

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**HCP NO. 91/2024
CM(1894/2024)
CM(5752/2024)**

Reserved On: 22.10.2024
Pronounced On: 31.10.2024

**Mohammad Tajamul Masoodi(Age: 45 years)
S/O Peer BadruUd Din
R/O Bagander Pampore, Pulwama
Through his Wife:
Riffat Masoodi
W/O Mohammad Tajamul Masoodi
R/O Bagander Pampore, Pulwama**

...Petitioner(s)

Through: Mr. S. R. Hussain, Advocate.

Vs.

- 1. UT of J&K through Financial Commissioner to Government (Additional Chief Secretary) Home.**
- 2. Divisional Commissioner, Kashmir, Srinagar.**
- 3. Senior Superintendent of Police, Baramulla.**
- 4. Superintendent Central Jail, Kotebhalwal, Jammu.**
- 5. Station House Officer, Police Station, Baramulla.**

...Respondent(s)

Through: Mr. Jehangir Ahmad Dar, Government Advocate.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

1. The instant petition has been filed on behalf of the detenu by his wife, who is interested in the life and liberty of the detenu.

2. It has been alleged that the detenu was called in the Police Station and subsequently detained and sent to Central Jail, Kotebhalwal, Jammu, under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short “the Act”).

3. The petitioner is aggrieved of the order of preventive detention bearing No. DIVCOM-“K”/20/2024 dated 19th March, 2024 passed by the respondent No. 2-Divisional Commissioner, Kashmir, Srinagar, against her husband, who she claims to be a businessman by profession and a partner of the partnership firm “Adab Traders”, engaged in the business of Trading Goods from Kashmir to other parts of India from last nine years and is also engaged in cross border trading of goods in strict compliance with guidelines and regulations issued by the Government of India.

4. It is pleaded by the learned counsel for the detenu that, an FIR No. 54/2017 came to be registered in the Police Station, Uri, against the detenu for alleged commission of offences under section 8/21, 29 of the NDPS Act and under Section 201 of Ranbir Penal Code. The further case of the detenus is that, upon the completion of investigation in the said case, final police report came to be presented before the competent court, wherein the detenu came to be arrayed as accused No.3 alongwith one Musadiq Afzal Masoodi and other co-accused and according to the petitioner, the case is presently under trial before the competent court of law.

5. It is the further case of the petitioner that in the aforesaid case, the afore-named co-accused (Musadiq Afzal Masoodi) came to be enlarged on bail by the Hon'ble Apex Court of India vide an order dated 9th August, 2023 and in light of the said development, the detenu also applied for grant of bail before this Court on the ground of parity and this Court allowed the said application and directed release of detenu on bail in terms of order dated 15th January, 2024.

6. Pursuant to the aforesaid order passed by this Court and after compliance of all the requisite formalities, the detenu came to be released from detention from the place of his lodging i.e. District Jail Kupwara.

7. However, the detenu filed a writ petition before this Court which was registered as HCP No.33/2024, apprehending that the respondent-Divisional Commissioner, Kashmir, may pass an order of preventive detention against the detenu under the Act and sought a direction against the respondents not to detain the detenu either under NDPS Act or under any other preventive detention law on the basis of FIR No.54/2017 registered under Sections 8/21, 29 of the Act, in which the detenu was enlarged on bail by this Court, with a further direction to restrain the respondents from taking any coercive measures against the detenu.

8. The learned counsel for the petitioner Mr. S.R. Hussain submits that the aforesaid writ petition came up for consideration before

this Court on 14th February, 2024 and this Court has been pleased to direct as under:

“The petitioner is apprehending that in order to frustrate the bail liberty granted in favour of the petitioner, the respondents 2 to 4 are resorting to preventive detention mode of depriving the petitioner of his personal liberty that brings him before this court through the medium of this writ petition.

Admit.

Issue notice.

Ms. Shaila Shameem, Assisting counsel vice Mr. Jehangir Ahmad Dar, learned GA, accepts notice on behalf of respondent nos. 2 to 4.

Two weeks time is granted to learned counsel for respondents for reply/objection. to file List on 04.03.2024.”

9. The learned counsel for the detenu further submits that when the aforesaid writ petition was pending before this Court, the Respondent No. 2 filed a detailed reply, in which a specific stand was taken that after examining the report and the implications of the release of the detenu, a request was made to the appropriate authority i.e. Divisional Commissioner, Kashmir, for passing an order of detention against the detenu. The said writ petition was dismissed by this Court in terms of an order dated 4th March, 2024.

10. The detenu feeling aggrieved of the aforesaid order so passed by this Court, preferred a Letters Patent Appeal bearing no. LPA No. 60/2024, which came up for consideration before this Court on 15th March, 2024, in which notice was issued to the respondents. The further

case of the detenu is that during the pendency of the LPA, the detenu came to be arrested by police on 29th March, 2024 and he was shifted to Central Jail, Kotebhalwal, Jammu, to be detained under the provisions of the Act in terms of the impugned order dated 19th March, 2024.

11. The specific case of the detenu is that, the order of detention does not attribute any activity post release of the detenu on bail by this Court on 15th January, 2024, and, therefore, the preventive detention in the instant case is unwarranted, unjustified and has been passed without application of mind. The Detaining Authority according to the learned counsel for the petitioner has acted at the behest of SSP, Baramulla, who has prepared the dossier and that too without application of mind. It is the specific case of the detenu that sponsoring agency and the detaining authority have not shown a single incident after release of the detenu on bail and do not specify any explicit allegation against the detenu, which are mere accusations and that too without any proof.

12. The instant petition has been preferred by the petitioner on behalf of the detenu, challenging the order of detention bearing No.DIVCOM-"K"/20/2024 dated 19th March, 2024 on the ground that the allegations mentioned in the grounds of detention have no nexus with the detenu and have been fabricated by the police in order to justify its illegal action of detaining the detenu.

13. It has been vehemently argued by the learned counsel for the petitioner that the allegations made in the grounds of detention are vague, non-existent and no prudent man can make a representation

against such allegation and passing of detention order on such grounds is unjustified and unreasonable.

14. The further case of the detenu is that the detenu was already on bail in FIR No. 54/2017 and the Detaining Authority despite having knowledge about the bail of the detenu, has not spelled out the compelling reasons to pass the order of detention, more particularly given the fact that the detenu was at large in pursuance to the bail granted by this Court and no illegal activity was thereafter attributed to him. Thus, the order of detention suffers from non-application of mind on part of Detaining Authority and deserves to be quashed.

15. It has been urged by the learned counsel for the petitioner that the impugned order of detention has been passed in a cursory manner, without any independent application of mind as mandated under the Act, that too without arriving at a subjective satisfaction. He further submits that order of detention does not attribute any activity post registration of FIR and on the other hand, the detenu has been detained solely on the basis of FIR No. 54/2017. It is the specific case of the detenu that despite passing of the order granting bail by this Court, the detenu has been detained on similar charges with incriminating mentioned in the grounds of detention and there is no mention of grant of bail to the detenu either in the order of detention or in the grounds of detention and absence of same vitiates the order of detention, as all the material which has been relied upon by the Detaining Authority while passing the order of detention, has not been supplied to the detenu,

which according to the learned counsel for the petitioner is violation of his constitutional right to make an effective representation.

16. It has been further argued by the learned counsel for the petitioner that Constitutional and statutory procedural safeguards have not been adhered to by the respondents while passing the order of detention, which is a replica of the police dossier and same is divested of subjective satisfaction of the detaining authority, which is a prerequisite before passing an order of detaining somebody, curtailing the liberty of an individual. The Detaining Authority according to the learned counsel for the detenu has remained oblivious to the crucial facts and circumstances including the fact that the detenu was already on bail, as such, no awareness was shown in the grounds of detention for drawing subjective satisfaction while passing the order impugned. Thus, the order impugned has been passed in a most mechanical manner, without application of mind and on the dictates of sponsoring agency, which cannot sustain the test of law.

17. It is the specific case of the detenu that the grounds of detention being vague and ambiguous, are bereft of any merit, liable to be rejected. Moreso, there are no compelling reasons mentioned in impugned order, which could be a justifiable ground for passing the impugned order of detention and on the other hand, apparently it seems that same has been issued only to circumvent the regular criminal process of trial, as the allegations leveled in the grounds of detention are of general nature and there is no incriminating material to connect the

detenu with the commission of any offence. It is specific case of the learned counsel for the detenu that the detenu has submitted a representation before the respondent No. 2, which was not accorded any consideration and neither any material was furnished as requested in the representation so that an effective representation could have been made before the Government as well as the Advisory Board.

18. In case if there was any incriminating material against the detenu or that the detenu has violated the terms and conditions of the bail order, then the respondents ought to have availed the remedy of seeking cancelation of bail, rather than passing the order of detention with a view to curtail the right of the detenu to personal liberty by passing detention order.

19. Lastly, the learned counsel for the petitioner has argued that it is settled preposition of law that recourse to preventive detention shall be taken by the State/Government as a matter of last resort when the ordinary law of the land is deemed insufficient to prevent a person from indulging in subversive activities. In the instant, case the detenu was already facing trial under the stringent provisions of the Act and the respondents instead of dealing with the detenu under the ordinary law, have illegally taken recourse to preventive detention law with a view to frustrate the order of bail, which was granted in favour of the detenu by the competent court of law.

20. Learned counsel for the petitioner with a view to fortify his claim has drawn attention of this Court to the grounds of detention, a

perusal whereof reveals that the grounds are vague and are not supported by any incident or reasoning, which could give a justifiable right to the Detaining Authority to detain the detenu on the grounds which have been mentioned in the grounds of detention. He has further drawn attention of this Court to the grounds urged in the dossier and the allied documents/reports, a perusal whereof reveals that the detenu was allegedly supplying drugs against hefty amounts to the gullible youth, which in turn has exposed them to different kinds of immoral and illegal criminal tendencies and, as such, resort to thefts and other illegal activities in order to purchase drugs from the detenu. Learned counsel for the detenu submits that to whom the detenu was supplying the drugs, has not been spelled out in the grounds of detention, which in turn has exposed the youth to different kinds of immoral and illegal activities, which resulted in thefts and other illegal activities. In absence of any cogent reason, the allegation levelled in the grounds of detention is bereft of any merit and cannot be the basis for detaining the detenu.

21. The learned counsel for the detenu further submits that how and under what circumstances the Detaining Authority has arrived at a subjective satisfaction that the detenu has adopted the drug trafficking as a regular source of earning in absence of any past incident of the petitioner prior to the registration of FIR or for that matter any other incident pursuant to the registration of FIR or securing bail. He submits that only bald allegations have been levelled against the detenu and that too in absence any sufficient material or giving the details of such

incident and thus, the said allegation levelled in the grounds of detention cannot be the basis for curtailing somebody's liberty by passing an order of detention. Thus, the order of detention according to the learned counsel for the detenu is liable to be quashed.

22. *Per contra*, reply has been filed on behalf of respondents, in which the respondents have taken a specific stand that all the procedural safeguards as envisaged under law have been followed in its letter and spirit by the respondents while passing the order of detention and thus, the order impugned is perfectly legal, justified and inconsonance with the detention law.

23. Mr. Jehangir Ahmad Dar, learned Government Advocate has vehemently argued that the scope and object of the preventive detention is designed to safeguard the society and the fundamental principle of preventive detention is not to punish an individual for his past actions but to prevent him from future actions that may pose a threat for the society at large and the detention order can be passed on the executive's reasonable belief in the probability or likelihood that the detenu may engage in activities in future which are detrimental to public health or security of the State. The learned counsel for the respondents has highlighted the menace of drug trafficking and its abuse poses a great threat to the society, leading to social degradation, health crises and the destabilization of the communities and the detention laws are crucial in curbing these activities and safeguarding public order.

24. As per the stand of the respondents, the detention order has been based on a well-founded conduct of the detenu which could be inferred from the detenu's past conduct and the surrounding circumstances, which could establish a continuous and direct link between his past behavior and his current activities. The cumulative assessment of the grounds of detention has led the Detaining Authority to arrive at a subjective conviction that preventive detention in the instance case was warranted and accordingly, the order impugned was passed.

25. Learned counsel for the respondents with a view to draw distinction between the prosecution under criminal law and an order of detention under the detention law, submits that the former is punitive and the latter is preventive. He has drawn attention of the Court towards the fact that on 2nd July, 2017 pursuant to a reliable information, District Police Baramulla, along with officials of the Security Wing and Customs Department, while checking the goods being transported from Pakistan Occupied Kashmir (PoK) to TFC Salamabad, Uri, in a truck bearing Registration No. AJ&KXA-267, recovered 1,332 packets of brown sugar concealed/hidden in 333 suit boxes, weighing 66.58 KG, which were being carried from Chakoti, Muzaffarabad, PoK.

26. Mr. Dar, learned Government Advocate has laid much emphasis on the quantity which has been recovered and the consignment according to the learned counsel for the respondents was ordered by the detenu with active aid and assistance of his co-associate, namely,

Musadiq Afzal Masoodi and it was only during the course of investigation of the case that the detenu and his other associates surfaced in the commission of offences and were subsequently arrested in the aforesaid case. The learned counsel submits that since the detenu was an active member of large drug mafia who was relentlessly involved in drug trafficking, not only in local area of his residence but involved in such illegal activities at the district level as well which was directly effecting the health and welfare of the people and was having an adverse impact on the national economy as well. In the aforesaid backdrop, with a view to prevent the detenu from further committing any offence under the provisions of the Act, the Detaining Authority issued the order of detention.

27. The decision of Detaining Authority as per the record was based on concrete evidence gathered through surveillance, information reports and intelligence inputs indicating his direct involvement in trafficking narcotics across State borders, which led to the passing of the order impugned. It has also been pleaded in the reply affidavit that the concerned police have indicated in the dossier that the detenu, after being released on bail and under surveillance of security agencies, has been found to be involved in drug trafficking, thereby necessitating his immediate detention.

28. It has been further submitted by the learned counsel for the respondents that the Detaining Authority was fully aware of the detenu's release on bail and all the material has been supplied to the detenu which

fact is borne from the record. As per the learned counsel for the respondents the documents comprising of 74 leaves which includes all the material, have been supplied to the detenu, which could be corroborated from the execution report from the original record and thus, the allegation of the detenu that he has not been supplied all the material is contrary to record and liable to be rejected.

29. The learned Government Advocate further submits that wife of the detenu has preferred a representation before the competent authority, which representation was accorded due consideration and was rejected by passing a detailed order. It is not so, even the Advisory Board has also accorded due consideration in conformity with the Act and rejected the case of the detenu, however, the learned counsel for the petitioner has taken a contrary stand that the respondents have not taken any specific stand in the counter affidavit with respect to the rejection of the representation of the detenu and thus, the detenu was not aware of the passing of any such order.

30. The learned counsel for the respondents has also made an emphasis that the satisfaction of the Detaining Authority is a subjective satisfaction, based on material and cannot be normally interfered as preventive detention under the Act is a proactive measure to disrupt drug trafficking with a view to prevent the spread of addiction and protect individuals from the devastating consequences of its abuse. Since detenu according to the learned counsel was involved in huge racket where

66.58 KGs of brown sugar was seized, it was sufficient for the Detaining Authority to detain the detenu on the basis of the sole FIR.

31. The respondents in the reply affidavit have taken a stand the continuous surveillance and monitoring of the detenu's activities post bail have revealed an unabated involvement in the criminal activities, which justifies the action of the respondents in passing the order impugned as it demonstrates a persistent and imminent threat to public health and national security.

32. Mr. Dar, learned counsel for the respondents submitted that there is a report of Police Station, Uri, that the detenu was reportedly trying to re-establish his links with the so-called drug mafia for cross border narcotics. He further submits that this adverse material was also supplied to the detenu and was also the basis for passing the order of detention.

33. Lastly, the learned counsel for the respondents submitted that both the sponsoring authorities i.e. SSP, Baramulla, and the Detaining Authority were alive to the fact of detenu being enlarged on bail and the material in this regard i.e. the orders passed by the competent court and other relevant material has been supplied to the detenu. Thus, the allegation of the detenu that the respondents were not alive to the detenu being enlarged on bail, is factually incorrect and denied specifically as the record says otherwise.

34. Insofar as the specific allegation of the detenu that the copy of the dossier has not been furnished to him, the same is also contrary to the record.

35. Mr. Dar, learned Government Advocate submits that as per the original record, copy of the dossier was furnished to the detenu and the allegation to the contrary is without any basis and liable to be rejected. He further submits that bail in the instant case was granted by the competent court only in the light of the delay occurred in the instant case for delayed trial and not on merits and, thus, the detenu cannot draw any advantage with respect to the factum of grant of bail. In case if the bail could have been granted on merits, then perhaps the detenu could have drawn any advantage on merits but in the instant case, since the bail has been granted for delay in the trial thus, the detenu cannot draw any advantage with regard to his enlargement on bail and both the authorities i.e. the Detaining Authority and the SSP concerned were alive to the fact that the bail has been granted to the detenu for delayed trial and not on merits.

LEGAL ANALYSIS:

36. After carefully considering the arguments from both sides and examining the record meticulously, I have given my thoughtful consideration to the relevant facts and the applicable law in this case.

37. The present case relates to illicit trafficking of narcotic drugs. The grounds of the detention indicate the alleged involvement of

the detenu in the trafficking of **66.58 kg of brown sugar**. The grounds for detention emphasize the recurring nature of these offences, which pose a significant threat to public health and societal stability. Drug abuse not only affects individual lives but also undermines the socio-economic fabric of communities. The interconnectedness of these offences indicates a broader issue that impacts national security and health. The global drug problem aggravates challenges faced by societies, particularly as younger generations fall victim to addiction. Traffickers exploit vulnerabilities, ensuring a continuous supply of narcotics, which further endangers public safety and well-being.

38. The Directive Principles of State policy, which are part of our Constitutions lays down that the State should strive to prohibit harmful substances, except for medical and scientific uses. Recently, India has been struggling with issues related to the transit of illegal drugs, which has led to increased cases of abuse and addiction. This situation has generated a growing demand for drugs within the country. The illegal trade in narcotic drugs and psychotropic substances poses significant risks to public health and welfare, and the activities of those involved in this trade also negatively impact the national economy as well.

39. It was argued by the learned counsel for the detenu that the grounds of the detention have no nexus with the detenu and have been fabricated by the police in order to justify its illegal action of detaining the detenu.

40. A review of the detention record reveals that the detenu has been implicated in multiple criminal cases, specifically FIR No. 54/2017 under NDPS Act and FIR No. 78/2017 under section 420, 467, 468, 109 RPC. These cases detail the detenu's involvement in serious drug-related offences. Given the habitual nature of his drug peddling activities, the court finds that the detenu's conscious participation in the illegal trafficking of narcotics and psychotropic substances constitutes a significant threat to public health and welfare. This assessment underscores the need for preventive measures to safeguard the community from the dangers posed by such illicit activities. Accordingly, the first ground urged by the detenu is not tenable as the respondents have submitted the detention record to support their position stated in the counter affidavit.

41. In so far as the contention of the Learned Counsel for petitioner is concerned that the grounds of detention are irrelevant, vague, and unclear, having no proximate and live link with the impugned detention order is also not tenable and liable to be rejected for the reason that the grounds of detention clearly indicate the petitioner's alleged activities which are clearly outlined. Specifically, the grounds mention about the FIRs filed against the petitioner, demonstrating a consistent pattern of behavior that threatens public order. The details of these incidents are explicitly noted, making the grounds of detention clear rather than vague. The most recent discreet report of SHO P/S Uri cited is of 13-02-2024, which is proximate in time to the date of

impugned detention order. Therefore, the petitioner's claim of a lack of a direct connection between the cited incidents and the detention order is not supported by the evidence.

42. Next, it has been argued by learned counsel for the petitioner that impugned order of detention has been passed in a cursory manner, without any independent application of mind as mandated under the Act, that too without arriving at a subjective satisfaction. He further submits that order of detention does not attribute any activity post registration of FIR and on the other hand, the detenu has been detained solely on the basis of FIR No. 54/2017.

43. In the above context, a perusal of the grounds of detention reveals that the alleged activities of the petitioner have been specifically mentioned therein. In the grounds of detention, reference has been made to the post bail violations and the activities of the detenu after his release are highly objectionable as reportedly he along with his associates have started indulging in illegal drug trafficking. Viewing the seriousness of the matter and its overall impact upon the people, particularly on younger generation, After the release of the detenu, he was put under proper surveillance by the security agencies and during his release detenu had reportedly visited Uri area of Baramulla which is suggestive of the fact that the detenu is trying to revive his illegal activities which poses a serious threat to the security of the state. And one solitary incident of such a huge quantity of Brown Sugar is enough to detain someone like the detenu.

44. This court with a view to proceed further deems it proper to answer an important question ***“Whether a detention order can be passed on a solitary incident?”***

45. This Court is fortified by the view taken by the Hon’ble Supreme Court in the case titled ***“Debu Mahato vs State of West Bengal (1974) 4 SCC 135”***. The relevant para is as under:

“2.....the order of detention is essentially a precautionary measure and it is based on the reasonable prognosis of the future behavior of a person based on his past conduct judged in the light of the surrounding circumstance. Such past conduct may consist of one single act or a series of acts.....”

46. It has also been contended by learned counsel for the petitioner that the detenu was not provided with all the material necessary for making an effective representation to the detaining authority.

47. The argument presented by the counsel for the detenu, has been refuted by the respondents. The record reveals that the detenu has not approached this Court with clean hands and have suppressed material facts to the extent that he has filed a representation before the respondents on 12-04-2024 and same was disposed of on 09-09-2024. Following this process and considering all relevant facts, the Advisory Board concluded that sufficient cause existed for the detenu's continued

detention. Subsequently, the Government confirmed his detention for a period of *one year* starting from the date of the execution of detention order, **w.e.f. 30-03-2024 till 29-03-2025** Thus, the claim of the detenu regarding insufficient materials for representation lack merit, given the opportunities provided to the detenu.

48. Further it was argued by the learned counsel for detenu that the Constitutional and statutory procedural safeguards have not been adhered to by the respondents while passing the order of detention, which is a replica of the police dossier and same is divested of subjective satisfaction of the detaining authority, which is a prerequisite before passing an order of detaining somebody, curtailing the liberty of an individual.

49. The detention record provided by the respondents indicates that the detention order was issued on 19-03-2024 and executed within eleven days, i.e. on 30-03-2024. It further shows that the detenu was notified of the detention that the contents of the detention warrant and grounds were explained to him in a language he understood, with his signature obtained as acknowledgment. The record demonstrates that the detaining authority adhered to the legal procedures required for issuing a detention order, thus mitigating any claims of procedural irregularities. Additionally, the respondents have provided all the necessary documents, ensuring he was aware of his right to make representations to both the Government and the detaining authority regarding his detention. As a result, the argument presented by the detenu's counsel

regarding procedural issues lack legal merit and is therefore rejected. The detention order appears to be valid and in compliance with established legal standards.

50. Moreover the learned counsel for the detenu has placed reliance over order passed by a Coordinate Bench of this court, wherein the relief has been granted by quashing detention order in favour of a co-accused and the detenu is also praying for the similar relief. So far as the parity in detention matter is concerned there are no hard and fast rules regarding grant or refusal of relief as each case has to be considered on its own merits and record. There cannot be any parity with respect to the detention matters as each case has to be evaluated on its own merit based on its individual circumstances and record.

51. The law of preventive detention is designed primarily to prevent future harm rather than to punish past actions. Unlike criminal proceedings, where specific offences must be proven, preventive detention relies on suspicion and reasonable belief that an individual may pose a threat. This means that the authorities do not need to establish guilt for a prior crime; instead, the focus is on preventing potential actions that could endanger public safety.

52. Preventive detention serves as a proactive measure employed by the executive when it believes that detaining an individual is necessary to prevent actions that could harm specified interests outlined by law. Unlike criminal proceedings, where an offence must be

established, preventive detention is justified by suspicion or a reasonable belief about future conduct.

53. The decision to detain is based on a careful assessment of an individual's past behavior and the surrounding circumstances, aiming to predict potential future threats. Importantly, preventive detention can occur either before or during the prosecution of a case; the existence of ongoing prosecution does not preclude the issuance of a detention order. Similarly, a preventive detention order does not prevent subsequent criminal prosecution for any related offences. This dual approach reflects the need to balance individual rights with the imperative of maintaining public safety.

54. The issue ***“Whether grant of bail on merits or any default provision can make any difference in the Subjective Satisfaction of detaining authority?”***

55. Reliance is placed on the Judgment dated 20.12.2022 passed by Bombay High Court in Criminal ***“Writ Petition No.626/2022 titled Alakshit V/S The State of Maharashtra (Paragraph No.13)”*** .

“13. It is well settled law that the grounds on which an accused, and a proposed detenu, is granted bail also form important part of the material available against such a person and therefore, it is the duty of the Detaining Authority to also consider that material. After all, the object of a preventive detention order passed under Section 3(1) of the MPDA Act is to curb criminal activities of the person which are considered

prejudicial to the maintenance of public order. Grant of bail is an important factor which goes into making up of the requisite satisfaction of the Authority. When considered appropriately, the grounds of bail do impact the decision of the Authority, one way or the other. We would illustrate the point by giving a few examples. In a given case, a person may be granted bail on a ground, inter alia, that he is not likely to tamper with the prosecution's evidence or witnesses. This would be a ground which may strengthen the case of that person and it may possibly restrain the Authority from passing any detention order. In another case, a proposed detenu is granted bail, not on merits of the matter but, upon a default ground under Section 167 of the Code of Criminal Procedure. There may be another case where the person is granted temporary bail for fulfilling some urgent purpose. In both of these examples, the grounds of bail may not perhaps help the proposed detenu and the Authority may possibly find them to be all the more reason for ordering preventive detention of such a person, provided the other criteria is fulfilled. Such is the importance of the grounds of bail and therefore, they are required to be considered by the Detaining Authority while passing the order of detention. This is the law laid down by the Apex Court in the case of Abdul Sathar Ibrahim Manik Vs. Union of India (1991 AIR 2261).

56. The grant of bail plays a crucial role in the assessment of the detaining authority's required satisfaction. When considered carefully, the reasons for grant of bail can significantly affect the authority's decision. For example, if bail is granted because the individual is unlikely to tamper with evidence or witnesses, this can strengthen their

case and may deter the Authority from issuing a detention order. On the other hand, if bail is granted not on the merits of the case but due to a procedural default under Section 167 of the Code of Criminal Procedure, or for a temporary urgent purpose, these circumstances might not benefit the detenu. In such situations, the Authority might view these circumstances as further justification for preventive detention, provided other criteria are satisfied. Therefore, the grounds for bail are essential and should be carefully considered by the Detaining Authority when making a decision on detention.

57. This Court is fortified by the view taken by the Hon'ble Supreme Court in case titled "*Sasti @ Satish Chowdhary Vs. State of West Bengal; (1972) 3 SCC 826*". The relevant para is as under:-

"It is always open to the detaining authority to pass an order for the detention of a person if the grounds of detention are germane to the object for which a detention order can legally be made. The fact that the particular act of the detenu which provides the reason for the making of the detention order constitutes an offence under the Indian Penal Code would not prevent the detaining authority from passing the order for detention instead of proceeding against him in a court of law. The detaining authority might well feel that though there was not sufficient evidence admissible under the Indian Evidence Act for securing a conviction, the activities of; the person ordered to be detained were of such a nature as to justify the order of detention. There would be no legal bar to the making of detention order in such a case. It would, however, be imperative that the incident which gives rise to the apprehension in the mind of the detaining authority and induces that authority to pass the order for detention should be relevant and germane to, the object for which a detention order can be, made

under the Act. Even in cases where a person has been actually prosecuted in a court of law in respect of an incident and has been discharged by the trying magistrate, a valid order of his detention can be passed against him in connection with that very incident.”

58. The Hon'ble Supreme Court, in Criminal Appeal No. 1064 of 2019 arising out of SLP (Crl.) No. 5459 of 2019, titled **“Union of India and Another v. Dimple Happy Dhakad reported as (2019)20 SCC 609”**, has held that an order of detention is not a curative, reformatory, or punitive action, but a preventive action. The avowed objective of preventive detention is to preclude antisocial and subversive elements from imperiling the welfare of the country, compromising public health and national security or disturbing public tranquility.

59. The issue **“Whether a parallel prosecution or remedy available in ordinary law can act as a bar to invoke preventive detention?”** has been answered by the Hon'ble Apex Court in the case titled **“Haradhan Saha vs State of West Bengal (1975) 3 SCC 198”**.

The relevant para is reproduced as under:

32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without

prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. It is based on a reasonable prognosis of the future behavior of a person based on his past conduct in the light of the surrounding circumstances.

60. The issue “***Whether a solitary offence involving huge amount of contraband and subsequent field reports for which prosecution has not been launched, can cause peril to public health and what can be its impact on society?***”

61. In the present case, the detenu was involved in trafficking of huge amount of heroin and was also caught in possession of the same. The detaining authority recorded finding that this has serious impact on the economy of the nation and is also satisfied that the detenu has propensity to indulge in the same act of smuggling and passed the order of preventive detention, which is a preventive measure. Based on the documents and the materials placed before the detaining authority and considering the individual role of the detenu, the detaining authority satisfied itself as to the detenu continued propensity and his inclination to indulge in acts of prejudicial activities of illicit traffic of narcotics and psychotropic substances which poses threat to the health and welfare of the citizens of this country. The offences committed by the detenu are so interlinked and are of such nature that these affect security and health of the nation.

62. Hon'ble Supreme Court in the case of *“State of Bombay v. Atma Ram Shridhar Vaidya, reported as AIR 1951 SC 157”*, has held that while looking into the scope of subjective satisfaction arrived at by the detaining authority has held that the same is extremely limited and that the Court, while examining the material, which is made basis of subjective satisfaction of detaining authority, would not act as a court of appeal and find fault with satisfaction on the ground that on the basis of the material before detaining authority, another view was possible. Such being the scope of enquiry in this field and the contention of counsel for petitioner, therefore, cannot be accepted.

63. The detention order is clearly a preventive measure designed to protect society. When preventive detention is intended to safeguard the nation's safety and security, it is essential to balance individual liberty with societal needs. The purpose of preventive detention is not to punish someone for past actions, but rather to stop them from engaging in harmful behavior in the future. In *“Naresh Kumar Goyal v. Union of India and others reported as (2005) 8 SCC 276”*, it was held as under:-

“8. It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the antisocial and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to

afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so.....”

64. This court is further fortified by view taken by the Hon’ble Supreme Court in the case titled *Haradhan Saha vs State of West Bengal* (Supra). The relevant Para is as under:

34. The recent decisions of this Court on this subject are many. The decisions in Borjahan Gorey v. The State of W. B., Ashim Kumar Ray V. State of W. B.; Abdul Aziz v. The District Magistrate, Burdwan and Debu Mahto v. State of W. B. correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand v. State of U. P. which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. 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 concerned person 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 jeopardize 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 the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behavior of a person based on his past conduct in the light of the surrounding circumstances.

65. The Hon'ble Supreme Court in the case titled “*Union of India v. Paul Manickam (2003) 8 SCC 342*” has upheld the validity of preventive detention in cases, where there is credible and substantive evidence of an individual's involvement in activities that pose a significant threat to national security and public health. So far as the instant case is concerned the detenu is involved in huge racket where **66.58 KGs of brown sugar** was seized, it is sufficient for the Detaining Authority to detain the detenu, so as to avoid the significant threat to national security and public health.

CONCLUSION:

66. The ongoing observation and monitoring of the detenu's actions after being released on bail have shown a continued participation in criminal activities. This sustained involvement in unlawful and anti-national actions supports the rationale for the preventive detention order, as it indicates a persistent and immediate risk to public safety, health and welfare of the society and national security. Since normal law has not been sufficient to stop drug trafficker from indulging in such activities, his detention order was passed and considering the aforesaid circumstances, the detention order made by the detaining authority stands upheld.

67. For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, **dismissed**.

68. The detention record be returned to the learned counsel for the respondents.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:

31.10.2024

"HAMID"

- i.* Whether Judgment is Reportable? Yes/No
- ii.* Whether Judgment is Speaking? Yes/No

