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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 21st February, 2025**Date of Decision: 12th March, 2025*

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W.P.(CRL)2743/2024**MONU @ SANDEEP**

.....Petitioner

Through: Mr. Sunil Kumar Mehta & Mr.
Kundan Kumar, Advs.
(M:9810150843)

versus

UNION OF INDIA THROUGH ITS SECRETARY & ORS.

.....Respondents

Through: Mr. Amit Tiwari, CGSC with Mr.
Ayush Tanwar and Ms. Ayushi
Srivastava, Advocates for UOI
(M:9311487129).**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****JUDGMENT****Rajneesh Kumar Gupta, J.**

1. The present petition is filed by the Petitioner – Monu @ Sandeep @ Rickey under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “*Cr.P.C*”)/Section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as “*BNSS*”) seeking the quashing of Order bearing F.No.U-11011/06/2024-PITNDPS dated 22nd February, 2024 passed under Section 3(1) of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as “*the PITNDPS Act*”). The said order is issued by the Joint Secretary, Government



of India, Ministry of Finance, Department of Revenue (PITNDPS UNIT) i.e., respondent No.3 (hereinafter referred to as “*the impugned detention order*”), thereby ordering the detention of Mr. Monu @ Sandeep @ Rickey (hereinafter referred to as the “*Detenu/petitioner*”).

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

Submissions on behalf of the Petitioner

3. The counsel for the Petitioner submits that the detenu has been detained pursuant to the impugned detention order dated 22nd February, 2024. The impugned detention order was passed on the basis of the following cases:-

- (i) FIR bearing No. 14/2022 dated 17th February, 2022 registered under section 21 of the NDPS Act, 1985, P.S. Crime Branch, Outer District Area, Delhi.
- (ii) FIR bearing No. 369/2020 dated 09th August, 2020 registered under section 21 of the NDPS Act, 1985, P.S. Aman Vihar, Delhi.
- (iii) FIR bearing no. 111/2003 dated 04th March, 2003 registered under section 21 of the NDPS Act, 1985, P.S. Janak Puri (West), Delhi.

3.1. The counsel for the petitioner further submits that the petitioner pleaded guilty in FIR No. 111/2003, and was sentenced to 6 months of imprisonment, which he has already served. Therefore, this ground is stale and it cannot be relied upon to justify the detention under preventive measures.



3.2. It is further submitted that with regard to the FIR Nos. 14/2022 and 369/2020, both the cases are pending before the concerned court of competent jurisdiction. The Petitioner has not yet been found guilty in these cases and as per the law, he is presumed innocent until proven guilty. The detention order cannot be passed merely based on charges pending trial. The counsel for the Petitioner further submits that the detention order cannot be used to subvert or replace the regular punitive laws under the Penal Code or the NDPS Act. In view of the fact that the Petitioner is currently in judicial custody, there is no compelling reason for the detaining authority to pass the impugned detention order. It is further submitted that the Petitioner's bail applications have already been dismissed and there is no indication that the Petitioner would be released on bail in accordance with section 37 of the NDPS Act, 1985, in the near future. Hence, there was no necessity for preventive detention. It is also submitted that the detaining authority has failed to provide any material on record that would justify the issuance of a detention order while the Petitioner was already in jail and had no freedom to engage in any further criminal activity. The impugned detention order appears to have been passed mechanically and without due application of mind.

3.3. The counsel for the Petitioner submits that the grounds of detention along with the relied-upon documents were provided in English and there is no material to show that the documents were explained to the Petitioner in Hindi which is a clear violation of the provisions under Article 22(5) of the Constitution of India. It is further submitted that the detention of the Petitioner is based on stale incidents and lack the necessary proximate link with the threat that the Petitioner might pose in



the future. The law on preventive detention mandates that the detention should be based on a reasonable prognosis of future behaviour, which is not the case here. It is submitted that the detention vide the impugned detention order dated 22nd February, 2024 violates the fundamental rights of the Petitioner under Article 21 of the Constitution of India, as the procedure followed in his case was neither fair nor just.

3.4. The counsel for the Petitioner submits that the detention order dated 22nd February, 2024 was issued two years after the detenu was sent in custody as his bail application was dismissed under Section 37 of the NDPS Act, 1985 in FIR No. 14/2022. Therefore, there is no justification for the inordinate delay, nor is there any material to support the assertion that the Petitioner was likely to be released on bail in the near future.

3.5. The counsel for the Petitioner submits that his representation for revocation of the detention order made through his counsel on 12th April, 2024 has not been considered by the detaining authority, nor have the documents requested been supplied to him. The counsel for the Petitioner has been denied an effective opportunity to contest his detention thereby vitiating the continued detention.

3.6. Reliance has been placed on the following judgments by the Id. Counsel for the Petitioner: -

- i. ***Farukh @ Chaptia V Union of India & Anr., W.P.(Crl.) 240/2023***, Decided by the coordinate bench of this court.
- ii ***Sushanta Kumar Banik V State of Tripura & Ors., Criminal Appeal No. 1708 of 2022***, decided by the Hon'ble Supreme Court of India.



3.7. Mr. Mehta, Ld. Counsel appearing for the Petitioner submits that there is a long list of FIRs/cases mentioned in the counter affidavit which appears to have compelled the impugned detention order. However, none of the materials or documents in respect of the said FIRs/cases have been furnished to the Petitioner.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

4. The Respondent Nos. 1 to 3 have filed their counter affidavit. The counsel for Respondent Nos. 1 to 3 submits that the Petitioner was involved in three cases of illicit trafficking of drugs under the NDPS Act, 1985, which are as follows:

- (i) FIR bearing No. 14/2022 dated 17th February, 2022 registered under section 21 of the NDPS Act, 1985, P.S. Crime Branch, Outer District Area, Delhi.
- (ii) FIR bearing No. 369/2020 dated 09th August, 2020 registered under sections 21/61/85 of the NDPS Act, 1985, P.S. Aman Vihar, Delhi.
- (iii) FIR bearing No. 111/2003 dated 04th March, 2003 registered under sections 21/61/85 of the NDPS Act, 1985, P.S. Janak Puri (West), Delhi.

5. The counsel for the Respondent Nos. 1 to 3 further submits that the Petitioner has been involved in approximately 109 criminal cases since 1997, which clearly indicates that he is a hardcore criminal offender with a high propensity for committing crimes upon being released on bail.

5.1. It is submitted that the Petitioner's previous criminal records were thoroughly considered while passing the impugned detention order. The Sanctioning Authority specifically took into account the Petitioner's



involvement in the offences under FIR bearing Nos. 111/2003, 14/2022 and 369/2020, concluding that he is a habitual offender under the NDPS Act. It is further submitted that the Petitioner has been making all the possible efforts to secure bail and has already applied for the same before both the concerned trial court and this court. There exists a strong apprehension that the Petitioner, being a habitual offender, is likely to continue committing offences under the NDPS Act. Hence, it was necessary to detain him. Additionally, the counsel for the Respondent Nos. 1 to 3, submits that the grounds of the detention were duly translated into Hindi for the Petitioner and all relevant documents, along with the impugned detention order, were duly supplied and explained to the petitioner on 04th March, 2023. The delay in providing the documents was due to the time required to translate the voluminous documents into Hindi, which was reasonable and justified.

5.2. The counsel for the Respondent Nos. 1 to 3 submits that the grounds of detention and the impugned detention order were passed in accordance with the law, only after the sanctioning authority had thoroughly scrutinized all the facts and material on record.

5.3. It is further submitted that the detention order and the grounds for detention were issued by the Detaining Authority as per section 3 of the PITNDPS Act, 1988, after due application of mind, based on the available material facts. This was done by carefully considering the materials collected, nature of activities, the propensity and potential of the detenu to engage in such activities and magnitude of the offences being committed by the detenu in utter disregard of the law. It is thus prayed that the present writ petition be accordingly dismissed.

The counsel for the Respondent Nos. 1 to 3 has placed reliance on



Haradhan Saha V The State of West Bengal & Ors., (1975) 3 SCC 198.

Impugned Detention Order

6. The impugned detention order is quite detailed and is reproduced below:-

***“F-No. U-11011/06/2024-PITNDPS
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(PITNDPS UNIT)***

*Room No.202,2nd Floor,
Jeevan Tara Building,
Parliament Street, New Delhi
Dated the 22nd February, 2024*

*Monu @ Rickey @ Sandeep S/o Hari Singh
R/o B-348, Balbir Vihar,
Aman Vihar, Delhi*

Subject: Grounds on which Detention Order F. No- U-11011/06/2024-PITNDPS dated 22nd February, 2024 has been issued against Monu @ Rickey @ Sandeep S/o Hari Singh R/o B-348, Balbir Vihar, Aman Vihar, Delhi under the PITNDPS Act, 1988 - Reg.

The following facts have been brought to my attention by the sponsoring Authority of this PITNDPS proposal i.e. the Deputy Commissioner of Police, Crime Branch, ANTF, New Delhi and I have gone through the facts presented by the Sponsoring Authority as mentioned below: -.

i. FIR No. 14/2022, Dt. 17.02.2022 U/s 21 NDPS Act, PS Crime Branch, (Outer District Area)

(a) On receipt of a secret information on 16.02.2022 that Monu @ Rickey @ Sandeep i.e. you are selling Heroine from your



- residence, a team of PS Crime Branch, New Delhi apprehended Monu @ Rickey @ Sandeep i.e. you from your residence. From the 1st floor of your house, three polythene bags were recovered that contained 200 Grams + 200 Grams + 100 Grams Heroine. Subsequently, the accused Monu @ Rickey @ Sandeep i.e. you were arrested in the present case. Accordingly, a case vide FIR No. 14/2022 dated 17.02.2022 was registered. The recovered contraband was seized under the NDPS Act, 1985.*
- (b) *In the disclosure statement dated 17.02.2022, Monu @ Rickey @ Sandeep i.e. you stated that due to death of your father in childhood, you started stealing money and small thefts; that you were in jail in cases related to robbery and came out of jail in the month of January; that you went to jail in 2003 and 2020 in cases related to NDPS Act; that on 16.02.2022, police authorities seized 500 gms of Heroin from first floor of your house; that you purchased the seized Heroin from one Bala; that you know the residence of Bala and her associate Manoj. Monu @ Rickey @ Sandeep i.e. you were arrested on 17.02.2022.*
- (c) *A sample of seized contraband was sent to Forensic Science Laboratory (FSL), Rohini, Delhi. Forensic Science Laboratory (FSL), Rohini, Delhi vide letter dated 13.06.2023 confirmed that the sample answers positive test for Diacetylmorphine, 6-Monoacetylmorphine, Acetylcodeine, Trimethoprim & Acetaminophen.*
- (d) *A Charge sheet has been filed in the Court of Additional Sessions Judge, Special Judge NDPS Act, Rohini Courts, New Delhi on 16.08.2022 against Monu @ Rickey @ Sandeep i.e. you and others under the NDPS Act, 1985.*
- (e) *You i.e. Monu @ Rickey @ Sandeep filed an application for grant of default bail before the Court of ASJ/Special Judge: NDPS (North-West), Delhi. The Court dismissed the default bail application vide order dated 03.06.2023. You filed another bail application before the Court of ASJ/Special Judge: NDPS (North West), Delhi which was dismissed as*



withdrawn vide order dated 19.08.2023. You filed another bail application before the Court of ASJ-II/Special Judge: NDPS (North-West)/Rohini Courts, Delhi which was dismissed vide order dated 19.02.2024.

ii. FIR No. 369/20 dt 09.08.2020 u/s 21/61/85 NDPS Act, PS Aman Vihar

- (a) *On receipt of a secret information on 09.08.2020, one person named Arjun @ Golu was apprehended near Balbir Vihar, Delhi and total 9.17 gms of Heroin was recovered. Accordingly, a case vide FIR No. 369/20 dated 09.08.2020 was registered. The recovered contraband was seized under the NDPS Act, 1985.*
- (b) *In the disclosure statement dated 09.08.2020, Arjun @ Golu revealed that he resides with Sandeep @ Monu i.e. you; that the said Heroin was given to him by Sandeep @ Monu i.e. you; that you told Arjun @ Golu to sell Heroin with you. Arjun @ Golu was arrested on 09.08.2020.*
- (c) *Subsequently, Sandeep @ Monu i.e. you were apprehended. In your disclosure statement dated 26.08.2020, you revealed that Arjun @ Golu is your relative and resides with you; that you told him to start selling smack/heroin with you; that you used to give Heroin/smack to him for selling it to customers. Sandeep (Monu i.e. you were arrested on 26.08.2020.*
- (d) *A sample of seized contraband was sent to Forensic Science Laboratory (FSL), Rohini, Delhi. Forensic Science Laboratory (FSL), Rohini, Delhi vide letter dated 28.01.2021 confirmed that the sample answers positive test for Diacetylmorphine, 6-Monoacetylmorphine, Acetylcodeine, Morphine, Dextromethorphan, Caffeine & Acetaminophen.*
- (e) *A Charge sheet was filed in the Hon'ble Court of GopalKrishan, Ld. MM, Rohini Courts, Delhi against Sandeep @ Monu i.e. you and Arjun @ Golu under the NDPS Act, 1985. The case is at the stage of trial.*



- (f) *You i.e. Monu @ Rickey @ Sandeep filed an application for grant of regular bail before the Court of ASJ-02/NDPS/North West, Rohini, Delhi. The Court dismissed the regular bail application vide order dated 01.09.2020. You filed another bail application before the Court of ASJ-02/NDPSNorth West, Rohini, Delhi which was dismissed vide order dated 09.10.2020. You filed another bail application before the Court of ASJ-02/NDPS/North West, Rohini, Delhi which was dismissed vide order dated 04.12.2020.*
- (g) *You i.e. Monu @ Rickey @ Sandeep filed an application for grant of bail before the Court of ASJ-02/NDPS/North West, Rohini, Delhi. The Court granted interim bail for a period of 45 days vide order dated 16.02.2021 which was further extended vide various orders and subsequently your bail application was dismissed as withdrawn vide order dated 08.01.2022 of Hon'ble ASJ-02/NDPS/North West, Rohini, Delhi.*

iii. FIR No. 111/2003, Dt. 04.03.2003 U/s 21/61/85 NDPS Act, PS JanakPuri (West) District

- (a) *In the evening of 04.03.2003, staff posted at PS JanakPuri noticed two boys coming towards them from A-2 Cut side, JanakPuri. The boys were signalled to stop but they tried to flee from the spot. In the meanwhile, they were overpowered by the police staff. On questioning, they disclosed their identities as Monu @ Rickey i.e. you and Raj Kumar. 10 grams smack was recovered from the conspicuous possession of Monu @ Rickey i.e. you and hence case was registered against you.*
- (b) *You i.e. Monu @ Rickey @ Sandeep were convicted in the said case and sentenced to jail for a period of 6 months.*

2. *After going through the facts and circumstances in all above-mentioned cases, it is clearly established that you i.e. Monu @ Rickey @ Sandeep are actively involved in trafficking of Narcotics Drugs and Psychotropic Substances and you are a habitual offender. Your presence in the society is a threat to innocent person of the locality/State/Nation and your activities*



are prejudicial to society.

3. *I am aware that at present you i.e. Monu @ Rickey @ Sandeep are in police/judicial custody since 17.02.2022 in case FIR No. 14/2022. 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. Monu @ Rickey @ Sandeep 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. Monu@ Rickey a Sandeep 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. Monu @ Rickey @ Sandeep 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 Monu @ Rickey @ Sandeep i.e. you to repeat the above serious prejudicial acts. Hence, I am satisfied that in the meantime you i.e. Monu @ Rickey @ Sandeep should be immobilized and there is a need to prevent you i.e. Monu @ Rickey @ Sandeep 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. Monu @ Ricky @ Sandeep have indulged in organizing 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. Monu (@ Rickey @ Sandeep 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. Monu @ Rickey @ Sandeep 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. Monu @ Rickey @ Sandeep 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.*

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

8. *While passing the Detention Order under the Prevention of Illicit Trafficking of Narcotic Drugs and Psychotropic Substances Act, 1988, I have referred to and relied upon the documents mentioned in the enclosed list.*

9. *You i.e. Monu @Rickey @ Sandeep have the right to represent against your detention to the Detaining Authority, to the Central Government as well as to the Advisory Board. If you wish to avail this right, you should send your representation through the Jail Authorities where you are detained, in the*



manner indicated below:

- a) *Representation meant for the Detaining Authority should be addressed to the Joint Secretary (PITNDPS), Government of India, Ministry of Finance, Department of Revenue, Room No. 202, 2nd Floor, Jeevan Tara Building, Parliament Street, New Delhi-110001.*
- b) *Representation meant for the Central Government should be addressed to the Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi 110001.*
- c) *Representation meant for the Advisory Board should be addressed to the Chairman, PITNDPS Advisory Board, High Court of Delhi, Delhi.*

10. You are further informed that you shall be heard by the Advisory Board in due course, if the Board considers it essential to do so or if you so desire.

11. The above grounds are communicated to you for the purpose of Clause (5) of Article 22 of the Constitution of India and as required under section 3(3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.”

ANALYSIS AND FINDINGS

7. There is no dispute as to the law that a detention order can be passed even if a person is already in custody. Admittedly, such power of preventive detention is a precautionary one which can be exercised upon reasonable anticipation.

8. In *Union of India V Ankit Ashok Jalan, (2020) 16 SCC 185*, the Hon’ble Supreme Court has observed as under:

“16. In Abdul Sathar case [Abdul Sathar Ibrahim Manik v. Union of India, (1992) 1 SCC 1 : 1992 SCC (Cri) 1] , this Court concluded as under : (Abdul Sathar case [Abdul Sathar Ibrahim Manik v. Union of



India, (1992) 1 SCC 1 : 1992 SCC (Cri) 1] , SCC pp. 16-17, para 12)

“12. ... (1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher court.

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu



in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.”

17. Now applying the law laid down by this Court, referred to hereinabove, to the facts of the case on hand and considering the ground (Para 7) and the various circumstances noted by the detaining authority, we are satisfied that the detention orders cannot be quashed on this ground. It is to be noted that the detenus have been granted bail by the Court on the very date the orders of detention were quashed by the High Court i.e. on 2-8-2019 [Ankit Ashok Jalan v. Union of India, 2019 SCC OnLine Del 9452 : (2019) 262 DLT 41] . Therefore, the apprehension in the mind of the detaining authority that the detenus are likely to be released on bail was well founded and fortified. Therefore, the High Court has fallen in error in quashing and setting aside the detention orders on the ground that there is a clear lapse and failure on the part of the detaining authority, to examine and consider the germane and relevant



question relating to the imminent possibility of the detenus being granted bail, while recording its subjective satisfaction and passing the detention orders.”

9. From ***Union of India V. Ankit Ashok Jalan (Supra)***, it is clear that even when a person is in judicial custody, he can be directed to be detained, supplementing further that there must be proper application of mind and the detaining authority must be subjectively satisfied that there is a reason to believe that the detenu would, in all probability, indulge in prejudicial activities, if released on bail. The detaining authority should also form a view that there is a "real possibility" of such detenu being released on bail.

10. Similarly, in ***Taimoor Khan V Union of India &Anr., 2024 SCC OnLine Del 416*** the Supreme Court observed as under: -

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

11. In ***G. Reddeiah v. Govt. of A. P., (2012) 2 SCC 389***, the Hon’ble Supreme Court held:-

“11. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. Even, as early as in 1975, a Constitution Bench of this Court considered the procedures to be followed in view of Articles 19 and 21 of the Constitution. In HaradhanSaha v. State of W.B. [(1975)



3 SCC 198 : 1974 SCC (Cri) 816] a Constitution Bench of this Court, on going through the order of preventive detention under the Maintenance of Internal Security Act, 1971 laid down various principles which are as follows : (SCC p. 209, para 34)

“34. ... First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the person concerned is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order.

Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate [sic] the order.

Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.”

16. The incident relating to the procedure to be adopted in case the detenu is already in custody has been dealt with in



several cases. In *Union of India v. Paul Manickam* [(2003) 8 SCC 342; 2004 SCC (Cri) 239] this Court has held as under: (SCC pp. 352-53, para 14)

*"14.... Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard 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 or economic stability, 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. If the detaining authority is reasonably satisfied with cogent materials 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. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated.... The point was gone into detail in *Kamarunnissa v. Union of India* [(1991) 1 SCC 128; 1991 SCC (Cri) 88]. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed:*

(1) if the authority passing the order is aware of the fact that he is actually in custody: (2) if he has a



reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail."

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12. From the aforesaid judgments it is clear that an order of preventive detention can be passed even when the detenu is facing prosecution under the ordinary law of the land. Each case would depend on its own facts and circumstances and upon the subjective satisfaction of the detaining authority.

13. A perusal of the impugned detention order would also show that in one of the cases being **FIR No.111/2003** where the Petitioner pleaded guilty, he was sentenced to jail for a period of six months. In the other FIR being **FIR No.14/2022**, which also forms the basis of the detention order, the alleged recovery was of commercial quantity. In this case, the Petitioner had subsequently applied for default bail which was dismissed by the Trial Court. Despite such dismissal, the Petitioner continued to apply for bail and as late as three days prior to the passing of the impugned detention order i.e. on 19th February, 2024, another bail application was dismissed. The Petitioner was filing repeated bail applications and thus the possibility of the same being considered and granted could not be ruled out.



14. Thus, the apprehension of the detaining authority while passing the impugned detention order is rightfully based on cogent grounds of the likelihood of the Petitioner securing bail and being released. In pursuance to such strong apprehension, the impugned detention order was passed, based on subjective satisfaction, to prevent the Petitioner from such release which could possibly lead to more criminal activities on his part.

15. A perusal of the counter affidavit would also show that apart from three FIRs which form the basis of the detention order and have been discussed herein above, the Petitioner's dossier record also revealed that he was involved in 109 criminal cases since 1997. The relevant part from the counter affidavit is reproduced herein below:

“2. That, in addition to the aforementioned cases, the Petitioner is involved in many criminal cases including the supply of illicit drugs and liquor. Furthermore, a perusal of the Petitioner's dossier records reveals that he has been involved in 109 criminal cases from 1997, which makes it abundantly clear that he is a hardcore criminal offender and has high propensity towards committing crime upon being enlarged on bail.”

16. The contention that the dossier record of the Petitioner reveals past criminal records and the same has not been disclosed to the Petitioner while passing the impugned detention order is one of the primary grounds of challenge by the Petitioner in this writ petition. However, a perusal of the counter affidavit reveals that such dossier record has been stated only in the counter affidavit in order to justify the impugned detention order. Such a justification cannot be made a basis to challenge the impugned detention order on the ground of non-supply of material since it is only to support the



subjective satisfaction of the authority concerned that the same has been mentioned. As held by the Supreme Court in *G. Reddeiah v. Govt. of A. P.*, (*Supra*) the detaining authority's subjective satisfaction can be reflected either in the detention order or even in the affidavit justifying the detention order. The observations of the Supreme Court are extracted below:

“22. In a matter of detention, the law is clear that as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order. Once the detaining authority is subjectively satisfied about the various offences labelled against the detenu, habituality in continuing the same, difficult to control him under the normal circumstances, he is free to pass an appropriate order under Section 3 of the 1986 Act by fulfilling the conditions stated therein. We have already concluded that there is no infirmity either in the reasonings of the detaining authority or the procedure followed by it. We are also satisfied that the detenu was afforded adequate opportunity at every stage and there is no violation of any of the safeguards. In these circumstances, we reject the contention raised by the learned Senior Counsel for the appellants.”

17. The last dismissal of the bail application and the perusal of the detention order clearly shows a live and proximate link between all three FIRs, which are the basis of the detention order, reflecting the clear propensity on the part of the Petitioner, who committed violation of law repeatedly. Even the quantity which has been alleged to have been recovered, shows that if not for detention, the Petitioner would have, in all likelihood, continued to indulge in similar activities. Moreover, the period of detention has also elapsed. The Respondent has also taken a position that no fresh proposal has been received to extend the detention. This is set out in



the email dated 19th February, 2025 placed before the Court, which reads as under:

“Sir,

*With reference to the trailing mail and in the pursuance of your email dated 17.02.2025 regarding the subject cited above, it is submitted that the detention order was executed upon the detenu on 04.03.2024, and therefore, the said detention order will conclude on 03.03.2025. Furthermore, no fresh proposal for preventive detention has been received so far in this regard. It is also submitted that the **PITNDPS Act** may kindly be referred to, as there is no provision for the renewal of any **PITNDPS Detention Order.**”*

18. From a perusal of the impugned detention order, it is evident that the detaining authority was well aware of the fact that the detenu was in custody and has applied for bail for several times for his release in FIR bearing Nos. 14/2022 and 369/2020. It is also evident from the grounds as stated in the impugned detention order that there was enough material on record necessitating the preventive detention of the detenu. It also shows that the detaining authority was well aware of the grounds of detention and the chances of release of the detenu on bail. The gap between filing of bail applications in FIR bearing nos. 14/2022 and 369/2020 and the date of passing of the impugned detention order, cannot be said to be delayed or having no live-link. The necessity of keeping the detenu in preventive detention has been clearly indicated.

19. From all these facts and circumstances, it can be said that the detaining authority is reasonably satisfied with the cogent material that there is likelihood of release of the detenu and in view of his antecedent activities, he must be detained to prevent him from engaging in illicit traffic in narcotic



drugs and psychotropic substances.

20. In view of the above discussions, this court is of the opinion that there is no infirmity in the reasoning of the detaining authority and the impugned detention order dated 22nd February, 2024 calls for no interference as the detaining authority has fully complied with the requisite procedure and statutory safeguards.

21. Under these circumstances, the challenge to the detention order is not tenable and the writ petition is dismissed accordingly along with any pending applications, if any.

RAJNEESH KUMAR GUPTA
JUDGE

PRATHIBA M. SINGH
JUDGE

MARCH 12, 2025/abk