S. No. 116

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on : 01.08.2024
Pronounced on : 25.10.2024

Case No. :- **HCP No. 41/2024**
CM No. 1732/2024

Roshan Kumar @ Rahul @ Prince
Age 23 years, S/o Kewal Krishan,
R/o Kotli Charkan, Tehsil Bishnah,
District Jammu.
Presently lodged in District Jail,
Kathua. ….. Petitioner(s)

Through: Mr. K.S.Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

Vs

1. Union Territory of Jammu and Kashmir through Commissioner/ Secretary to Government, Home Department, Government of Jammu & Kashmir, Civil Secretariat, Jammu.
2. Divisional Commissioner, Rail Head Complex, Jammu.
3. Senior Superintendent of Police, Jammu.
4. Superintendent, District Jail, Kathua.
5. Station House Officer (SHO), Police Station, Bishnah.

….. Respondent(s)

Through: Mr. Amit Gupta, AAG with
Ms. Chetna Manhas, Advocate.

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

1. Impugned in the instant petition, filed under the provisions of Article 226 of the Constitution of India, is the order of Detention bearing No. PITNDPS 07 of 2024 dated 25.01.2024 passed by the respondent No.2 i.e.

Divisional Commissioner, Rail Head Complex, Jammu, while invoking his powers under Section (3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the "PITNDPS Act", for short) read with SRO 247 dated 27.07.1988, whereby the petitioner/detenu was directed to be detained and ordered to be lodged in District Jail, Kathua for a period to be specified by the Government.

2. The petitioner has sought the quashment of the impugned order dated 25.01.2024 by the issuance of writ of Habeas Corpus on the grounds that he being a citizen of India is entitled to the protection of his fundamental rights as guaranteed under Part III of the Constitution of India. That the material supplied to the family of the petitioner after his detention is incomplete with the missing of pages between Nos. 34 to 46 and the plea of the respondents that the material including grounds of detention etc. consisting of 73 leaves was furnished to detenu, does not bear the truth. That the perusal of the material also reveals that some documents are in Urdu, thus, being illegible and un-understandable by the detenu being a person not conversant with the Urdu language and, as such, the impugned order for want of proper supply of documents is unsustainable and liable to be quashed. That the petitioner was detained in pursuance of the impugned order on the allegation of his involvement in three case FIR(s) in which he had been already granted bail by the competent trial court, holding that the rigor of Section 37 of the NDPS Act is not applicable and the learned trial court in all the case FIR(s) made its opinion regarding *prima facie* non-involvement of the petitioner, but the said fact has not

been appreciated by the learned detaining authority leading to non-application of mind. That impugned detention order could have only been passed under the circumstances evidencing that the normal substantive law has failed to deter the petitioner/detenu from indulging in alleged illicit trafficking of drugs. That no steps were taken by the Government for approaching the competent trial courts with the request for cancellation of bail orders already passed in his favour. The fact that the impugned detention order is not backed by the subjective satisfaction and application of mind of the detaining authority is quite clear from the fact that out of three FIR(s), two are pending trial since five and two years respectively. That no proximate link with the alleged incidences stands made out for passing of the impugned detention order on 25.01.2024. That the impugned order was passed on 25.01.2024 but the same came to be executed on 11.03.2024 i.e. after elapse of approximately 45 days from the date of its passing and, thus, the delayed execution of the impugned order vitiates the same. That the non-supply of complete relevant material in the language understandable by the detenu has prevented him to exercise his unalienable fundamental right to make an effective representation to the concerned authority. That the detenu has neither been informed about his right to file a representation against the detention order nor were the grounds of detention explained to him in a language being understood by him. That the impugned order has not been forwarded to the Central Government within ten days from its passing in terms of Section (3) (2) of the PITNDPS Act, 1988 and consequently no report has been obtained from the Central Government in that behalf. That

the impugned detention order is mainly based on the ground of registration of three case FIR(s) against the petitioner registered from 2019 to 2023 along with some DDR's in 2023. That no justifiable case was made out for passing of the impugned detention order as the petitioner had been bailed out in all the case FIR(s) with the observation of the learned trial court that no prima facie ground of inculpability of the petitioner appears to be made out. That the impugned detention order appears to have been passed and executed by the detaining authority at its leisure and comfort. That the petitioner was on bail in all the case FIR(s) and there is no allegation that he has violated any of the bail conditions. That the petitioner has no alternative, efficacious remedy available to him except to approach this Court by way of present petition.

3. The contesting respondent No.2-Divisional Commissioner, Jammu has through his counter affidavit resisted the petition on the grounds that same deserves to be out rightly rejected for want of any cause of action as none of constitutional, legal or statutory rights of the petitioner have been infringed or violated. That the petitioner has raised disputed questions of facts which cannot be adjudicated upon through the medium of a writ petition. That the detention order was passed after a careful examination of the dossier and the material annexed to the same because the detention of the petitioner was felt imperative under the relevant provisions of the PITNDPS Act who after being tried under the NDPS Act for repeated and continuous offences got again involved in the illicit trafficking of narcotic drugs, thus, posing a serious threat to the public order as well as to the health and welfare of the people. That the ordinary law has failed to deter

the petitioner as is evident from the conduct of the detenu transpiring from the dossier submitted by the SSP, Jammu. That at the time of the execution of the impugned detention order, the Executing Officer has provided the complete set of dossier along with detention order, grounds of detention (total 73 leaves), who also explained to the detenu/petitioner in his own language i.e. English/Urdu/Hindi and Dogri with the information to him to make a representation before the Government (Home Department) as well as before the detaining authority against the detention order, if he feels aggrieved. That the petitioner has admitted the registration of three case FIR(s) against him. That the aspect of the writ petitioner being on bail in the criminal cases has been specifically mentioned in the grounds of detention and, as such, there is no suppression of information and non-application of mind as alleged. That the repeated and continuous involvement of the petitioner/detenu in illicit trafficking led to the issuance of the detention order. That the detention order under challenge issued by the answering respondent No.2 stands backed by the judgment dated 16.08.2023 passed by this Court in LPA No. 55/2023 titled "**Anil Sharma Vs. UT of J&K and Ors."** wherein this Court was pleased to upheld the detention order and the relevant portion of the said judgment is reproduced as under :-

> "…In view of the foregoing discussion, it is clearly disclosed that it is not the number of acts that are to be determined for detention of an individual but it is impact of the act which is material and determinative. In the instant case the act of detenue relates to drug trafficking, which has posed serious threat, apart from health and welfare of the people, to youth, most particularly unemployed youth, to indulge in such acts, ramifications thereof would be irreversible and unimaginable. Appellant/writ petitioner has

> not been able to convincingly point out violation of any statutory or constitutional provisions…"

That the Hon'ble Apex Court has also issued guidelines for preventive detention in case titled "**Naresh Kumar Goyal Vs. Union of India (2005) 8 SCC 276"** and "**Haradhan Saha Vs. State of W.B (1975) 3 SCC"**. The relevant portions of the authoritative judgments are reproduced hereunder respectively:-

> "It is trite law that an order of detention is not a curative or reformative or punitive action, but a preventive action, avowed object of which being to prevent the anti-social 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."

> "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 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.
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> 33. Article 14 in inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. I preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu."

4. I have heard learned counsel for the parties, who reiterated their stands respectively taken in the instant petition and the counter affidavit. I have also perused the instant petition, the counter affidavit filed by the contesting respondent No.2 and have also gone through the detention record.

5. Keeping in view the aforementioned perusal and the consideration of the rival arguments advanced on both the sides, this Court is of the opinion that the impugned detention order dated 25.01.2024 suffers from illegality and infirmity. The, "application of mind" of the detaining authority and the "inevitability of the detention" which are *sine qua non* for passing of a detention order appear to have been compromised in the instant case. Besides the communication of the order of detention to the petitioner so as to enable him to make an effective representation to the concerned authorities at an earliest also does not seem to have been made effectively in the case. Section (3) of the PITNDPS Act which confers the power on the competent authority to make orders for detaining certain persons is reproduced as hereunder for ready reference:-

> "**3. Powers to make orders detaining certain persons. —**
> (1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of Secretary to that Government, specifically empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.
> (2) When any order of detention is made by a State Government or by an officer empowered by a State

> Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.
> (3) For the purpose of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention."

6. The impugned detention order has been passed on 25.01.2024 but has been executed with the arrest of the petitioner on 11.03.2024 after an elapse of 45 days. The officer, who was entrusted with the execution of the detention order, namely, S.I. Om Parkash PID No. EXJ-845541 of Police Station, Bishnah has nowhere in his report even made a whisper about the cause of delay in execution of the same. Perusal of the entire detention record did not show any document of whatever nature evidencing the cause of delay in execution of the impugned detention order.

7. Under these circumstances, this Court has no reason to disbelieve the learned counsel for the petitioner, who has contended that the impugned detention order has been passed by the respondents as per their leisure and comfort.

8. **The preventive detentions need to be passed with great care and caution keeping in mind that a citizens most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the**

basis of subjective satisfaction of the detaining authority without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution and the provisions of Section (3) of the PITNDPS Act requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper communication of the grounds of detention and the information of liberty to make a representation against the detention order are the imperative and inevitable conditions rather requirements for passing of a detention order.

9. The Hon'ble Supreme Court in case of **"Rekha Vs. State of Tamil Nadu through Secretary to Government and another", reported in (2011) 5 SCC 244** has laid emphasis on the fundamental right to life and personal liberty of a citizen of India guaranteed under Article 21 of our Constitution and has, accordingly, stressed for taking great care and caution while passing any preventive detention orders so that same are passed in case of genuine and inevitable need only without any misuse or abuse of the powers. The relevant provisions of the said authoritative judgment are reproduced as hereunder:-

> "21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year's imprisonment. What

difference is it to the detenu whether his imprisonment is called preventive or punitive?

29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22 (3) (b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

35. It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a 'jurisdiction of suspicion', (Vide State of Maharashtra Vs. Bhaurao Punjabrao Gawande. The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital.

36. It has been held that the history of liberty is the history of procedural safeguards. (See: Kamleshkumar Ishwardas Patel Vs. Union of India and others). These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. As observed in Rattan Singh Vs. State of Punjab, (1981) 4 SCC 1981 :-

> "4. May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus."

39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional

> values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in Thomas Pelham Dale's case, (1881) 6 QBD 376 :
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> "Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue."

10. In the case of **"Francis Coralie Mullin Vs Administrator, Union Territory of Delhi and others,"** reported in **(1981) SCC 608,** it has been *inter alia* authoritatively laid down:-

> "4. Now it is necessary to bear in mind the distinction between 'preventive detention' and punitive detention', when we are considering the question of validity of conditions of detention. There is a vital distinction between these two kinds of detention. 'Punitive detention' is intended to inflict punishment on a person, who is found by the judicial process to have committed an offence, while 'preventive detention' is not by way of punishment at all, but it is intended to pre-empt a person from indulging in conduct injurious to the society. The power of preventive detention has been recognized as a necessary evil and is tolerated in a free society in the larger interest of security of the State and maintenance of public order. It is a drastic power to detain a person without trial and there are many countries where it is not allowed to be exercised except in times of war or aggression. Our Constitution does recognize the existence of this power, but it is hedged-in by various safeguards set out in Articles 21 and 22. Art. 22 in clauses (4) to (7), deals specifically with safeguards against preventive detention and any law of preventive detention or action by way of preventive detention taken under such law must be in conformity with the restrictions laid down by those clauses. But apart from Art. 22, there is also Art. 21 which lays down restrictions on the power of preventive detention. Until the decision of this Court in Maneka Gandhi. v. Union of India, a very narrow and constricted meaning was given to the guarantee embodied in Art. 21 and that article was understood to embody only that aspect of the rule of law,

which requires that no one shall be deprived of his life or personal liberty without the authority of law. It was construed only as a guarantee against executive action unsupported by law. So long as there was some law, which prescribed a procedure authorising deprivation of life or personal liberty, it was supposed to meet the requirement of Art. 21. But in Maneka Gandhi's case (supra), this Court for the first time opened-up a new dimension of Art. 21 and laid down that Art. 21 is not only a guarantee against executive action unsupported by law, but is also a restriction on law making. It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Art. 21. This Court expanded the scope and ambit of the right to life and personal liberty enshrined in Art. 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights. This decision in Maneka Gandhi's case became the starting point-the-spring board-for a most spectacular evolution the law culminating in the decisions in M. H. Hoscot v. State of Maharashtra, Hussainara Khatoon's case, the first Sunil Batra's case and the second Sunil Batra's case. The position now is that Art. 21 as interpreted in Maneka Gandhi's case (supra) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise. The law of preventive detention has therefore now to pass the test not only of Art. 22, but also of Art. 21 and if the constitutional validity of any such law is challenged, the Court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. But despite these safeguards laid down by the Constitution and creatively evolved by the Courts, the power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the most cherished and prized possession of man in a civilized society. It is a power to be exercised with the greatest care and caution and the courts have to be ever vigilant to see that this power is not abused or misused. It must always be remembered that preventive detention is qualitatively

> different from punitive detention and their purposes are different. In case of punitive detention, the person concerned is detained by way of punishment after he is found guilty of wrong doing as a result of trial where he has the fullest opportunity to defend himself, while in case of preventive detention, he is detained merely on suspicion with a view to preventing him from doing harm in future and the opportunity that he has for contesting the action of the Executive is very limited. Having regard to this distinctive character of preventive detention, which aims not at punishing an individual for a wrong done by him, but at curtailing his liberty with a view to pre-empting his injurious activities in future."

11. In the case of **"Nand Lal Bajaj Vs State of Punjab and another,"** reported in **(1981) 4 SCC 327**, the Hon'ble Supreme Court has stated the position as under**:-**

> **"**9. Among the concurring opinions, Krishna Iyer, J., although he generally agreed with Bhagwati, J., goes a step forward by observing:
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> Procedural safeguards are the indispensable essence of liberty. In fact, the history of procedural safeguards and the right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights: observance of fundamental rights is not regarded as good politics and their transgression as bad politics. In short, the history of personal liberty is largely the history of procedural safeguards. The need for observance of procedural safeguards, particularly in cases of deprivation of life and liberty is, therefore, of prime importance to the body politic."

12. **As hereinbefore mentioned an unexplained delay of about 45 days has occasioned in the instant case in execution of the impugned detention order. The detention order has been passed by respondent No.2 on 25.01.2024 when the same stands executed on 11.03.2024. The detention order was entrusted on the same day i.e. 25.01.2024 by the respondent No.3 i.e. Senior Superintendent of Police, Jammu to S.I. Mashkoor Ahmed PID No. EXJ-196442 of Police Station, Bishnah for**

execution but the same came to be executed by S.I. Om Parkash PID No. EXJ-845541 of Police Station, Bishnah on 11.03.2024 after elapse of 45 days. The delay in execution of the warrant is unknown. Neither the respondent No.3 nor the Executing Officer S.I. Om Parkash has assigned any reasons for delay in execution of the detention order. The respondents have not even initiated the proceedings under Section (8) of the PIT NDPS Act revealing thereby that the impugned detention order has been executed with the arrest of the petitioner/detenu by the respondents at their sweet wish.

13. **This Court is of the opinion that delay *per se* in execution of the impugned detention order is not fatal because there can be a variety of circumstances and reasons justifying the delay and it is why the legislature has taken care of such eventualities by acting the provisions of Section (8) of Act. But unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu would definitely throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from engaging in illicit traffic in narcotics drugs and psychotropic substances. Such an unexplained delay eclipses the proximate and live link between the grounds of the detention and the detention order.**

14. This Court in its opinion feels fortified with the authoritative judgment of Hon'ble Apex Court cited as **"P.U. Iqbal Vs. Union of India & Ors."**

reported as (1992) 1 SCC 434, the operative paras of which decision are reproduced hereunder for ready reference:-

> "14. Now, there can be no doubt-and the law on this point must be regarded as well settled by these two decisions-that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenue, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner.
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> 15. Chinnappa Reddy, J. speaking for the Bench in Bhawarlal Ganeshmalji v. State of Tamil Nadu has explained as follow:
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> It is further true that there must be a 'live and proximate link' between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is 'snapped' if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the 'link' not snapped but strengthened.
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> 18. It is manifestly clear from a conspectus of the above decisions of this Court, that the law promulgated on this aspect is that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenue, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the 'live and proximate link' between the grounds of the detention and the purpose of detention is snapped in arresting the detenue. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case."

15. I am also supplemented in opinion with the authoritative judgment of the Hon'ble Supreme Court of India reported in "**Rajinder Arora Vs. Union of India and others" AIR 2006 (4) SCC 796, decided on 10.03.2006**. The relevant paras of the judgment are reproduced as hereunder:-

> "The conspectus of the above decisions can be summarized thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.
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> Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."

16. It is being observed that in case of the preventive detentions, the detenues are required to sign on previously printed receipts regarding documents and same is done also with the preparation of execution reports. Under such circumstances, the contention of the detenus that they did not receive

the documents in terms of their title and the number of pages cannot always be doubted. It will be in the ends of justice if such receipts regarding furnishing of the entire documents including the grounds of detention are prepared in the presence of the detenu and witnessed by any available public servant or any private person. It has been submitted by learned counsel for the petitioner that the family of the detenu has been furnished the documents which were not 73 in number as mentioned in the receipt and some important pages were missing in the same. The non-supply of the entire set of documents including the grounds of detention in particular at an earliest contravenes the provisions of Article 22 Clause (5) and Section (3) Clause (3) of PITNDPS Act. The non-supply of the relevant material especially the grounds of detention at an earliest and not later than the time as mentioned in Section (3) Clause (3) of PITNDPS Act disables a detenu to make an effective representation at an earliest.

17. As per the grounds of detention, the petitioner is alleged to be involved in three case **FIR(s) bearing No. 192/2019** under Sections 8/21/22/29, **bearing No. 117/2022** under Sections 8/21/22 NDPS Act and **bearing No. 259/2023** under Sections 8/21/22 of NDPS Act of NDPS Act of Police Station, Bishnah. As itself admitted by the detaining authority, the petitioner stood already bailed out in all the three case FIR(s) and there was no allegation of misuse of any bail condition by him. There is also nothing on record evidensive of the fact that the Government through prosecution made any endeavour to seek the cancellation of the bail orders. The detention order appears to have been passed 45 days after the registration of the last case FIR. So, again the delay in passing the

impugned detention order snaps the required live link between the last incident of 11.12.2023 that led to the registration of the FIR No. 259/2023 against the detenu and the detention order dated 25.01.2024.

18. The detaining authority has not also in clear and pellucid manner mentioned in the grounds of detention as to how the normal criminal law failed to prevent the petitioner/detenu from repeating the commission of crime. In all cases of detention which are based on the criminal cases registered against the detenue, it is incumbent upon the detaining authority to record in the grounds of detention as to whether ordinary criminal law had not prevented such person so as to draw satisfaction to order preventive detention. In none of the cases against the petitioner, as mentioned in the grounds of detention, a commercial quantity of narcotic drugs or psychotropic substances is alleged to have been recovered from the possession of the detenu. The same thing is borne out from the bail orders of the learned trial court dated 14.11.2019 passed in FIR No. 192/2019, order dated 16.12.2023 passed in FIR No. 259/2023 and order dated 06.07.2022 passed in FIR No. 117/2022. So, the non-application of mind and the lack of subjective satisfaction is discernable in the facts and circumstances of the case. **The detenue has already suffered detention of 9 months.**

19. For the foregoing discussion, the petition is allowed and the impugned Detention Order bearing No. PITNDPS 07 of 2024 dated 25.01.2024 passed by respondent No.2 is quashed. The petitioner/detenu is directed to be released forthwith in the case from his preventive detention, provided he is not required in any other case.

20. The detention record is directed to be returned back to the office of learned Additional Advocate General.

(Mohd. Yousuf Wani)
Judge

JAMMU :
25.10.2024
Pawan Chopra

i) Whether the Judgment is speaking: Yes
ii) Whether the Judgment is reportable: Yes