

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.650 of 2024

Arising Out of PS. Case No.-29 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Bhojpur

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Deepak Dhanuk, Son of Kishun Dhanuk, Resident of Village - Shahpur Ward
No.10, P.S. - Shahpur, District – Bhojpur.

... .. Petitioners.

Versus

1. The Union of India through the Joint Secretary, Ministry of Finance, Department of Revenue, (PITNDPS Unit), Parliament Street, New Delhi.
2. The Department of Home through the Secretary, Government of Bihar, Patna.
3. The Narcotics Control Bureau, Patna, Zonal Unit, Patna, Bihar through It Director.
4. The Zonal Director, Narcotics Control Bureau, Patna Zonal Unit, Bihar.
5. The District Magistrate, Bhojpur, Ara.

... .. Respondents.

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Appearance :

For the Petitioner.	:	Mr. Ravindra Kumar, Advocate. Mr. Sandeep Kumar Pandey, Advocate.
For the State	:	Mr. P.N. Sharma, AC to AG
For the UOI	:	Mr. Subodh Kumar Jha, Senior C.G.C. Ms. Parul Prasad, CGC. Mr. Aditya Anand, Advocate. Mr. Shailesh Anand, Advocate.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 14-08-2024

Petitioner has prayed for quashing of the order dated 01.09.2023 passed by the Joint Secretary, Government of India, under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'PITNDPS') (Annexure-1) and order dated 01.01.2024



passed by the Deputy Secretary, Government of India, under Section 9(f) of the PITNDPS (Annexure-3), confirming the detention order for a period of one year.

Factual Matrix:

2. Brief facts of the case are that petitioner- Deepak Dhanuk was alleged to have involved in Crime No.29/2021, NCB Patna; NDPS Special Case No.26/2021 in connection with seizure of 315 grams of Alprazolam, 270 grams of Morphine and 500 grams of Patthar on 28.11.2021. Similarly in Crime No.04/2022, NCB Patna; NDPS Special Case No.71/2022, seizure of 380 grams of heroin on 26.01.2022. His alleged involvement was based on statement of the accused Madan Singh Sondhiya and Vikas Kumar. Further, a case was registered bearing Shahpur P.S. Case No.448 of 2023 for the alleged offences under Sections 341, 323, 325, 307, 504 and read with 34 of Indian Penal Code. Petitioner-Deepak Dhanuk had the benefit of regular bail in NDPS Special Case No.71/2022 arising out of NCB Case No.04/22 in Criminal Misc. No.37896 of 2023 decided on 04.07.2023 (Annexure-6), in NDPS Case No.57/2022, arising out of NCB Case No.29/2021 dated 26.05.2022, in Criminal Misc. No.40976 of 2023, he had the benefit of regular bail on 19.07.2023



(Annexure-5). Similarly, in respect of Shahpur P.S. Case No.448 of 2023 for the offences under Sections 341, 323, 325, 307, 504 and read with 34 of Indian Penal Code, he had the benefit of regular bail in Criminal Misc. No.5567 of 2024 decided on 09.02.2024.

3. In this backdrop, the Joint Secretary, Government of India, initiated action under Section 3(1) of PITNDPS and it was supported by the grounds on which the detention order dated 01.09.2023 has been issued against the petitioner-Deepak Dhanuk and the same was communicated to him vide Annexures-1 and 2 respectively. On 28.09.2023, in Shahpur P.S. Case No.448 of 2023, petitioner was taken into custody. On 09.02.2024, bail was granted. In the meanwhile, on 17.10.2023, detention order and grounds were served on him. On 03.11.2023, matter was referred to Advisory Board and it was communicated to the petitioner on 11.11.2023 and to Advisory Board on 09.11.2023. Thereafter, petitioner's wife submitted representation through Registered post to the Joint Secretary, Government of India, on 30.11.2023. The same was rejected on 20.12.2023. Notice was issued for appearance of petitioner before Advisory Board on 20.12.2023 to appear on 21.12.2023 at 03:00 PM. It was deferred to next date i.e., 22.12.2023 and



opinion was notified on 22.12.2023. Resultantly, the Deputy Secretary to the Government of India, confirmed the detention order on 01.01.2024 under Section 9(f) of PITNDPS. Hence, the present writ petition.

Arguments advanced by Petitioner:

4. Learned counsel for the petitioner submitted that petitioner-Deepak Dhanuk was taken into custody in NCB Case No.29 of 2021 on 26.01.2022. On 18.10.2022, petitioner was remanded in NCB Case No.04 of 2022. He had the benefit of regular bail in NCB Case No.04 of 2022 on 04.07.2023 and, similarly, in NCB Case No.29 of 2021 on 19.07.2023. He was involved in Shahpur P.S. Case No.448 of 2023 and he was under custody till 09.02.2024. In the intervening period on 01.09.2023, the Joint Secretary, Government of India, gave a proposal along with the grounds for detention. Petitioner was served with proposed detention order along with the grounds of detention on 17.10.2023. Petitioner had passed 8th standard and he was not aware of English language. Therefore, the authorities should have furnished proposed detention order with the grounds of detention dated 01.09.2023 along with relied documents in Hindi translation and merely apprising orally is incorrect when liberty of the petitioner is the subject matter. Courts have time



and again held that reasonable opportunity in the known language is to be apprised, like in the present case documents should have been translated in Hindi and it should have been served. Before submission of representation by petitioner's wife Smt. Babita Devi on 30.11.2023, matter was placed before the Advisory Board on 03.11.2023 and, thereafter, referring to Advisory Board was served on the petitioner on 11.11.2023. Petitioner's wife had submitted representation to the detaining authority on 30.11.2023. Representation was rejected on 20.12.2023. It was not a speaking order, none of the contents of representation was considered. On 22.12.2023, Advisory Board formed opinion and supported the detention order without assigning any reason. The Respondents have not apprised the documents relied on grounds for detention to the Advisory Board. Thereafter, on 01.01.2024, order of detention was passed by the detaining authority for one year from the date of his detention on 01.01.2024. Order of detention was confirmed and served on the petitioner on 02.01.2024 and on two more occasions, confirmation order was communicated to the petitioner on 09.01.2024 and 07.04.2024.

5. In this backdrop, learned counsel for the petitioner submitted that there is delay in communication in serving the



initial proposed detention order. Proposed detention order along with the grounds was notified on 01.09.2023 and it had been served on the petitioner on 17.10.2023. There is delay of about 46 days and it is in contravention of the provisions of PITNDPS. Provisions stipulate that it has to be served not later than 5 days and for reasons to be recorded in writing not later than 15 days. Resultantly, procedures have been violated. In support of the aforesaid contention, learned counsel for the petitioner relied on a decision of the Hon'ble Supreme Court in the case of **Union of India Versus Meera Mohideen** reported in **(1995) 4 Supreme Court Cases 51** (Para-15).

6. Learned counsel for the petitioner submitted that copies of documents relied on by the detaining authority was not made available to the petitioner like bail applications and bail orders, which were annexed with the grounds of detention and it was not supplied in entirety in Hindi translation to the petitioner as he was in jail and it is also learnt that various documents have not been placed before the Advisory Board. In support of the above contention, learned counsel for the petitioner relied on the following decisions of the Hon'ble Supreme Court:

(a). A. Ahmad Kutty Vs. Union of India,
reported in **(1990) 2 SCC 1 (Para-27).**



(b). P.U. Abdul Rahiman Vs. Union of India and Others, reported in 1991 Supp. (2) SCC 274 (Para-7).

7. It is further contended that there is no direct “live and proximate link” between the action of the petitioner and detention order passed by the detaining authority. On this issue, learned counsel for the petitioner submitted that in the grounds of detention order, not a single word has been whispered that the petitioner even after being bailed out was regularly in touch with his sources or mobilizing them. On this issue, learned counsel for the petitioner relied on a decision of the Hon’ble Supreme Court in the case of **Sushanta Kumar Banik Vs. State of Tripura & Others**, reported in **2022 SCC Online SC 1333 (para-19)** wherein the Hon’ble Supreme Court referred to the case of **Bhawarlal Ganeshmalji Vs. State of Tamil Nadu**, reported in **(1979) 1 SCC 465**.

8. It is submitted that the Advisory Board was not informed that the petitioner is in custody with reference to other than the NCB matter. In the absence of recording subjective satisfaction that the detenu is likely to be released on bail, the detention order has been passed without arriving as subjective satisfaction that the detenu is already in custody. In support of this contention, learned counsel for the petitioner relied on a



decisions of the Hon'ble Supreme Court in the case of **Kamarunissa Vs. Union of India, reported in (1991) SCC 128 (Para-13), Veeramani Vs. State of T.N. reported in (1994) 2 SCC 337 (para-6) and Taimoor Khan @ Bholu @ Tamoor Vs. Union of India, reported in (2024) SCC Online Del. 416 (para-16).**

9. It is further submitted that the delay in disposal of the representation of the petitioner's wife for revoking detention order would be hurdle and it is not a speaking order vide order dated 20.12.2023, pursuant to her representation dated 30.11.2023. On this issue, learned counsel for the petitioner is relying on a decision of the Hon'ble Supreme Court in the case of **Kamla Kanyalal Khushalani Vs. State of Maharashtra** reported in **(1981) 1 SCC 748 (paras-2 and 8)**, where there was a delay of 25 days in disposal of the representation in which it is held that it is fatal. Similarly, in **Smt. Icchu Devi Choraria Vs. Union of India**, reported in **(1980) 4 SCC 531 (Para-10)**, wherein 14 days delay was taken into consideration as fatal to the proceedings, so 46 days delay in disposal of the petitioner's wife representation, detention order stands vitiated.

10. It is further submitted that the petitioner had attended Class-VIII and he does not know English and detention



order, grounds for detention, documents and, its confirmation or proceedings are in English. On this point also, the proposed detention order, its grounds and confirmation are liable to be set aside.

Arguments advanced by Respondents:

11. Per contra, the learned counsel for the Union of India submitted that, at the outset, the present writ petition is not maintainable. It is further submitted as follows:

- (i) Detention order along with relied documents was served on the petitioner on 17.10.2023 at Mandal Kara, Ara (Bhojpur) in the presence of Deputy Superintendent of Mandal Kara, Ara (Bhojpur).
- (ii) Letter reference to Advisory Board under Section 9(b) of the NDPS Act dated 03.11.2023 was served on the petitioner at Mandal Kara, Ara (Bhojpur).
- (iii) The impugned order dated 01.01.2024 of detention order is served on the petitioner on 07.04.2024 at Mandal Kara, Ara (Bhojpur).
- (iv) Petitioner's name cropped up in the aforementioned NCB Cases based on the voluntary statement under Section 67 of the NDPS Act, 1985 by the accused Madan Singh Sondhiya and Vikas Kumar,



while referring to the alleged fact that seized drug was of the petitioner.

- (v) On 25.01.2022, petitioner appeared and tendered his voluntary statement in which he has confessed his involvement in the aforementioned cases and he was arrested on 25.01.2022 and he was sent to judicial custody on 26.01.2022.
- (vi) Accused Vinod Dhanuk, who was brother of the petitioner-Deepak Dhanuk confessed under Section 67 of the NDPS Act. In this regard, they have analyzed CDR of five mobiles. There were certain incoming and outgoing calls.
- (vii) Petitioner has criminal antecedent as is evident from Crime No.13 of 2022 dated 08.01.2022 for the alleged offences under Sections 341, 323, 325, 307, 504 read with Section 34 of the Indian Penal Code.
- (viii) From the possession of Vinod Dhanuk and petitioner Deepak Dhanuk, competent authority has seized immovable property worth about Rs.1,86,40,000/, which is alleged to have been illegally acquired properties.
- (ix) On 17.10.2023, petitioner was apprised about the entire proceedings which are in English language, he has been apprised in Hindi so as to make him understand on 17.10.2023 at Mandal Kara, Ara (Bhojpur)



in the presence of the Deputy Superintendent of Mandal Kara, Ara (Bhojpur).

(x) Learned counsel for the petitioner cited the aforementioned decisions. Those decisions do not assist on the factual aspect for the reasons that the official respondents have complied each and every procedure in the manner known to the law.

12. In view of the aforementioned contentions, the petitioner has not made out a case so as to interfere with the impugned orders of detention and its confirmation and, thus, the writ petition is liable to be dismissed.

Analysis:

13. Heard learned counsel for the respective parties.

14. In cases of preventive detention, where the detenu is held in arrest for a crime committed, but for a potential crime, he may commit, the Court must always give every benefit of doubt in favour of the detenu, and even the slightest of error in the procedural compliances must result in favour of the detenu.

15. Undisputed facts are that petitioner was involved in two NCB cases (cited supra) and one case is relating to alleged offence under the Indian Penal Code. Petitioner was not



directly involved in the aforementioned NCB cases. On the other hand, his name had been cropped up during the interrogation of the accused Madan Singh Sondhiya and Vikas Kumar. Thereafter, there was alleged confession by Vinod Dhanuk, who was also arrayed as one of the accused and he had confessed that petitioner-Deepak Dhanuk is involved in the transaction. Therefore, there is no direct material evidence to the extent that the petitioner Deepak Dhanuk is involved in the cited NCB cases. Ultimately, in the trial, role of the petitioner-Deepak Dhanuk is required to be examined. Taking note of the stringent provisions like Section 37 of the NDPS Act, this Court granted regular bail to the petitioner- Deepak Dhanuk in NDPS Case No.71 of 2022, arising out of NCB Case No.4 of 2022, on 04.07.2023 in Criminal Misc. No.37896 of 2023 and similarly, in NDPS Case No.57 of 2022, arising out of NCB Case No.29 of 2021, on 19.07.2023 in Criminal Misc. No.40976 of 2023 vide Annexures- 6 and 5 respectively. It is also to be noticed that in Shahpur P.S. Case No.448 of 2023 for the offences under the Indian Penal Code, petitioner has been granted bail on 09.02.2024 in Criminal Misc. No.5567 of 2024 vide Annexure-4. In this backdrop, the Joint Secretary initiated proceedings for detention order along with the grounds on 01.09.2023. Before it



was served on the petitioner, petitioner was involved in Shahpur P.S. Case No.448 of 2023 in which he was in jail custody from 28.09.2023 to 09.02.2024. In the meanwhile, detention order with the grounds of detention was served on the petitioner on 17.10.2023. Reference to Advisory Board dated 03.11.2023 was served on 11.11.2023. Petitioner's wife submitted representation on 30.11.2023. It was rejected on 20.12.2023. Order of detention was passed on 01.01.2024 and it has been confirmed on 02.01.2024. Detention order was passed on 01.01.2024 and it is stated to have been served on three occasions on the petitioner, namely, on 02.01.2024, 09.01.2024 and 07.04.2024. Perusal of records, it is evident that detention order dated 01.01.2024 was served on the petitioner on 02.01.2024 and the signature of the petitioner is reflected in the detention order dated 01.01.2024.

16. Petitioner is disputing the proposal and grounds for detention read with the documents. The documents have not been supplied to him even though the respondents have stated that documents have been supplied. There are no material evidence to show that it has been served. Perusal of records it is evident that documents have been supplied along with Hindi translation, however, some of the documents have not been



translated in Hindi language like chemical examination report, complaint copy, Talash copy etc.

17. Delay in communication about 46 days in respect of the proposed detention order dated 01.09.2023 with the grounds was served on the petitioner on 17.10.2023. Thus, there is a delay of about 46 days in serving the proposed detention order along with the grounds. The official respondents were required to serve within 5 days and in exceptional circumstances and for the reasons to be recorded in writing not later than 15 days. On this ground, petitioner has made out a case.

18. It is also submitted that in not furnishing the documents along with the grounds for detention resulted in violation of Article 22(5) of the Constitution of India. Whereas some of the documents were not supplied in Hindi language. On this point, he has cited decisions in the case of **P.U. Abdul Rahiman** and **A. Ahmad Kutty** (cited supra), which assists his contention.

19. There are no iota of material information to the respondents to the extent that after obtaining bail orders in the aforementioned cases that the respondents are of the view that the petitioner is likely to commit identical offences. On this



point, he has relied on a decision of the Hon'ble Supreme Court in the case of **Sushanta Kumar Banik** (cited supra), wherein the Hon'ble Supreme Court discussed the "live and proximate link" while referring to the earlier Judgment in the case of **Bhawarlal Ganeshmalji** (cited supra). This contention also covers the petitioner's grievance.

20. Petitioner contended that all the proceedings are in English language. Petitioner studied up-to Class-VIII and he is not in a position to understand the documents. It should have been translated in Hindi version and furnished while explaining each and every proceedings. Some of the documents are in English language and which have not been translated in Hindi and communicated to the detinue like arrest memo dated 29.11.2021 (serial no.4), Junior Intelligence Officer, NCB, Patna communication dated 30.11.2021 to the District and Sessions Judge, Ara, Bihar requesting accused persons, namely, Madan Singh Sondhiya and Vikas Kumar may be pleased to send judicial custody, warrant for intermediate custody in NCB case No.29 of 2021, complaint petition (serial no.8) along with Annexures-I, II and III filed by Junior Intelligence Officer, NCB, Patna through A.P. Singh, SPP, NCB, Patna, bail orders copy dated 19.07.2023 passed in Criminal Misc. No.40976 of



2023, Forensic Examination Report dated 30.09.2022 and Forensic Examination Report dated 27.04.2022, result of examination dated 27.04.2022, Jamatalashi, bail orders dated 04.07.2023 passed in Criminal Misc. No.37896 of 2023.

21. On the other hand, the Union of India have specifically stated in their counter affidavit that the petitioner was apprised with the NCB officials on 17.10.2023 at Mandal Kara, Ara (Bhojpur), in the presence of the Deputy Superintendent of Mandal Kara, Ara (Bhojpur) in paragraph-33 and it is not supported by material evidence. In fact, the present matter is relating to liberty of a person is involved. Therefore, in all fairness, the respondents should have resorted to translate all the English version documents to that of Hindi translation and apprised the petitioner. To that extent, they should have recorded under the signature of the petitioner so as to substantiate their versions in paragraph-33 of the counter affidavit. On this issue, Delhi High Court elaborately considered in the case of **Sharafat Sheikh Versus Union of India and Another**, reported in **2022 SCC OnLine Del 2725**; similarly, in **Jasvinder Kaur Versus Union of India through its Secretary Ministry of Finance Department of Revenue and Others**, reported in **2022 SCC OnLine Del 510**.



22. Be that as it may, even on principle, when a person is to be detained under the provisions of the PITNDPS, principle of fairness is warranted for the reasons that action of the respondents by various proceedings, petitioner's liberty would be curtailed. Therefore, petitioner should have knowledge of the proceedings in the known language. On this point, the petitioner has made out a case.

23. The petitioner is relying on various Judgments (cited supra). In the case of **A. Ahmad Kutty** (cited supra), it relates to delay in initiation of detention proceedings with reference to event. The same was not accepted by the Hon'ble Supreme Court. On the other hand, delay of about 38 days in the execution of detention of order was considered. Bail application, bail order, show cause notice and reply were not placed before the detaining authority, resultantly, denial of opportunity in not furnishing the effective representation and it is in violation of Article 22(5) of the Constitution of India. On facts of the case, the present case is not applicable to the petitioner. Petitioner has raised that he has not been provided documents. Hence, the present decision is applicable to the petitioner.

24. P.U. Abdul Rahiman's case (cited supra) is also



in respect of non supply of various documents like bail application, bail order, conditions stipulated therein. In this case, there is a reference of Section 3(1) and 10(1) of the NDPS Act, 1988. This case also assists the petitioner's petition.

25. In the case of **Sushanta Kumar Banik** (cited supra), in paragraphs-11 and 23, it is held as under:

“11. We are persuaded to allow this appeal on the following two grounds:

- (i) Delay in passing the order of detention from the date of proposal thereby snapping the “live and proximate link” between the prejudicial activities and the purpose of detention & failure on the part of the detaining authority in explaining such delay in any manner.
- (ii) The detaining authority remained oblivious of the fact that in both the criminal cases relied upon by the detaining authority for the purpose of passing the order of detention, the appellant detenu was ordered to be released on bail by the special court. The detaining authority remained oblivious as this material and vital fact of the appellant detenu being released on bail in both the cases was suppressed or rather not brought to the notice of the detaining authority by the sponsoring authority at the time of forwarding the proposal to pass the appropriate order of preventive detention.”

“23. As noted above, in the case on hand, in both the cases relied upon by the detaining authority for the purpose of preventively detaining the appellant herein, the appellant



was already ordered to be released on bail by the concerned Special Court. Indisputably, we do not find any reference of this fact in the proposal forwarded by the Superintendent of Police, West Tripura District while requesting to process the order of detention. The reason for laying much stress on this aspect of the matter is the fact that the appellant though arrested in connection with the offence under the NDPS Act, 1985, the Special Court, Tripura thought fit to release the appellant on bail despite the rigours of Section 37 of the NDPS Act, 1985. Section 37 of the NDPS Act, 1985 reads thus:

“Section 37. Offences to be cognizable and nonbailable.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 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 Criminal



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

The aforementioned principle is squarely applicable to the case in hand in the light of the facts of the present case.

26. The Judgments in the case of **Kamarunissa** and **Veeramani** (cited supra) are not relevant to the case in hand on factual aspects. That apart, both the cases were dismissed by the Hon’ble Supreme Court.

27. In the case of **Smt. Icchu Devi Choraria** (cited supra), in paragraphs-4 and 5, it is held as under:

“**4.** It is also necessary to point out that in case of an application for a writ of habeas corpus, the practice evolved by this Court is not to follow strict rules of pleading nor place undue emphasis on the question as to on whom the burden of proof lies. Even a postcard written by a detenu from jail has been sufficient to activate this Court into examining the legality of detention. This Court has consistently shown great anxiety for personal liberty and refused to throw out a petition merely on the ground that it does not disclose a prima facie case invalidating the order of detention. Whenever a petition for a writ of habeas



corpus has come up before this Court, it has almost invariably issued a rule calling upon the detaining authority to justify the detention. This Court has on many occasions pointed out that when a rule is issued, it is incumbent on the detaining authority to satisfy the court that the detention of the petitioner is legal and in conformity with the mandatory provisions of the law authorising such detention: vide *Niranjan Singh v. State of Madhya Pradesh* [(1972) 2 SCC 542 : 1972 SCC (Cri) 880 : AIR 1972 SC 2215] ; *Shaikh Hanif, Gudma Majhi & Kamal Saha v. State of West Bengal* [(1974) 3 SCR 258 ; (1974) 1 SCC 637 : 1974 SCC (Cri) 292] and *Dulal Roy v. District Magistrate, Burdwan* [(1975) 1 SCC 837 : 1975 SCC (Cri) 329 : (1975) 3 SCR 186] . It has also been insisted by this Court that, in answer to this rule, the detaining authority must place all the relevant facts before the court which would show that the detention is in accordance with the provisions of the Act. It would be no argument on the part of the detaining authority to say that a particular ground is not taken in the petition: vide *Nizamuddin v. State of West Bengal* [(1975) 3 SCC 395 : 1975 SCC (Cri) 21 : (1975) 2 SCR 593] . Once the rule is



issued it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and the citizen is not deprived of his personal liberty otherwise than in accordance with law: vide Mohd. Alam v. State of West Bengal [(1974) 4 SCC 463 : 1974 SCC (Cri) 499 : (1974) 3 SCR 379] and Khudiram Das v. State of West Bengal [(1975) 2 SCC 81 : 1975 SCC (Cri) 435 : (1975) 2 SCR 832] .

5. The practice marks a departure from that obtaining in England where observance of the strict rules of pleading is insisted upon even in case of an application for a writ of habeas corpus, but it has been adopted by this Court in view of the peculiar socio-economic conditions prevailing in the country. 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.”

The aforementioned decision is applicable to the case in hand.

28. In the case of **Kamla Kanyalal Khushalani** (cited supra), principle is laid down in this decision to the extent of strictly compliance of Articles 21 and 22(5) of the Constitution is warranted in which also it is held that protection under Article 22(5) of the Constitution complied. Further, it is observed that the procedure is just and reasonable. To that effect, there is unreasonableness is forthcoming in the present case and cited decision assists the petitioner.

29. Section 9(c) of the PITNDPS has not been complied by the Advisory Board. It is necessary to reproduce Section 9(c) of the PITNDPS and it reads as under:

“9(c)the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the



detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned.”

Underline Supplied.

It is also necessary to reproduce opinion of the Advisory Board dated 22.12.2023 and it reads as under:

ADVISORY BOARD CONSTITUTED UNDER SECTION 9(b) OF THE PITNDPS Act, 1988

PRESENT

..... - **CHAIRMAN**
.....-**MEMBER**
..... - **MEMBER**

We are hearing the matter under the powers conferred under Section 9(b) of the PITNDPS Act, 1988. It appears that the Joint Secretary to the Government of India, Ministry of Finance. Department of Revenue (PITNDPS Unit), has recorded his satisfaction for detaining Deepak Dhanuk, son of Kishun Dhanuk, resident of village- Ward No. 10. Shahpur. PO+PS-Shahpur, District- Bhojpur (Ara), Bihar. The order of detention is dated 1st September, 2023.

OPINION

The Board has considered the reference made under Section 9(b) of the PITNDPS Act. 1988 in accordance with the requirement under Section 9(c) of the said Act. After considering the reference and the materials placed before the Board and upon hearing the detenu in person, the Board is of the opinion that there is sufficient ground for detention of the detenu Deepak Dhanuk, son of Kishun Dhanuk, resident of village- Ward No. 10. Shahpur, PO+PS-Shahpur, District- Bhojpur (Ara), Bihar.

Sd/-

(.....)

Sd/-

(.....)

Dated: 22nd December, 2023



Sd/-

(.....)

Underline Supplied

It is also necessary to reproduce detention order dated
01.01.2024 and it reads as under:

F. No. U-11012/20/2023-PITNDPS
Government of India
Ministry of Finance
Department of Revenue
PITNDPS Division

2nd Floor, Room No. 202,
Jeevan Tara Building,
Parliament Street, New Delhi.
Date: 01.01.2024

ORDER

WHEREAS, an Order No. U-11011/32/2023-PITNDPS dated 01.09.2023 was issued by the Joint Secretary to the Government of India, Department of Revenue Ministry of Finance under section 3(1) of the Prevention of Illicit Traffic of Narcotics Drugs and Psychotropic Substances Act, 1988 in respect of Deepak Dhanuk S/o Kishun Dhanuk.

AND WHEREAS, the said Order was executed upon Deepak Dhanuk on 17.10.2023 who is currently lodged in Mandal Kara, Ara, Bhojpur, Bihar.

AND WHEREAS, the matter of Deepak Dhanuk was placed before the State Advisory Board, Bihar which is of the opinion, that there is sufficient ground for detention of the detenu Deepak Dhanuk.

AND WHEREAS, the Central Government has considered the opinion of the State Advisory Board, Bihar.

NOW THEREFORE, in exercise of the powers conferred by Section 9(f) of the Prevention of Illicit Traffic of Narcotic Drugs and Psychotropic Substances Act, 1988, the Central Government hereby confirms the aforesaid Detention Order dated 01.09.2023 and further directs under Section 11 of the said Act that Deepak Dhanuk, S/o Kishun Dhanuk be detained for a period of one year from the date of his detention i.e. 17.10.2023.

Sd/-

(Arvind Kumar Mishra)

Deputy Secretary to the Government of India

To,

Deepak Dhanuk, S/o Kishun Dhanuk,
Through: The Superintendent,
Mandal Kara, Ara, Bhojpur, Bihar.

Copy to:-

1. The Superintendent, Mandal Kara, Ara, Bhojpur, Bihar with the request to serve the order on the detenu and return a dated acknowledgement to the undersigned. An extra copy of the Order is enclosed for this purpose.



2. The Secretary, Home Department, Government of Bihar.
3. The Zonal Director, Narcotics Control Bureau, Patna Zonal Unit.
4. The Competent Authority (SAFEMA), Kolkata. A copy of Grounds of Detention is also enclosed.

Sd/-

(Arvind Kumar Mishra)
Deputy Secretary to the Government of India

Underline Supplied

30. Reading of the opinion of the Advisory Board dated 22.12.2023 (cited supra), it is unclear. There is not even reference and consideration of petitioner's wife representation dated 30.11.2023 and its rejection by the Government in its memorandum dated 20.12.2023. In fact, there is no formation of opinion. In other words, opinion is not reasoned one. It is merely stated " after considering the reference and materials placed before the board and upon hearing the detinue in person, the board is of the opinion that there is sufficient ground for detention of the detinue Deepak Dhanuk, son of Kishun Dhanuk, resident of village-Ward No.10, Shahpur, PO+PS-Shahpur, District- Bhojpur (Ara), Bihar" .

The aforementioned opinion is not supported by reasoning and its quasi judicial function exercised under Section 9(c) of the PITNDPS and amenable to judicial review. Therefore, we have to draw inference that it is a not speaking order/unreasoned opinion. Government of India while passing



detention order dated 01.01.2024 (cited supra). It is only referred to “AND WHEREAS, the Central Government has considered the opinion of the State Advisory Board, Bihar”. the Central Government has no occasion to consider the opinion of the Advisory Board, since dearth of reasoning. Similarly, the Central Government while passing detention order for a period of one year from the date of his detention, i.e. 17.10.2023 passed on 01.01.2024 is also a not speaking order and there is not even reference of consideration to the petitioner’s wife representation.

31. The petitioner’s wife Babita Devi submitted representation on 30.11.2023 consisting of three pages and 19 paragraphs. However, representation was rejected on 20.12.2023. It is necessary to reproduce the petitioners’ wife representation dated 30.11.2023 and memorandum of petitioner’s wife representation dated 20.12.2023. It reads as under:

सेवा में,

संयुक्त सचिव भारत सरकार
(PITNDPS UNIT)
राजस्व विभाग वित्त मंत्रालय,
नई दिल्ली

प्रसंग: NDPS केस नंबर 26/21 व NCB पटना क्राइम नंबर 29/21 दिनांक 28/11/21 तथा
NDPS केश नंबर 71/22 व NCB पटना क्राइम नंबर 04/22 दिनांक 26/01/22 के संबंध में,

आवेदन पत्र द्वारा आवेदिका बबीता देवी पति दीपक



धानुक ग्राम शाहपुर वार्ड संख्या 10 थाना शाहपुर
जिला भोजपुर निम्न प्रकार है:-

1. यह कि मैं अपने पति श्री दीपक धानुक पिता श्री किशुन धानुक से मिलने मंडल कारा आरा में गई तो मेरे पति द्वारा मुझे बताया गया कि मेरे पति को मंडल कारा आरा के अधिकारियों द्वारा आपके द्वारा निर्गत नोटिस का जवाब देने की अनुमति नहीं दी जा रही तथा किसी कागजात को आप तक भेजने नहीं दिया जा रहा है ऐसी गैर कानूनी परिस्थिति में मैं अपने पति की तरफ से इस जवाब को आप तक भेज रही हूँ।
2. यह कि श्रीमान को विदित हो कि मेरे पति को किसी भी न्यायालय द्वारा कभी भी दोषी करार नहीं दिया गया और ऐसी परिस्थिति में मेरे निर्दोष पति को बिना किसी सुनवाई के मेरे पति को कैद करने का आपका आदेश पूर्णतः गलत गैर कानूनी है।
3. यह कि आपके द्वारा जीन दो मुकदमों में मेरे पति के संलिप्तता के आधार पर अपने कैद करने का आदेश निर्गत किया है उन सभी मुकदमों में मेरे पति विद्वान न्यायालय द्वारा जमानत प्राप्त हैं।
4. यह कि उपरोक्त मुकदमा पहले पहल मदन सिंह सौंधिया और विकास कुमार के उपर कायम किया गया और बाद में चलकर उन लोगों के पास से जब मादक पदार्थ बरामद हुआ तो आपके विभाग ने उन लोगों से पूछताछ किया जिसमें मेरे पति का नाम आया जिसके बुनियाद पर मुझे 25/01/22 को गिरफ्तार किया गया और 26/01/22 को न्यायालय में प्रस्तुत किया गया।
5. यह कि सारे उपलब्ध साक्षियों को अवलोकन कर माननीय उच्च न्यायालय पटना में दिनांक 19/07/23 को मुझे जमानत प्राप्त हुआ क्योंकि इस मुकदमें में मेरे पति के पास से किसी भी प्रकार का कोई मादक पदार्थ प्राप्त नहीं हुआ था। और साथ ही माननीय पटना उच्च न्यायालय में मुझे कारा में रहने की अवधि भी स्वीकार करते हुए जमानत दिया।
6. यह कि श्रीमान कभी भी मेरे पति का संपर्क मेरे पति के पूर्व गिरफ्तार मदन सिंह सौंधिया और विकास कुमार से नहीं रहा है।
7. यह कि उक्त मुकदमें में मेरे पति को पटना से गिरफ्तार किया गया और मेरे पति के पास से किसी प्रकार का मादक पदार्थ बरामद नहीं हुआ जिसे लगे कि मेरे पति मादक पदार्थ के खरीद बिक्री में संलिप्त रहे हैं।
8. यह कि श्रीमान मेरे पति का विवाद अपने शाहपुर के पूर्व अध्यक्ष मंटू सोनार उर्फ वशिष्ठ प्रसाद से था जो काफी राजनीतिक पैठ वाले व्यक्ति थे और हरदम उनका तथा उनके परिवार का प्रयास किसी न किसी तरह से मेरे पति को मुकदमें में फंसाने का रहा है तथा फसाते भी आए हैं।
9. यह कि कड़ी मेहनत कर अपने को गरीबी से ऊपर उठाया है और किसी भी प्रकार का मेरे पति और मेरे परिवार का मादक पदार्थ के खरीद और बिक्री से कोई संबंध नहीं रहा है।
10. यह कि जब मेरे पति कारा से मुक्त होकर घर आए तो मेरे पति को पूर्व के हर्ष फायरिंग के मुकदमें में दिनांक 27/09/23 को जेल भेजा गया।



11. यह कि श्रीमान जब जमीनी स्तर पर पहुंच कर पता करेंगे तो पता चलेगा कि मेरे पति का संपर्क दूर-दूर तक कोई वास्ता या नाता मादक पदार्थ के व्यापार से नहीं रहा है।
12. यह कि मेरे पति एक छोटा-मोटा होटल बनाकर चलाते हैं जिससे मेरा परिवार चलता है।
13. यह कि जहां तक मेरे पति की संलिप्तता की बात NCB 4/22 में की गई है वह तथ्यों को छुपा कर की गई क्योंकि मेरे पति को 25/01/22 को पटना से गिरफ्तार किया गया था और उक्त मुकदमें में भी मेरे पास से किसी प्रकार का मादक पदार्थ की बरामदगी नहीं हुई थी।
14. यह कि श्रीमान दोनों मुकदमा को एक साथ रखकर विचार करेंगे तो पाएंगे कि मेरे पति भले ही विनोद धानुक का भाई है लेकिन विनोद धानुक के मवेशी के कारोबार में पति का दूर-दूर तक कोई लेना-देना नहीं है।
15. यह कि जिस बुनियाद पर बिना मादक पदार्थ पास से बरामद हुए मेरे पति के उपर DETENTION का नोटिस दिया गया है वह कानून के नजर में बिल्कुल बेईमानी है।
16. यह कि मेरे पति के ऊपर जो मुकदमा कायम किया गया है वह बिल्कुल झूठा और सत्य से परे हैं।
17. यह कि श्रीमान के कार्यालय द्वारा भेजा गया मेरे पति को DETENTION करने का नोटिस चलने के काबिल नहीं है क्योंकि कभी भी कोई ठोस साक्ष्य आपके विभाग में मादक पदार्थ खरीदे और बेचने का मेरे पति के विरुद्ध नहीं पाया है।
18. यह कि मेरे पति के ऊपर भेजा गया नोटिस खुल्लम-खुल्ला मौलिक अधिकारों का हनन है।
19. यह कि श्रीमान सारी बातों को अवलोकित कर मेरे पति को DETENTION आदेश से वंचित करने की कृपा की जाए।

अतः श्रीमान से नम्र निवेदन है कि मेरे आवेदन पर विचार करते हुए मुझे DETENTION आदेश मुक्त करने की कृपा करें।

आपका विश्वासी
Babita Devi

F. No. U-11013/73/2023-PITNDPS
Government of India
Ministry of Finance
Department of Revenue
PITNDPS Division
.....

2nd Floor, Room No. 202,
Jeevan Tara Building,
Parliament Street, New Delhi,
Date: 20.12.2023



MEMORANDUM

With reference to the representation dated NIL. made to the Detaining Authority i.e. Joint Secretary (PITNDPS) by Babita Devi, wife of the detenu Deepak Dhanuk, requesting for revoking the detention order dated 01.09.2023 issued under section 3(1) of the PITNDPS Act, 1988, it is hereby informed that the aforesaid representation has been examined and considered, along with material facts on record, by the Detaining Authority and the same has been rejected by the Detaining Authority.

**Sd-
(Arvind Kumar Mishra)
Deputy Secretary to the Government of India**

Underline Supplied

To,

Deepak Dhanuk,
Through: The Superintendent, District Jail, Ara, Bhojpur
Bihar

Copy to:

1. The Superintendent, District Jail, Ara, Bhojpur- He is requested to serve the original copy of the Memorandum on the detenu and return the dated acknowledgement copy to the undersigned. An extra copy of this Memorandum is enclosed for this purpose.
2. Smt. Babita Devi, w/o Deepak Dhanuk, Village Shahpur, Ward No. 10, PS Shalhpur, District Bhojpur, Bihar
3. The Zonal Director, NCB, Patna Zonal Unit, Patna
4. The Registrar, State Advisory Board, High Court of Patna, Bihar along-with a copy of the representation of Babita Devi.

**Sd/-
(Arvind Kumar Mishra)
Deputy Secretary to the Government of India**

The reading of the aforementioned memorandum dated 20.12.2023 insofar as rejection of the petitioner's wife representation, it is also dearth of application of mind as well as reasoning. Merely rejection of petitioner's wife representation is in violation of principles of natural justice. In fact, petitioner's wife representation and its rejection was not made available to the Advisory Board for perusal. Advisory Board



not recorded apprising the detenu of the details of detention and his say in the matter. Be that as it may, specifying in a separate paragraph thereof its opinion is not forthcoming in the Advisory Board opinion. Specifying in separate paragraph thereof its opinion is reflected in Section 9(c) of the PITNDPS and it is not complied by the Advisory Board.

32. The Hon'ble Supreme Court in the case of **Nenavath Bujji Etc. Versus State of Telangana and others**, reported in **AIR 2024 Supreme Court 1610** considered the role of the Advisory Board in paragraphs-49 to 63. Paragraphs-61 to 63 reads as under.

“61. An Advisory Board whilst dispensing its function of ascertaining the existence of a “sufficient cause” for detention, cannot keep itself unconcerned or oblivious to the developments that have taken place by a plethora of decisions of this Court delineating the criterion required to be fulfilled for passing an order of detention. The “independent scrutiny” as envisaged by Article 22 includes ascertaining whether the detention order would withstand the scrutiny a court of law.

62. We fail to understand what other purpose the Advisory Board encompassing High Court judges or their equivalent as members would serve, if the extent of their scrutiny of the order of detention is confined just to the subjective



satisfaction of the detaining authority. The entire purpose behind creation of an Advisory Board is to ensure that no person is mechanically or illegally sent to preventive detention. In such circumstances, the Advisory Boards are expected to play a proactive role. The Advisory Board is a constitutional safeguard and a statutory authority. It functions as a safety valve between the detaining authority and the State on one hand and the rights of the detenu on the other. The Advisory Board should not just mechanically proceed to approve detention orders but is required to keep in mind the mandate contained in Article 22(4) of the Constitution of India.

63. Thus, an Advisory Board setup under a preventive detention legislation is required to undertake a proper and thorough scrutiny of an order of detention placed before it, by appreciating all aspects and angles before expressing any definite opinion in its report.”

The above principle is aptly applicable to the case in hand, in view of the aforementioned Advisory Board’s opinion read with confirmation of detention order.

33. The Hon’ble Supreme Court in the case of **Pramod Singla Versus Union of India and others disposed of on 10.04.2023 {2023 SCC OnLine SC 374} (paragraphs-25 to 28)** analyzed how the representation was required to be



considered. In the present case, Central Government have not considered the representation of the petitioner's wife dated 30.11.2023. On the other hand in one sentence it has been rejected.

34. The Hon'ble Supreme Court in the case of **ORYX Fisheries Private Limited Versus Union of India and others**, reported in **(2010) 13 Supreme Court Cases 427** has laid down certain principles insofar as passing of quasi judicial orders and it is relevant to reproduce the paragraph-40. Paragraph-40 reads as under:

“40. In *Kranti Associates* [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below : (SCC pp. 510-12)

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.



(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for



sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*(1987) 100 Harv. L. Rev. 731-37.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] ,



EHR at p. 562, para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 : 2001 ICR 847 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, ‘adequate and intelligent reasons must be given for judicial decisions’.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of ‘due process’.”

35. In the above analysis rejection of petitioner’s wife Babita Devi’s representation dated 30.11.2023 on 20.12.2023 and opinion of the Advisory Board dated 22.12.2023 are unreasoned. Consequential proceedings of the Central Government dated 01.01.2024 is arbitrary.

36. Respondents-the Union of India have not cited any decision in support of their impugned action.

37. In the light of the aforementioned analysis, this writ petition succeeds and is hereby allowed. The order of detention passed by the Deputy Secretary, Government of India dated 01.01.2024 is hereby quashed and set aside. The petitioner is hereby ordered to be released forthwith, if not wanted in any



other case. Pending Interlocutory Application(s), if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	09.08.2024.
Uploading Date	14.08.2024.
Transmission Date	14.08.2024.

