii) The Petitioner was acquitted in the aforementioned case *vide* order dated 18th October, 2018.

c) FIR No. 157/2023 under Sections 20(b)(ii)(C) of the NDPS Act registered at PS Ranhola, Delhi:

i) Based on a secret information, the Petitioner alongwith co-accused persons namely, Pappu Rai and Geegal Kumar were apprehended with an effected recovery of a total of 101.65 kgs. of *Ganja* (out of which, 35 kgs. and 250 grams of *Ganja* was recovered from the possession of the Petitioner) and accordingly the aforementioned FIR came to be registered.

ii) In his disclosure statement, the Petitioner stated that he had met the co-accused Pappu Rai alongwith one Awadesh and through the latter, the co-accused Geegal Kumar, in and outside of jail in connection with the aforementioned FIR No. 202/2016.

iii) Further, in the disclosure statement, it was stated that on 9th February, 2023, the Petitioner met the other two accused persons along with Awadesh near Sabzi Mandi and that on 11th February, 2023, the said Awadesh directed the Petitioner to meet him alongwith the other two accused persons, namely, Pappu Rai and Geegal Kumar near Ranhola, where Awadesh gave 3 sacks of



Ganja to them and all three were apprehended while waiting for an auto.

iv) The Petitioner along with the co-accused Pappu Rai and Geegal Kumar were arrested on 12th February, 2023 and the chargesheet was filed by the Learned Additional Sessions Judge, Tis Hazari Courts, Delhi.

v) The Petitioner filed a bail application, which was dismissed *vide* order dated 23rd September, 2023 by the Learned Special Judge (NDPS), West, Delhi.

4. On the basis of the aforesaid facts and circumstances, the Detaining Authority (Respondent no. 2) 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. Pabbar Giri @ Vijay are actively involved in trafficking of Narcotic Drugs and Psychotropic Substances and you are a habitual offender. Your presence in the society is a threat to innocent person of the locality/State/Nation and your activities are prejudicial to society.

3. I am aware that at present you i.e. Pabbar Giri @ Vijay are in judicial custody since 12.02.2023 in Case FIR No. 157/23. 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. Pabbar Giri @ Vijay through your above acts engaged yourself in prejudicial activities of illicit traffic of narcotics and psychotropic substances, which poses serious threat to the health and welfare not only to the citizens of this country but to every citizen in the world, besides deleterious effect on the national economy. The offences committed by you i.e. Pabbar Giri @ Vijay 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. Pabbar Giri @ Vijay 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 Pabbar Giri @ Vijay i.e. you to repeat



*the above serious prejudicial acts. **Hence, I am satisfied that in the meantime you i.e. Pabbar Giri @ Vijay should be immobilized and there is a need to prevent you i.e. Pabbar Giri @ Vijay 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. Pabbar Giri@ Vijay 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. Pabbar Giri @ Vijay would continue to so engage yourself in possessing, purchase, sale, transportation, storage, use of narcotics and psychotropic substances illegally and handling the above activities, organizing directly in the above activities and conspiring in furtherance of above activities which amount to illicit trafficking of psychotropic substances under section 2(e) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988 in future also. I am, therefore, satisfied that there is full justification to detain you i.e. Pabbar Giri @Vijay 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. Pabbar Giri@ Vijay 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 prejudicial activities have been carried on, the nature and gravity of the offence, the consequential extent of investigation involved including scanning/examination of papers, formation of grounds, I am satisfied that the nexus between the dates of incident and passing of the Detention Order as well as object of your detention has been well maintained.”

(emphasis supplied)



SUBMISSIONS ON BEHALF OF THE PETITIONER

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

A) Non-placing of vital documents before the Detaining Authority

Learned Counsel appearing on behalf of the Petitioner submits that with respect to FIR no. 157/2023, the Petitioner was forcibly picked up by the officers of Delhi police at around 11:30 p.m. on 11th February, 2023 from Najafgarh Goushala Road, Krishna Mandir, Nangloi, Delhi and was kept in police custody. Further, from there, he alongwith with the co-accused Pappu Rai was taken near Park Hospital, Keshav Pur Mandi, where both of them were kept in a vehicle. That at around 3:00 p.m., the officers took the co-accused Pappu Rai to the aforesaid spot near Park hospital and in the meantime, the other co-accused Geegal Kumar was called over phone to come to the said spot and the Petitioner alongwith the accused person(s) were taken to the concerned Police Station. Therefore, the Petitioner contends that the aforementioned case was planted on him and that he possesses a CD containing the CCTV footage to that effect, i.e., of 11th February, 2023, which formed a part of judicial record before the Learned Trial Court. The same CCTV footage was never placed before the Detaining Authority (Respondent no. 2) by the Sponsoring Authority even though the Petitioner drew attention to the said CCTV material through his representations.

B) Delay in passing and execution of the Detention Order

Learned Counsel for the Petitioner submits that in FIR no. 157/2023, the Petitioner was arrested on 12th February, 2023 and that the proposal was sent by the Sponsoring Authority to the Detaining Authority (Respondent no. 2)



on 8th of December, 2023 with an approximate delay of 10 months, which was further forwarded to the Screening Committee after approximately one month and 20 days, i.e., on 29th January, 2024. It was further submitted that there was no record as to when the Screening Committee accepted the said proposal and the impugned detention order was then passed after approximately a month, i.e., on 21st February, 2024. It is further contended that the said detention order was only executed to the Petitioner after a period of 7 days from passing of it, i.e., on 27th February, 2024.

C) Non-application of mind with respect to rigours of Section 37 of the NDPS Act

Learned counsel for the Petitioner submits that the Petitioner was arrested for possession of commercial quantity and therefore, the rigours of Section 37 of the NDPS Act would come into play, which prohibits any Court from granting bail to an accused possessing commercial quantity of narcotic drugs or psychotropic substances unless the twin conditions are satisfied. Section 37 of the NDPS Act reads as under:

"37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of



Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

(emphasis supplied)

In the present facts of the matter, the Detaining Authority was already aware of the Petitioner being in judicial custody and yet the order of detention was passed, as in the grounds of detention served to the Petitioner, in paragraph no. 3, the Detaining Authority mentions *"I am aware that at present you i.e., Pabbar Giri@ Vijay are in judicial custody since 12.02.2023 in case FIR No. 157/23. 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."* However, the Detaining Authority was already aware of the rejection of the bail application of the Petitioner in FIR No. 157/2023 vide order dated 23rd September, 2023 by the Learned Special Judge (NDPS), West, Delhi and the fact that the Petitioner did not challenge the same. Thus, there was no compelling necessity to pass the detention order after approximately 5 months of rejection of the bail application.

D) No live or proximate link

Learned Counsel for the Petitioner submits that with respect to FIR No. 157/2023, the Petitioner was arrested on 12th February, 2023; however, the Detaining Authority only passed the Detention order after an unexplained delay of approximately one year on 21st February, 2024. Therefore, it is contended that the delay in passing of the impugned detention order has snapped the nexus/live-link between the alleged prejudicial activities of the Petitioner and the purpose of "immobilising" him or detaining him.



6. Learned Counsel appearing on behalf of the Petitioner relies on the following judgments:

- i. **Sushanta Kumar Banik vs. State of Tripura and Others 2022 SCC OnLine SC 1333**
- ii. **Shahid Khan @ Chote Pradhan vs. Union of India and Another 2024:DHC:3012-DB**
- iii. **Sumita @ Manto vs. Union of India 2003 SCC OnLine Del 294**
- iv. **Dharmendra Suganchand Chelawat through his sister KM. Archana Chelawat and Another vs. Union of India (1990) 1 SCC 746**
- v. **Farukh @ Chapta vs. Union of India and Another 2024:DHC:3414-DB**
- vi. **Rizauddin @ Riyajuddin @ Riyajudden @ Pintu vs. Union of India and Others 2024:DHC:6831-DB**
- vii. **Amardeep Singh Narang vs. Union of India and Others 2024:DHC:5820-DB**
- viii. **Pramod Singla vs. Union of India and Others 2023 SCC OnLine SC 895**

SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 1 AND 2

7. Learned Central Government Standing Counsel appearing on behalf of Respondent nos. 1 and 2 argued on the lines of the counter-affidavit filed on their behalf. It was argued that in view of the prejudicial activities of the present Petitioner and his continuous involvement in the NDPS Act, the Sponsoring Authority felt the need to prevent him from any other activities and therefore, a proposal for his detention was moved on 8th December, 2023 and the same was placed before the Screening Committee on 29th



January, 2024.

8. It is submitted on behalf of the Learned Counsel for the Respondent nos. 1 and 2 that the objective of PITNDPS Act was to prevent persons of such propensity to continue with their prejudicial activities despite the fact that there are stringent conditions in the NDPS Act itself for bail as well as quantum of punishments. It was further submitted that there was no delay in passing of the detention order inasmuch as the prejudicial activities of the Petitioner as highlighted in the grounds of detention clearly shows his propensity to commit such offences in future and therefore in view of aims and objectives of the PITNDPS Act, it was necessary for him to be immobilised. Attention of this Court was drawn to the aims and objectives of the PITNDPS Act, which reads as under:

“An Act to provide for detention in certain cases for the purpose of preventing illicit traffic in narcotic drugs and psychotropic substances and for matters connected therewith

Whereas illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and the activities of persons engaged in such illicit traffic have a deleterious effect on the national economy;

And whereas having regard to the persons by whom and the manner in which such activities are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to the illicit traffic in narcotic drugs and psychotropic substances, such activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities to provide for detention of persons concerned in any manner therewith.”

9. It is further submitted that the contention of the Petitioner that the CCTV footage was not placed before the Detaining Authority is unfounded inasmuch as the same is not part of the judicial record. Attention of this Court was drawn to an order dated 3rd March, 2023 passed by the Learned



Trial Court in FIR No. 157/2023 wherein, while disposing of the application under Section 91 of the Cr.P.C. moved by the Petitioner, it was observed as under:

“Fresh reply regarding the verification of the CTV footage containing in the CD placed on record on behalf of applicant/ accused and regarding the preserving of CDR are filed.

Heard. I have perused the record as well as the report.

In the present case, accused has submitted that the recording of CTV footage of Park Hospital was collected by his family. However, in all the reports / reply including CCTV footage contained in the CD filed on record on behalf of applicant / accused, it is reported that the same could not be verified as same was deleted. In view of the averments in the application and in view of the reply, the applicant/ accused is at liberty to keep the CD with him and may use in his defence at appropriate stage as per law. The application u/s 91 Cr.P.C for preserving the CCTV Footage filed u/s 91 Cr.P.C are disposed off accordingly.

So far as the CDR of abovesid two mobiles numbers are concerned, it is reported that the same is directed to be preserved. In view of the same, the application filed to preserve the CDR is disposed off with directions that IO will take necessary steps to get the CDR preserved during the pendency of the present case.

Applications are disposed off accordingly.

Copy of this order be given dasti to the parties/IO

Applications be clubbed as and when the chargesheet filed in the present case.”

It is submitted that in view of the same it is clear that the CCTV footage was not part of the Trial Court record; however, it was in the possession of the Petitioner himself. Therefore, not placing the same would not have any bearing on the detention order.

10. Learned counsel appearing on behalf of the Respondent nos. 1 and 2 sought to distinguish the judgments passed by this Court in **Riyazuddin (supra)** and **Amardeep Singh Narang (supra)** to submit that the documents discussed in those judgments were of material in nature and



therefore non-consideration of the same by the Detaining Authority was treated to be fatal to the detention order made therein. It is submitted that in the present case, the CCTV footage relied upon by the Petitioner is not a part of the Trial Court and therefore the said judgments would not be applicable in the present case. Similarly, in **Sushanta Kumar Banik** (*supra*), it is pointed out that delay in passing the detention order was after the grant of bail to the Appellant therein and therefore the said case would be distinct from the present one as the Petitioner had not been granted bail in the present case.

ANALYSIS AND FINDINGS

11. Heard Learned Counsels for the parties and perused the record.
12. The following dates are relevant for deciding the present petition:
 - a) The Petitioner was arrested in case FIR No. 157/2023 registered at P.S. Ranhola on 12th February, 2023.
 - b) The Petitioner filed a bail application which was dismissed *vide* order dated 23rd September, 2023 by the Learned Special Judge (NDPS), West Delhi.
 - c) The proposal for detention was forwarded by the Sponsoring Authority to the Detaining Authority on 8th December, 2023. It is pertinent to note that on the said date, there was no application pending on behalf of the Petitioner seeking bail in the aforesaid FIR. On a specific query made by this Court during the course of the hearing, the Investigating Officer informed that the other two co-accused persons were also in judicial custody and had not been granted bail.



d) The detention order was passed on 21st February, 2024.

13. This Court is of the considered opinion that there was considerable and unreasonable delay from the date of the arrest of the Petitioner and that of sending the proposal for detention. It is also a matter of record, as pointed out hereinabove, that the bail application of the Petitioner was dismissed on 23rd September, 2023 and on the date when the proposal was moved, i.e., on 8th December, 2023; no application seeking bail was pending. On the examination of the proposal (annexed with the Status Report filed on behalf of Respondent no. 3), it is observed that the Sponsoring Authority has not given any explanation with regard to the reason for moving the proposal in the circumstances where the bail of the Petitioner had already been dismissed and no application was pending. There is no explanation by the Sponsoring Authority as to reasonable grounds to believe that the Petitioner being already in judicial custody and immobilised, would be likely to be released on bail and commit prejudicial activities as alleged in the grounds of detention.

14. 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:

“11. The contents of the detention order and its accompanying annexure clearly show that the detaining authority was aware and conscious of the fact that the detenu was already in custody in connection with the Bank dacoity at the time of making the detention order. The fact that the detenu's application for grant of bail in the dacoity case had been rejected on 22-8-1988 and he was remanded to custody for the offence of bank dacoity punishable under Section 397 IPC is also evident from the record. The detention order came to be made on 7-9-1988 on the above grounds in these circumstances. In the detention order the detaining authority recorded its satisfaction that the detenu's preventive detention was necessary to prevent him



from indulging in activities prejudicial to maintenance of public order in which he would indulge if he was allowed to remain at large. The above quoted paras 18 and 19 of the Annexure to the detention order clearly disclose the factual position. **However, it may be pointed out that the detention order read along with its annexure nowhere indicates that the detaining authority apprehended the likelihood of the detenu being released on bail in the dacoity case and, therefore, considered the detention order necessary.** On the contrary, its contents, particularly those of the above quoted para 18 clearly mention that the detenu had been remanded to custody for being proceeded against in due course and even though his name was not mentioned in the FIR as one of the dacoits who participated in the commission of the armed Bank dacoity yet the documents clearly revealed that the detenu was an active participant in the conspiracy to loot the bank in furtherance of which the dacoity was committed; and that considerable booty of that crime including weapons, bombs and hand grenades were recovered from his possession pursuant to the detenu's confession made after his arrest. **These averments in the detention order indicate the satisfaction of the detaining authority that in its view there was ample material to prove the detenu's active participation in the crime and sharing the booty for which offence he had already been taken into custody. This view of the detaining authority negatives the impression of likelihood of detenu being released on bail.**

21. A review of the above decisions reaffirms the position which was settled by the decision of a Constitution Bench in Rameshwar Shaw case [AIR 1964 SC 334 : (1964) 4 SCR 921 : (1964) 1 Cri LJ 257] . The conclusion about validity of the detention order in each case was reached on the facts of the particular case and the observations made in each of them have to be read in the context in which they were made. None of the observations made in any subsequent case can be construed at variance with the principle indicated in Rameshwar Shaw case [AIR 1964 SC 334 : (1964) 4 SCR 921 : (1964) 1 Cri LJ 257] for the obvious reason that all subsequent decisions were by Benches comprising of lesser number of Judges. We have dealt with this matter at some length because an attempt has been made for some time to construe some of the recent decisions as modifying the principle enunciated by the Constitution Bench in Rameshwar Shaw case [AIR 1964 SC 334 : (1964) 4 SCR 921 : (1964) 1 Cri LJ 257] .
22. **We may summarise and reiterate the settled principle. Subsisting**



custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position.

23. Applying the above settled principle to the facts of the present case we have no doubt that the detention order, in the present case, must be quashed for this reason alone. The detention order read with its annexure indicates the detaining authority's awareness of the fact of detenu's jail custody at the time of the making of the detention order. However, there is no indication therein that the detaining authority considered it likely that the detenu could be released on bail. In fact, the contents of the order, particularly, the above quoted para 18 show the satisfaction of the detaining authority that there was ample material to prove the detenu's complicity in the Bank dacoity including sharing of the booty in spite of absence of his name in the FIR as one of the dacoits. On these facts, the order of detention passed in the present case on 7-9-1988 and its confirmation by the State Government on 25-10-1988 is clearly invalid since the same was made when the detenu was already in jail custody for the offence of bank dacoity with no prospect of his release. It does not satisfy the test indicated by the Constitution Bench in Rameshwar Shaw case [AIR 1964 SC 334 : (1964) 4 SCR 921 : (1964) 1 Cri LJ 257]. We hold the detention order to be invalid for this reason alone and express no opinion on merits about the grounds of detention.”
(emphasis supplied)

15. At this stage, it will be apposite to refer to a judgement of the Hon’ble Supreme Court in **Rajinder Arora vs. Union of India and Others (2006) 4 SCC 796**. In the said case, the petitioner therein was arrested on 28th May,



2004 and order of detention was issued on 31st March, 2005. The Hon'ble Supreme Court while taking note of the same, observed and held as under:

“20. Furthermore no explanation whatsoever has been offered by the respondent as to why the order of detention has been issued after such a long time. The said question has also not been examined by the Authorities before issuing the order of detention.

21. The question as regards delay in issuing the order of detention has been held to be a valid ground for quashing an order of detention by this Court in T.A. Abdul Rahman v. State of Kerala [(1989) 4 SCC 741 : 1990 SCC (Cri) 76 : AIR 1990 SC 225] stating: (SCC pp. 748-49, paras 10-11)

“10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard-and-fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and



genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.”

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

16. Learned Division Bench of this Court in *Gurminder Singh @ Lalli vs. Union of India and Others* 1999 SCC OnLine Del 85 in a similar situation held as under:

“6. From the above it is apparent that the detaining authority was conscious of the fact that the petitioner was in custody, but it failed to point out any material on the basis of which it was led to believe that there was a likelihood of the bail being granted to the petitioner. The inference of the detaining authority does not seem to be grounded on any cogent material. It is important to note that the petitioner is alleged to have committed offences under Sections 21 and 23 of the Narcotic Drugs and Psychotropic Substances Act. It is also clear from the reading of the grounds of detention that the D.R.I. claims to have seized 4.800 kgs. of heroine from the car which was driven by the petitioner. Ordinarily, when such a huge quantity of heroine is alleged to have been recovered from the custody of a person, there is hardly any possibility of his being released on bail in view of the provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act.

*7. In *Kamarunnissa v. Union of India and another*, (1991) 1 S.C.C. 128, the Supreme Court on review of a large number of decisions laid down that even in the case of a person in custody a detention order can be passed provided the following conditions are satisfied :-*

- (1) the authority passing the order is aware of the fact that he is actually in custody;*
- (2) the detaining authority has reason to believe on the basis of reliable material placed before it that there is a real possibility of his being released on bail, and that on being so released he would in all probability indulge in prejudicial activity; and*
- (3) it is essential to detain him to prevent him from indulging in prejudicial activities.*

*To the same effect are the decisions of the Supreme Court in *Suraj Pal Sahu v. State of Maharashtra and others*, (1986) 4 S.C.C. 378; *Smt.**



Shashi Aggarwal v. State of U.P. and Others, (1988) 1 S.C.C. 436; N. Meera Rani v. Government of Tamil Nadu and Another, (1989) 4 S.C.C. 418; and Anand Prakash v. State of U.P. and Others, (1990) 1 S.C.C. 291.

8. Thus, even in a case where a person is in custody, if the facts and circumstances of the case so demand, detention order can be passed for his detention under the law of preventive detention provided there is relevant and creditable material to indicate that he is likely to be released on bail and is likely to repeat his criminal activities.”

(emphasis supplied)

17. It is the case of the Sponsoring Authority itself that the present Petitioner is a previous convict under the NDPS Act and keeping in mind the rigours of Section 37 of the NDPS Act, it was incumbent upon the Sponsoring Authority as well as the Detaining Authority to apply its mind on this aspect. The order of detention simply records the fact that the Petitioner is in judicial custody and is likely to indulge in prejudicial activities if released on bail; however, there is no satisfaction shown in the order of detention as to the likelihood of the Petitioner being released on bail in these circumstances. In fact, other co-accused persons had not been granted bail and were in judicial custody.

18. The submissions on behalf of Respondent nos. 1 and 2 with respect to the object of the PITNDPS Act, is not in dispute. However, the detention order should be in compliance with the procedural safeguards provided in law. The subjective satisfaction of the Detaining Authority is open to judicial review by the Constitutional Court.

19. 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,



then the same can be set aside by this Court while exercising its power under Article 226 of the Constitution of India.

20. In Ameena Begum vs. State of Telangana and Others (2023) 9 SCC 587, the Hon'ble Supreme Court while referring to various judgments with respect to judicial reviewability of a detention order, observed and held as under:

“15. In Rameshwar Shaw v. District Magistrate, Burdwan [Rameshwar Shaw v. District Magistrate, Burdwan, 1963 SCC OnLine SC 33 : AIR 1964 SC 334] , a Constitution Bench speaking through Hon'ble P.B. Gajendragadkar, J. (as the Chief Justice then was) in course of interdicting an order of detention passed under Section 3 of the Detention Act held as follows : (AIR p. 337, paras 7-8)

“7. There is also no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of clauses (i) to (iii) of Section 3(1)(a) and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed. Similarly, if some of the ground supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making a representation, that again may introduce a serious infirmity in the order of his detention. If, however, the grounds on which the order of detention proceeds are relevant and germane to the matters which fall to be considered under Section 3(1)(a), it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not reasonably based on any of the said grounds.

8. It is, however, necessary to emphasise in this connection that though the satisfaction of the detaining authority contemplated by Section 3(1)(a) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention on the ground of mala fides and in support of the said plea urge that along with other



facts which show mala fides, the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner and in support of the plea of mala fides that this question can become justiciable; otherwise the reasonableness or propriety of the said satisfaction contemplated by Section 3(1)(a) cannot be questioned before the Courts.

17. In *Ichhu Devi Choraria v. Union of India* [*Ichhu Devi Choraria v. Union of India*, (1980) 4 SCC 531 : 1981 SCC (Cri) 25], the judicial commitment to strike down illegal detention, even when the petition on which rule was issued did not have the requisite pleadings, was highlighted in the following words : (SCC p. 538, para 5)

“5. ... Where large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and make out a *prima facie* case in support of those grounds before a rule is issued or to hold that the detaining authority should not be liable to do any thing more than just meet the specific grounds of challenge put forward by the petitioner in the petition. The burden of showing that the detention is in accordance with the procedure established by law has always been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. This is an area where the court has been most strict and scrupulous in ensuring observance with the



requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detenu even though the detention may have been valid till the breach occurred. The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.”

(emphasis supplied)

22. On a conspectus of the decisions referred to above and other decisions on preventive detention, we may observe here that the argument commonly advanced on behalf of detaining authorities in the early days of the Constitution was that the Court's enquiry ought to be confined to whether there is an order of detention or not and the moment such an order, good on its face, is produced, all enquiry into good faith, sufficiency of the reasons or the legality or illegality of the action comes to an end. However, with passage of time, and expansion and development of law, it is no longer the law that a preventive detention action, howsoever lawful it might appear on its face, cannot be invalidated by the constitutional courts. This is so, as at present, there is no administrative order affecting rights of the subjects that can legitimately claim to be impregably guarded by a protective shield, which judicial scrutiny cannot penetrate.

23. Apart from the aforesaid decisions, multiple decisions have been rendered by this Court over the years which provide suitable guidance to us to complete the present exercise; however, we wish to conclude this discussion by referring to one decision of this Court delivered [Rekha v. State of T.N., (2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] little in excess of a decade back by a Bench of 3 Judges.

24. In Rekha v. State of T.N. [Rekha v. State of T.N., (2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] , this Court observed that : (SCC pp. 253-55, paras 21 & 29)

“21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year's imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive?



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29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the Rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.” [Ed. : It would appear that this entire extract from paras 21 and 29 of *Rekha*, (2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596, and in particular the observation in para 29, that preventive detention is not permissible when the ordinary law of the land can deal with the situation, is per incuriam paras 19 and 32 to 34 of the Constitution Bench in *Haradhan Saha v. State of W.B.*, (1975) 3 SCC 198 : 1974 SCC (Cri) 816, as held para 26 of the present judgment hereinbelow. Paras 19 and 32 to 34 of *Haradhan Saha* have been set out in the Headnote at SCC pp. 589-90.] (emphasis in original)

25. There could be little doubt with the thought process that although the executive would pass an order under the preventive detention laws as a preventive or a precautionary measure, its effect viewed strictly from the standpoint of the detenu is simply and plainly punitive. Significantly, an order of detention is not relatable to an alleged commission of offence which a court is seized of and, thus, the conduct of the accused complained of, is yet to be found blameworthy; on the contrary, since it relates to an anticipated offence based on past conduct, the detenu could well feel that he is at the receiving end of a subjective satisfaction of the executive despite he not being proved to be on the wrong side of the law on any previous occasion. If someone loses his liberty and lands up in prison not having a semblance of a chance to resist or protest, the very circumstance of being put behind bars for such period as specified



in the order of detention based on an anticipation that an offence is likely to be committed by him seems to be an aspect which does not sync with the norms and ethos of our very own Constitution and the decisions of this Court in which the concept of “life” has been explained in such a manner that “life” has been infused in the letters of Article 21 (see Common Cause v. Union of India [Common Cause v. Union of India, (1999) 6 SCC 667 : 1999 SCC (Cri) 1196]). Nonetheless, so long clause (3) of Article 22 of the Constitution itself authorises detention as a preventive measure, there can be no two opinions that none can take exception to such a measure being adopted and it is only a limited judicial review by the constitutional courts that can be urged by an aggrieved detenu wherefor too, in examining challenges to orders of preventive detention, the Courts would be loath to interfere with or substitute their own reasoning for the subjective satisfaction arrived at by the detaining authority. Since the object of a preventive detention law is not punitive but preventive and precautionary, ordinarily it is best left to the discretion of the detaining authority.”

(emphasis supplied)

[paragraph in bold and underline: emphasis supplied by this Court and paragraph underlined: emphasis in the original judgement]

21. In the present circumstances, this Court is of the considered opinion that there is no live or proximate link between the alleged prejudicial activities of the Petitioner and that of passing of the detention order. Further considering the fact that the bail of the Petitioner was rejected and he was already immobilised, the propensity to further indulge in any unlawful activity also did not exist at the time when the impugned order of detention was passed.
22. In view thereof, the order dated 21st February, 2024 is hereby set aside.
23. The present petition is allowed and disposed of accordingly.
24. Pending application(s), if any, also stands disposed of.
25. 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.



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

**AMIT SHARMA
(JUDGE)**

**PRATHIBA M. SINGH
(JUDGE)**

NOVEMBER 14, 2024/bsr

Signature Not Verified

Digitally Signed By BHASKAR
SINGH RAWAT
Signing Date: 14.11.2024
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