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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 3rd September, 2024**Date of Decision: 6th September, 2024*

+ W.P.(CRL) 183/2024 & CRL.M.A. 1720/2024

RIZAUDDIN @ RIYAJUDDIN

@ RIYAJUDDEN @ PINTU

.....Petitioner

Through: Mr. S.K. Santoshi and Mr. C.D. Raw,
Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Kaushal Jeet Kait, GP for R-1 and
2.Ms. Nandita Rao, Additional Standing
Counsel (Crl.) for the State GNCTD.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Article 226 of the Constitution of India seeks quashing of the preventive detention orders dated 31st August, 2023 and 29th November, 2023 bearing F. No. U-11011/29/2023-PITNDPS and bearing F. No. U-11012/19/2023-PITNDPS, issued by the Joint Secretary and the Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue (PITNDPS Unit) i.e., Respondent nos. 1 and 2 (the Detaining Authority) respectively, under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as 'PITNDPS Act'), thereby ordering the detention of



the Petitioner for a period of one year from the date of his detention, i.e., 7th September, 2023.

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

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

a.) FIR no. 631/2003 under Sections: 21/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), registered at PS: Kotwali, Delhi for the effected recovery of 08 grams of brown sugar. The Petitioner was acquitted *vide* order dated 3rd November, 2006, passed by the Learned Special Judge (NDPS), Tis Hazari Courts, Delhi.

b.) FIR no. 80/2009 under Section 21 of the NDPS Act, registered at PS: Narcotics Cell, Crime Branch (Delhi) for the effected recovery of 100 grams of brown sugar. The Petitioner was convicted for a period of 3 months and 15 days *vide* order dated 06th January, 2011, passed by the Learned Special Judge (NDPS), Karkardooma Courts, Delhi.

c.) FIR no. 200/2012 under Section 21 of the NDPS Act, registered at PS: Narcotics Cell, Crime Branch (Delhi) for the effected recovery of 275 grams of heroin. The Petitioner was convicted under Section 21(c) of the NDPS Act and sentenced to rigorous imprisonment for 15 years alongwith a fine of Rs. 1,50,000/- *vide* order dated 12th February, 2016 passed by the Learned Special Judge (NDPS), Tis Hazari Courts, Delhi. *Vide* order dated 31st July, 2020 in CRL. M (Bail) 7635/2020, the sentence of the Petitioner was suspended till the pendency of the appeal bearing no. CRL. A. 398/2016, pending before this Court.



d.) FIR no. 253/2021 under Sections 21/25/29 of the NDPS Act, registered at PS Narela for the effected recovery of 98 grams and 300 grams of heroin initially from one Mr. Salman and Ms. Heena Khattoon @ Heena Khatun, who on her disclosure statement alleged that she had procured 450 grams of heroin from the Petitioner about 3-4 days before her arrest on 16th June, 2021. Based on such disclosure statement, the Petitioner was arrested on 18th June, 2021 and a total of 260 grams of heroin was seized from the house of the Petitioner. The Petitioner is currently lodged in judicial custody in the aforementioned case FIR. The chargesheet and supplementary chargesheet stand filed in the aforementioned case.

ii. On the basis of the alleged involvement of the Petitioner in the aforesaid cases, Deputy Commissioner of Police, District-Outer North, Delhi, i.e., the Sponsoring Authority submitted a proposal dated 31st July, 2023 to Respondent nos. 1 and 2, which was forwarded to the Screening Committee on 8th August, 2023. The said proposal was considered by the Screening Committee on 28th August, 2023 and the same was held to be fit for preventive detention under the PITNDPS Act.

iii. Thereafter, the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue (PITNDPS Unit), i.e., the Detaining Authority (Respondent no. 1) on 31st August, 2023 issued the detention order bearing F. No. U-11011/29/2023-PITNDPS under Section 3(1) of the PITNDPS Act, which along with the 'grounds of detention' and Relied Upon Documents ('RUDs') were served upon the Petitioner in jail on 7th September, 2023 following the mandate of Section 3(3) of the PITNDPS Act.

iv. Thereafter, on 5th October, 2023, the Petitioner sent a representation for



recalling of the detention order dated 31st August, 2023 to the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue (PITNDPS Unit), i.e., the Detaining Authority (Respondent no. 1) through his counsel, which stood rejected *vide* memorandum bearing F. No. U-11013/68/2023-PITNDPS, issued by the Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue (PITNDPS Unit), i.e., the Detaining Authority (Respondent no. 2) on 31st October, 2023.

v. Thereafter the Petitioner sent a representation to the Chairman, PITNDPS Advisory Board, High Court of Delhi and on 2nd November, 2023; he was produced before the Hon'ble Central Advisory Board, Delhi High Court (hereinafter referred to as 'the Board'), wherein the detention order was confirmed by the Board.

vi. Subsequently on 29th November, 2023, the Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue (PITNDPS Unit) i.e., Respondent no. 2 under powers conferred to him under Section 9(f) of the PITNDPS Act confirmed the aforementioned detention order dated 31st August, 2023 and under Section 11 of the PITNDPS Act, ordered for the detention of the Petitioner for a period of one year with effect from 7th September, 2023.

3. The facts with respect to which the aforesaid cases registered by the Narcotics Cell, Crime Branch Delhi and Delhi Police have been brought forward by the Sponsoring Authority, i.e., Deputy Commissioner of Police, District-Outer North, Delhi before the Detaining Authority (Respondent nos. 1 and 2) and have been recorded in the impugned detention order dated 31st August, 2023, are reproduced as under:

“i. FIR No. 631/2003, Dated 02.11.03 u/s 21/61/85 NDPS Act, 1985 PS:

**Kotwali Delhi**

- a) *On the basis of information, the officers of P.S. Kotwali apprehended one person namely Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you S/o Dukhi Ansari R/o C-9, B/387 Bihari Basti Chand Masjid Yumna Pusta Delhi. On search of the person, a total of 08 grams of brown sugar was recovered from you. The recovered contraband was seized under the NDPS Act, 1985 and you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu were arrested under the NDPS Act, 1985.*
- b) *A Complaint in the case was filed in the Court of Additional Sessions Judge, Delhi. However, you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu were acquitted by the Hon'ble Court of NDPS Judge, Tis Hazari Court Delhi, vide Order dated 03.11.2006.*

ii. FIR No. 80/2009 Dated 30/05/2009 u/s 21 NDPS Act, 1985 PS: Narcotics Cell Crime Branch Delhi

- a) *Working on a secret information, the officers at Narcotics Cell Crime Branch Delhi, intercepted Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you S/o Dukhi Ansari R/o H. No. 714-715, Pocket-4, Sector A-6, Narela near Bus Stand, Gurudwara Nanksar, Wazirabad; Delhi on 30.05.2009. In course of the search, total 100 grams of brown sugar was recovered from your possession which was subsequently seized under the NDPS Act, 1985. You i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu were arrested under the NDPS Act, 1985.*
- b) *A Complaint in the case was filed in the Court of ASJ, Karkardooma Court, Delhi. On completion of trial, Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you S/o Dukhi Ansari was convicted for 3 months and 15 days by the Hon'ble Court of NDPS Judge, Karkardooma Court vide Order dated 06.01.2011.*

iii. FIR No. 200/2012 Dated 24.07.2012 U/s 21 NDPS Act, PS: Narcotics Cell Crime Branch Delhi

- a) *On the basis of secret information, Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you S/o Dukhi Ansari R/o H. No. 714-715, Pocket-4, Sector A-6, Narela, Delhi was intercepted by officers of PS Narcotics Cell Crime Branch Delhi at Bishnoi, Dharamsala, Bela Road, Delhi. During the search of Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you S/o Dukhi Ansari, a total of 275 grams of Heroin was recovered. You i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu were arrested on 24.07.2012 and were remanded to two days police custody.*
- b) *A Complaint in the case was filed in the Court of Special Judge, (NDPS) Tis Hazari, Delhi against you i.e. Rizauddin @ Riyajuddin*



@ Riyajudden @ Pintu under the NDPS Act, 1985.

c) On completion of trial, Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you were convicted for 15 years of rigorous imprisonment with a fine of Rs. 1,50,000/- by the Hon'ble Court of NDPS Judge Tis Hazari Court vide Order dated 12.02.2016. The High Court of Delhi vide Order dated 31.07.2020 suspended the sentence of the appellant till the hearing of appeal on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the equivalent amount to the satisfaction of the Jail Superintendent/Duty Magistrate.

iv. **FIR No. 253/2021 Dated 16.06.2021 U/s 21/25/29 NDPS Act, 1985 PS: Narela/OND, PS Narela, Delhi**

a) On the basis of information, the officers of Narcotics Cell/OND Delhi, intercepted Heena Khatun and her cousin brother Salman and recovered 300 grams and 98 of grams of Heroin respectively from their possession in front of House No 1045, Pocket 4, Punarwas Colony, Sector A6, Narela, Delhi on 16.06.2021.

b) Disclosure Statement of Heena Khatun was recorded wherein she, inter-alia, stated that she used to procure heroin from one Anila of Bawana, Pintu of Narela and Sakina of Jahangirpuri; that the recovered contraband was received from Anita of J.J. Colony.

c) In her disclosure statement Anita revealed that she was arrested twice in NDPS cases in 2004-05 in Lucknow and in 2007 at Delhi; that she knew Riyajudin @ Babu @ Pintu i.e. you and Heena Khatun resident of same colony; that she is engaged in sale and purchase of heroin from both of them; that she received 450 grams heroin from Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you 3-4 days before arrest of Heena Khatun; that she has supplied 400 grams to Heena Khatun and 50 grams of heroin was recovered from her possession.

d) In his disclosure statement Salman disclosed that he used to assist Heena Khatun in sale of heroin and he used to get Rs. 400 per day in lieu of that; that Heena procured heroin from Anita on 16.06.2021.

e) **Thereafter on the disclosure of accused Heena Khatun, Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you S/o Dukhi Ansari R/o H. No. 714-715, Pocket-4 Sector A-6 Narela Delhi was arrested on 18.06.2021.**

f) On search of the house of Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you, a total of 260 grams of Heroin was recovered from the house which was seized under the NDPS Act, 1985. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you were produced before the Court of ASJ/Special Judge (NPPS) North, Rohini Courts, Delhi. An



application seeking police remand for 5 days was made before the Court of ASJ, Rohini Courts, Delhi. The Court granted PC for 4 days. He was subsequently produced on 23.06.2021 and he was remanded to judicial custody.

- g) You i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu in your disclosure statement stated that you knew one Anita of Bawana since long; that she is engaged in supply of 'heroin'; that Anita got you introduced to one Toufiq @ Salman of Lucknow; that you used to supply heroin in Delhi on getting it from Toufiq @ Salman; that after release from jail you again contacted Toufiq @ Salman and started supplying heroin to Hina Khatun of Narela after getting it from Toufiq.
- h) Further, in course of investigation, Anita was also arrested on 25.06.2021 under the NDPS Act, 1985 and 50 grams of heroin was recovered from the possession Anita.
- i) Samples of the seized contraband were sent to FSL, Rohini for chemical examination on 25.06.2021. The FSL vide report dated 27.05.2022 has confirmed that (i) Exhibits 'XA' & 'YA' were found to contain Diacetylmorphine, 6-Monoacetylmorphine, Acetylcodeine, Trimethoprim, Caffeine and Acetaminophen (ii) Exhibit 'ZA' was found to contain Diacetylmorphine, 6-Monoacetylmorphine, Acetylcodeine, Trimethoprim and Acetaminophen. Another report of FSL, Rohini dated 27.05.2022 confirmed that the exhibit 'A1' was found to contain Diacetylmorphine, 6-Monoacetylmorphine, Acetylcodeine, Trimethoprim & Acetaminophen.
- j) A Chargesheet has been filed in the Hon'ble Court of ASJ, Special Judge, NDPS Act, 1985 Rohini Court under the NDPS Act, 1985 against (i) Heena Khatun (ii) Salman (iii) Mohd Riyajuddin @ Babu @ Pintu i.e. you (iv) Anita. A Supplementary chargesheet has also been filed in the same Court in the instant case.
- k) You i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu S/o Dukhi Ansari filed an interim bail application in the Court of ASJ/Special Judge (NDPS) North, Rohini Courts, Delhi. The Court of ASJ/Special Judge (NDPS) North, Rohini Courts, Delhi vide Order dated 21.05.2022 granted interim bail to you for a period of ten days subject to furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount on certain conditions. The High Court of Delhi vide Order dated 10.01.2023 ordered you to be released on interim bail for a period of six weeks subject to furnishing a personal bond and surety bond in the sum of Rs. 20,000/- each, to the satisfaction to the trial Court. **The Special Judge (NDPS) North, Rohini Courts, Delhi vide Order dated 29.08.2023 dismissed the**



regular bail petition of you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu.

(emphasis supplied)

4. On the basis of aforesaid facts and circumstances, the Detaining Authority (Respondent no. 1) further observed and recorded as under:

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

3. I am aware that at present you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu are in judicial custody. However, **considering your conscious involvement in illegal trafficking of drugs and psychotropic substances in a repeated manner to the detriment of the society, you have high propensity to be involved in the prejudicial activities in future on being released on bail.**

4. In view of the facts mentioned above, I have no hesitation in arriving at the conclusion that you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu through your above acts engaged yourself in prejudicial activities of illicit traffic of narcotics and psychotropic substances, which poses serious threat to the health and welfare not only to the citizens of this country but to every citizen in the world, besides deleterious effect on the national economy. The offences committed by you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu are so interlinked and continuous in character and are of such nature that these affect security and health of the nation. The grievous nature and gravity of offences committed by you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu in a well-planned manner clearly establishes your continued propensity and inclination to engage in such acts of prejudicial activities. Considering the facts of the present case mentioned in foregoing paras, I have no hesitation in arriving at the conclusion that there is ample opportunity for Rizauddin @ Riyajuddin @ Riyajudden @ Pintu i.e. you to repeat the above serious prejudicial acts. Hence, I am satisfied that in the meantime you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu should be immobilized and there is a need to prevent you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu from engaging in such illicit traffic of narcotic drug and psychotropic substances in future by



detention under section 3(1) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988.

5. In view of the overwhelming evidences discussed in foregoing paras, detailing how you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu have indulged in organizing the illicit trafficking of Narcotic Drugs and Psychotropic substances as well as have a high propensity to engage in this illicit activity, it is conclusively felt that if you are not detained under section 3(1) of the PITNDPS Act, 1988, you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu would continue to so engage yourself in possessing, purchase, sale, transportation, storage, use of narcotics and psychotropic substances illegally and handling the above activities, organizing directly in the above activities and conspiring in furtherance of above activities which amount to illicit trafficking of psychotropic substances under section 2(e) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988 in future also. I am, therefore, satisfied that there is full justification to detain you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 with a view to preventing you i.e. Rizauddin @ Riyajuddin @ Riyajudden @ Pintu from engaging in above illicit traffic of narcotics and psychotropic substances specified under schedule to the NDPS Act, 1985.

6. Considering the magnitude of the operation, the chronicle sequence of events, the well-organized manner in which such pre-judicial activities have been carried on, the nature and gravity of the offence, the consequential extent of investigation involved including scanning/examination of papers, formation of grounds, I am satisfied that the nexus between the dates of incident and passing of the Detention Order as well as object of your detention has been well maintained.”

(emphasis supplied)

SUBMISSIONS ON BEHALF OF THE PETITIONER

5. i) Learned counsel for the Petitioner has challenged the impugned detention orders dated 31st August, 2023 and 29th November, 2023 and submits that since the petitioner was already in judicial custody in case FIR no. 253/2021 since 18th June, 2021; there was no proximate or live link between the alleged prejudicial activities of the Petitioner and the issuance of



the detention order. It is pointed out that the Petitioner who was already serving a sentence of 15 years in case FIR no. 200/2012 was released on bail after suspension of his sentence by a Learned Single Judge of this Court in criminal appeal bearing no. CRL. A. 398/2016, which is presently pending. It is submitted that since the Petitioner already stands convicted in an NDPS case, there is no reasonable possibility of him being released on bail in the subsequent FIR, which is pending trial. It is submitted that it is the admitted case of the Respondents that the application seeking bail by the Petitioner in case FIR no. 253/2021 was rejected by the Learned Special Court (NDPS Act) on 29th August, 2023.

5. ii) It is further submitted that in the aforesaid pending trial, the Petitioner was released on interim bail twice, i.e., by the Learned Special Court (NDPS Act) *vide* order dated 21st May, 2022 for a period of 10 days as well as by the Hon'ble High Court *vide* order dated 10th January, 2023 for a period 6 weeks respectively and no material has been brought on record to demonstrate that the Petitioner has misused the liberty granted to him during the period of interim bail or indulged in any prejudicial activities in order to come to a conclusion that the Petitioner shall continue with the same activities.

5. iii) It is further contended by the Learned counsel for the Petitioner that while the Petitioner was on interim bail in case FIR no. 200/2012, he made a complaint against three officials of Narcotics Cell, Crime Branch (Delhi) including SI Sunil Jain (Seizing Officer of the said case), Head Constable Om Prakash and Constable Kheta Ram before the Anti-Corruption Branch (Delhi) for his false implication in the said FIR. It is pointed out that he had provided telephonic conversation recorded by him on his mobile phone, on the basis of which FIR no. 49/2014 was registered under Section 7 of the Prevention of



Corruption Act, 1988 (hereinafter referred to as 'PC Act') by PS Anti-Corruption Branch (Delhi) against the aforesaid police officials, which remained under investigation for a long time. It is pointed out that on the Petitioner's conviction in FIR no. 200/2012, he was taken to custody on 12th February, 2016 and therefore, he could not pursue the said FIR against the aforesaid officials. It is submitted that in the absence of his assistance, a closure report was filed by the concerned Investigating Officer against the aforesaid officials in the said FIR before the Learned Special Judge (PC Act), Rouse Avenue, District Courts, Delhi which was then accepted *vide* order dated 29th August, 2020. The contention of the learned counsel for the Petitioner is that this fact was not brought on record to the knowledge of the Detaining Authority (Respondent nos. 1 and 2) by the Sponsoring Authority although the order dated 29th August, 2020 passed in the closure report by the Special Judge (PC Act) was part of the application filed on behalf of the Petitioner for his release on bail before the Learned Trial Court as well as the Hon'ble High Court, being bail application no. 1420/2023. It is submitted that the Sponsoring Authority has not provided to the Detaining Authority (Respondent no. 1) the said material which demonstrated his enmity with the Narcotics Cell, Crime Branch (Delhi) and therefore, the impugned detention orders have been passed without application of mind.

5. iv) It is further argued that in the list of Relied upon Documents ('RUDs') in respect of the detention order dated 31st August, 2023, Respondent no. 1 has mentioned in serial nos. 1,2,3,5,6,7,9,10,14,15,16, 17,18,19,20,21,22,23 (English version) various documents but such documents were not available in the list of documents (Hindi version), as such the Petitioner could not make effective representation before Respondent no. 1 and on account of the same,



the impugned detention orders are liable to be quashed as the Petitioner is a semi-literate person and is able to read and write Hindi with great difficulty and can only sign in Hindi.

5. v) Reliance is placed by the Learned Counsel for the Petitioner on the following judgements:

- i) **Gurminder Singh @ Lalli vs. Union of India and Others**
1999 SCC OnLine Del 85
- ii) **Sharafat Sheikh @ Md. Ayub vs. Union of India and**
Another 2022:DHC:3401-DB

SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 1 & 2

6. i) Learned counsel appearing on behalf of Respondent nos. 1 and 2 has drawn the attention of this Court to the ‘grounds of detention’ annexed with the impugned order of detention dated 31st August, 2023 to demonstrate that the Petitioner continuously engaged in the prejudicial activities pertaining to illicit traffic in narcotics and psychotropic substances, which pose a serious threat to the health and welfare of not only the citizens of this country but to the citizen of every country in the world besides having deleterious effects on the national economy. The grievous nature and gravity of the offences committed by the Petitioner in a well-planned manner clearly establishes his continued propensity and inclination to engage in such prejudicial activities. It is submitted that the past antecedents of the Petitioner reflect that he has a high propensity to engage in such kind of illicit activities in future as well, therefore, it was conclusively felt that if the Petitioner is not detained under the PITNDPS Act, he would continue to engage in prejudicial activities. Learned counsel for the Respondent submitted that the proximate link with the prejudicial activities of the Petitioner and the detention order survives on



account of his previous involvements as detailed in the order of detention.

6. ii) It is submitted on behalf of the learned counsel for the Respondent that the objective of PITNDPS Act was to prevent persons of such propensity to continue with their prejudicial activities despite the fact that there are stringent conditions in the NDPS Act itself for bail as well as quantum of punishments. It is submitted that unlike the Customs Act, 1962 (hereinafter referred to as ‘Customs Act’) wherein the accused can easily avail bail, the provisions of the NDPS Act are stringent and despite the same, the PITNDPS Act was enacted to ensure that persons having propensity to commit offences under NDPS Act should be detained. In view of the above, it is submitted that the present petition should be dismissed.

ANALYSIS AND FINDINGS

7. Heard the learned counsel for the parties and perused the records.

8. So far as the contention with regard to non-supply of documents in Hindi raised by the learned counsel for the Petitioner is concerned, it is pertinent to note that during the course of the hearing, the original records were produced before this Court and after perusal of the same, *vide* order dated 2nd September, 2024 the following was recorded:

“2. Ld. CGSC’s office has handed over the original records containing the endorsements to the effect that all English and Hindi documents have been supplied to the Petitioner. The same has been perused.

3. Insofar as compilation of documents in Hindi and English is concerned, the objection which was raised by the Ld. Counsel for the Petitioner was that there were two sets of compilations which were supplied to the Petitioner having separate indices i.e., one in English and one in Hindi. It is further stated that the Hindi index was the true translated copy of the English index. The English index and the Hindi index were identical. However, some of the documents were not attached in the Hindi compilation and were attached only in the English compilation.



4. *This Court has perused the full compilation of documents which were given to the Petitioner and it is clear from a perusal of the same that the only documents which were not attached with the Hindi compilation are those which were otherwise in Hindi and were attached in the English compilation.*”

After perusal of the record, it is reflected that the documents which are not in the compilation with the Hindi index are only those which are originally in Hindi and have been supplied in the compilation having the English index. Thus, insofar as the present contention is concerned, the same is rejected.

9. The submissions on behalf of Respondent nos. 1 and 2 with respect to the object of the PITNDPS Act, is not in dispute. However, the detention order should be in compliance with the procedural safeguards provided in law. In **Ameena Begum vs. State of Telangana and Others (2023) 9 SCC 587**, the Hon’ble Supreme Court while referring to various judgments with respect to judicial reviewability of a detention order, observed and held as under:

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

“7. There is also no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of clauses (i) to (iii) of Section 3(1)(a) and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed. Similarly, if some of the ground supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making a representation, that again may introduce a serious infirmity in the order of his detention. If, however, the grounds on which the order



of detention proceeds are relevant and germane to the matters which fall to be considered under Section 3(1)(a), it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not reasonably based on any of the said grounds.

8. It is, however, necessary to emphasise in this connection that though the satisfaction of the detaining authority contemplated by Section 3(1)(a) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention on the ground of mala fides and in support of the said plea urge that along with other facts which show mala fides, the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner and in support of the plea of mala fides that this question can become justiciable; otherwise the reasonableness or propriety of the said satisfaction contemplated by Section 3(1)(a) cannot be questioned before the Courts.”

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

“5. ... Where large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and make out a prima facie case in support of those grounds before a rule is issued or to hold that the detaining authority should not be liable to do any thing more than just meet the specific grounds of challenge put forward by the petitioner in the petition. The burden of showing that the detention is in



accordance with the procedure established by law has always been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detenu even though the detention may have been valid till the breach occurred. The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

(emphasis supplied)

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

23. *Apart from the aforesaid decisions, multiple decisions have been rendered by this Court over the years which provide suitable guidance*



to us to complete the present exercise; however, we wish to conclude this discussion by referring to one decision of this Court delivered [Rekha v. State of T.N., (2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] little in excess of a decade back by a Bench of 3 Judges.

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

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

* * *

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

25. There could be little doubt with the thought process that although



the executive would pass an order under the preventive detention laws as a preventive or a precautionary measure, its effect viewed strictly from the standpoint of the detenu is simply and plainly punitive. Significantly, an order of detention is not relatable to an alleged commission of offence which a court is seized of and, thus, the conduct of the accused complained of, is yet to be found blameworthy; on the contrary, since it relates to an anticipated offence based on past conduct, the detenu could well feel that he is at the receiving end of a subjective satisfaction of the executive despite he not being proved to be on the wrong side of the law on any previous occasion. If someone loses his liberty and lands up in prison not having a semblance of a chance to resist or protest, the very circumstance of being put behind bars for such period as specified in the order of detention based on an anticipation that an offence is likely to be committed by him seems to be an aspect which does not sync with the norms and ethos of our very own Constitution and the decisions of this Court in which the concept of “life” has been explained in such a manner that “life” has been infused in the letters of Article 21 (see Common Cause v. Union of India [Common Cause v. Union of India, (1999) 6 SCC 667 : 1999 SCC (Cri) 1196]). Nonetheless, so long clause (3) of Article 22 of the Constitution itself authorises detention as a preventive measure, there can be no two opinions that none can take exception to such a measure being adopted and it is only a limited judicial review by the constitutional courts that can be urged by an aggrieved detenu wherefor too, in examining challenges to orders of preventive detention, the Courts would be loath to interfere with or substitute their own reasoning for the subjective satisfaction arrived at by the detaining authority. Since the object of a preventive detention law is not punitive but preventive and precautionary, ordinarily it is best left to the discretion of the detaining authority.”

(emphasis supplied)

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

10. In the present case, it is an admitted fact that the Petitioner was arrested in the fourth FIR being FIR no. 253/2021 on 18th June, 2021. The Petitioner was arrested in this case after his release by way of suspension of sentence in case FIR No. 200/2012 on 31st July, 2020.



Other admitted position is that the fact that the Petitioner stands convicted in FIR 200/2021, under Section 21(c) of the NDPS Act for possession of commercial quantity of 275 grams of heroin. Similarly, in the fourth FIR, which is pending trial, i.e., FIR no. 253/2021, the Petitioner has again been charged for possession as well as conspiracy with respect to commercial quantity under Sections 21(c)/25/29 of the NDPS Act.

11. In these circumstances, in view of the provision of section 37 of the NDPS Act, likelihood of the present Petitioner being released on bail had to be dealt with by the Detaining Authority. Section 37 of the NDPS Act reads as under:

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

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

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

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

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

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

12. The Detaining Authority, i.e., Respondent no. 1 in the 'grounds of detention', although records the fact that the Petitioner is in judicial custody;



however, does not record that there are reasonable grounds to believe that the Petitioner is likely to be released on bail enabling him to engage in prejudicial activities. Relevant portion of the detention order is as under:

“3. I am aware that at present you i.e. Rizauddin @ Riyajudden @ Pintu are in judicial custody. However, considering your conscious involvement in illegal trafficking of drugs and psychotropic substances in a repeated manner to the detriment of the society, you have high propensity to be involved in the prejudicial activities in future on being released on bail.”

13. The Hon’ble Supreme Court in **N. Meera Rani vs. Government of Tamil Nadu and Another (1989) 4 SCC 418**, in respect to the aforementioned aspect, held as under:

*“11. The contents of the detention order and its accompanying annexure clearly show that the detenu was already in custody in connection with the Bank dacoity at the time of making the detention order. The fact that the detenu's application for grant of bail in the dacoity case had been rejected on 22-8-1988 and he was remanded to custody for the offence of bank dacoity punishable under Section 397 IPC is also evident from the record. The detention order came to be made on 7-9-1988 on the above grounds in these circumstances. In the detention order the detaining authority recorded its satisfaction that the detenu's preventive detention was necessary to prevent him from indulging in activities prejudicial to maintenance of public order in which he would indulge if he was allowed to remain at large. The above quoted paras 18 and 19 of the Annexure to the detention order clearly disclose the factual position. **However, it may be pointed out that the detention order read along with its annexure nowhere indicates that the detaining authority apprehended the likelihood of the detenu being released on bail in the dacoity case and, therefore, considered the detention order necessary.** On the contrary, its contents, particularly those of the above quoted para 18 clearly mention that the detenu had been remanded to custody for being proceeded against in due course and even though his name was not mentioned in the FIR as one of the dacoits who participated in the commission of the armed Bank dacoity yet the documents clearly revealed that the detenu was an active participant in the conspiracy*



to loot the bank in furtherance of which the dacoity was committed; and that considerable booty of that crime including weapons, bombs and hand grenades were recovered from his possession pursuant to the detenu's confession made after his arrest. **These averments in the detention order indicate the satisfaction of the detaining authority that in its view there was ample material to prove the detenu's active participation in the crime and sharing the booty for which offence he had already been taken into custody. This view of the detaining authority negatives the impression of likelihood of detenu being released on bail.**

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

22. **We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he**



must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position.

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

(emphasis supplied)

14. Learned Division Bench of this Court in **Gurminder Singh @ Lalli** (*supra*) in a similar situation held as under:

“6. From the above it is apparent that the detaining authority was conscious of the fact that the petitioner was in custody, but it failed to point out any material on the basis of which it was led to believe that there was a likelihood of the bail being granted to the petitioner. The inference of the detaining authority does not seem to be grounded on any cogent material. It is important to note that the petitioner is alleged to have committed offences under Sections 21 and 23 of the Narcotic Drugs and Psychotropic Substances Act. It is also clear from the reading of the grounds of detention that the D.R.I. claims



to have seized 4.800 kgs. of heroine from the car which was driven by the petitioner. Ordinarily, when such a huge quantity of heroine is alleged to have been recovered from the custody of a person, there is hardly any possibility of his being released on bail in view of the provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act.

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

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

To the same effect are the decisions of the Supreme Court in *Suraj Pal Sahu v. State of Maharashtra and others*, (1986) 4 S.C.C. 378; *Smt. Shashi Aggarwal v. State of U.P. and Others*, (1988) 1 S.C.C. 436; *N. Meera Rani v. Government of Tamil Nadu and Another*, (1989) 4 S.C.C. 418; and *Anand Prakash v. State of U.P. and Others*, (1990) 1 S.C.C. 291.

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

(emphasis supplied)

15. In the present case, it is an admitted fact that the application for regular bail in the fourth FIR being FIR no. 253/2021, filed by the Petitioner, already stands dismissed on 29th August, 2023 by the Learned Special Judge (NDPS Act), Rohini Courts, Delhi and considering the circumstances in which the present Petitioner is facing trial under Section 21(c) of the NDPS Act, there



is no subjective satisfaction of the Detaining Authority with regard to reasonable grounds to believe that the Petitioner is likely to be released on bail. It is also pertinent to note that the present detention order has been passed after the period of 2 years and 3 months (approximately) from the date of his arrest, i.e., 18th June, 2021 in the fourth FIR. There is again no explanation given with regard to the Detaining Authority's order being passed after a gap of 2 years and 3 months (approximately).

16. The present Petitioner in his petition has raised very specific ground(s), which is reproduced as under:

“C. That it is submitted that the petitioner/detenué has long drawn enmity with the police in general and with the police of Narcotic Cell, Crime Branch in particulars.

It is submitted. that The petitioner/detenué was initially arrested in FIR No. 631/2003, dated 02.11.2003, u/s 21/61/85 NDPS Act, PS Kotwali by the officers of Delhi Police for alleged recovery of 8 grams of brown sugar. The petitioner/detenué faced the rigour of trial and ultimately he was acquitted by the Special Judge Delhi vide order dated 03.11.2006.

After a lapse of about 6 years, the petitioner/detenué was again arrested in another false FIR No. 80/2009 dt 30.05.2009, u/s 21 NDPS Act, PS Narcotics Cell, Crime Branch, Delhi for alleged recovery of 100 gms of brown sugar and after completion of trial, the Ld. Special Judge, Karkardooma Courts convicted and sentence him for 3 months and 15 days vide order dated 06.01.2011.

The Petitioner/detenué was again falsely arrested by the police of same PS- Narcotics Cell, Crime Branch in FIR No. 200/2012 dt. 24.07.2012, u/s 21 NDPS Act, PS, PS Narcotics Cell, Crime Branch, Delhi for alleged recovery of 275 gms of heroin.

It is relevant to mention herein that while the petitioner/detenué was on interim bail in the above false FIR No. 200/2012, on 13.02.2013 he made a complaint against 3 Police Officials of Narcotics Cell, Crime Branch including SI Sunil Jain (Seizing Officer), of above case FIR No. 200/2012, PS Narcotics Cell, Crime Branch, Delhi, HC Om Prakash and Ct. Kheta Ram before the Anti-Corruption Branch, Delhi against his false implication in the above FIR No. 200/2012, which was registered against the petitioner/



detenue with a view to extract money from him on the pretext that he will be again implicated in a false case and the petitioner/detenue against their highhandedness also provided the telephonic conversation recorded by him on his mobile phone and on the basis of complaint and material provided by the petitioner/detenue a FIR No. 49/2014 was registered u/s 7 PC Act by PS- Anti Corruption Branch against the above police officials, which remained under investigations for a quite long time and during this period investigation changed hands and after his conviction In FIR No. 200/2012, on 12.02.2016 he was taken into custody as such he could not properly assist the investigating officer of Anticorruption Branch, Delhi and was not able to provide necessary documents/ Gazettes to the investigating officer and as such in absence of proper assistance on the part of petitioner/detenue the closure report was finally accepted by the Ld. Special Judge (Prevention of Corruption Act), Rouse Avenue, District Courts Delhi vide order dated 29.08.2020. Hereto annexed and marked as Annexure-P-2 is the copy of order dated 29.08.2020.

It is submitted that this fact was not brought in the knowledge the detaining authority by the sponsoring authority though the order dated 29.08.2020 passed on closure report by the special Judge, which was part of the application filed on behalf the petitioner/detenue for his release on bail before the Ld. Trial Court as well as before the Hon'ble High Court of Delhi being bail application No. 1420/2023 as such the Respondent No. 1 has been kept in dark by the sponsoring authority about his enmity with the police and the detention order dt 31.08.2022 detaining the petitioner/detenue has been passed without proper application of mind as such the same is liable to be quashed.

G. That the sponsoring authority did not place all the documents and court orders as placed in the judicial record of all the 4 FIRs before this authority for consideration of passing detention order, rather the sponsoring authority chose to file only selected documents of file with obvious reason to bias Respondent No. 1. Such act of the sponsoring authority has clearly debarred the Respondent No. 1 to peruse and form opinion for passing detention order against the Petitioner/detenue and hence, the detention order is liable to be quashed.”



17. In the affidavit filed on behalf of Respondents nos. 1 and 2, the reply to the aforesaid ground(s) is reproduced as under:

“21. That the contents of ground C of the writ petitioner under reply are denied save and except which is a matter of record. It is submitted that the averments made in the Ground under reply are misconceived and untenable in lights of facts and law involved. It is submitted that the arrest/apprehension of the Petitioner mentioned in the Ground under reply were based on actionable information received against the Petitioner and the officials have duly abided by the law of the land as such no enmity exists between the Petitioner and the officials involved. It is pertinent to mention herein that the Petitioner was arrested in case bearing FIR No 80/2009 u/s 21 NDPS Act, PS Crime Branch Delhi and brown sugar weighing 100 grams was recovered from him and thereby he was convicted and sentenced for 3 months and 15 days vide order dt 06.01.2011 passed by the Ld. Special judge, Karkardooma Courts. Thereafter the Petitioner was arrested in another case bearing FIR. No 200/12 u/s 21 NDPS Act, by the Narcotics Cell, PS Crime Branch Delhi whereby heroin weighing 275 grams was recovered and the Petitioner was convicted and sentenced to rigorous imprisonment for a period of 15 years along with imposition of fine of Rs. 1,50,000 - vide order dc 12.02.2016 by the Ld. Special judge, NDPS, Tis Hazar Courts.

22. That the contents of ground D to I of the writ petitioner under reply are false, misleading and denied. It is submitted that Grounds of Detention along-with documents relied upon were served to the detenu on 07.09.2023. The detenu was also provided with a Hindi translation of documents which were originally in English Language under proper acknowledgement signed by the Petitioner himself. It is also submitted that no Hindi translation of documents was provided which were originally in Hindi. It is further submitted that all the documents i.e. Detention Order, Grounds of Detention and Relied upon Documents were provided to the detenu under proper acknowledgement. The detenu himself has signed those documents in Hindi and has acknowledged that he has seen, read and understood the contents of all the documents. It is also submitted that the subjective satisfaction of the detaining authority is elaborated in the grounds of detention. Therefore, sensing the magnitude of offences being committed by the detenu with utter disregard to the law of land, the detaining authority was convinced and issued the impugned order after examining all the documents. material facts and records placed



before it. The content of para 37 of this reply may be read as part and parcel of this para and the same is not being repeated for the sake of brevity.”

18. It is further noted that in the Relied upon Documents (‘RUDs’) filed along with the ‘grounds of detention’, the bail order dated 29th August, 2023 has been supplied, however, the application for seeking bail as mentioned in the aforesaid grounds have not been supplied. There is no explanation with regard to non-supplying of the same as well. It is further noted that there is no explanation with regard to the specific ground taken by the Petitioner in respect of the FIR registered at his instance, against the officers of the Sponsoring Authority. It is further noted that this specific ground was taken by the Petitioner in his representation dated 5th October 2023 to Respondent No. 1 as well.

19. The Hon’ble Supreme Court in **Ashadevi wife of Gopal Ghermal Mehta (detenu) vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat (1979) 1 SCC 222**, observed and held as under:

“6. It is well-settled that the subjective satisfaction requisite on the part of the detaining authority, the formation of which is a condition precedent to the passing of the detention order will get vitiated if material or vital facts which would have a bearing on the issue and would influence the mind of the detaining authority one way or the other are ignored or not considered by the detaining authority before issuing the detention order. In Sk. Nizamuddin v. State of West Bengal [(1975) 3 SCC 395 : 1975 SCC (Cri) 21 : AIR 1974 SC 2353] the order of detention was made on September 10, 1973 under Section 3(2)(a) of MISA based on the subjective satisfaction of the District Magistrate that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community and this subjective satisfaction, according to the grounds of detention furnished to the petitioner, was founded on a solitary incident of theft of aluminium wire alleged to have been committed by the petitioner



on April 14, 1973. In respect of this incident of theft a criminal case was filed *inter alia* against the petitioner in the Court of the Sub-Divisional Magistrate, Asansol, but the criminal case was ultimately dropped as witnesses were not willing to come forward to give evidence for fear of danger to their life and the petitioner was discharged. It appeared clear on record that the history-sheet of the petitioner which was before the District Magistrate when he made the order of detention did not make any reference to the criminal case launched against the petitioner, much less to the fact that the prosecution had been dropped or the date when the petitioner was discharged from that case. In connection with this aspect this Court observed as follows:

“We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. That circumstance might quite possibly have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate.”

*It is true that the detention order in that case was ultimately set aside on other grounds but the observations are quite significant. These observations were approved by this Court in Suresh Mahato v. District Magistrate, Burdwan [(1975) 3 SCC 554 : 1975 SCC (Cri) 120 : AIR 1975 SC 728] . **The principle that could be clearly deduced from the above observations is that if material or vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal. After all the detaining authority must exercise due care and caution and act fairly and***



justly in exercising the power of detention and if taking into account matters extraneous to the scope and purpose of the statute vitiates the subjective satisfaction and renders the detention order invalid then failure to take into consideration the most material or vital facts likely to influence the mind of the authority one way or the other would equally vitiate the subjective satisfaction and invalidate the detention order.”

(emphasis supplied)

20. The Hon’ble Supreme Court in **State of U.P. vs. Kamal Kishore Saini (1988) 1 SCC 287** observed that non-supply of relevant documents by the Detaining Authority would vitiate the order of detention by observing as under:

“7. Against this order the instant appeal has been filed on special leave. The Learned Counsel appearing on behalf of the appellant-State, did not question before us the validity and legality of the finding of the High Court insofar as it relates to the non-supply of the relevant and vital materials, that is, the statements recorded under Section 161 of the Code of Criminal Procedure so far as Ground 1 of the order of detention is concerned, to the detenus and also of the non-placement of the application made by the co-accused before the Judicial Magistrate to the effect that the detenus were falsely implicated in the said case as Vijay Pratap Singh was fired at by some unknown assailants and this fact was also mentioned in the bail application made by the detenus before the court and the police report submitted thereon. The only challenge made on behalf of the appellant is to the finding of the High Court to the effect that the incidents referred to in Grounds 1 and 2 created only law and order problem and it did not affect public order. In other words, the even tempo of the life of the community has not at all been affected by the said incident. It is relevant to mention in this connection that the names of the detenus were not mentioned in the FIR in respect of incident in Ground 1 and the basis of their complicity came to be known only in the material found in the course of the investigation. The detenus were supplied only with the copy of the FIR and also extract of the charge-sheet and not the statements under Section 161 of the Code of Criminal Procedure. It is undisputed that the charge-sheet was subsequently submitted in the court and the respondents



were furnished with the copies of the statements recorded under Section 161 of CrPC long after the passing of the order of detention communicating the grounds of detention. Similarly, with regard to Ground 3, the application of the co-accused as well as the statement made in the bail application filed on behalf of the detenus alleging that they had been falsely implicated in the same case and the police report thereon, were not produced before the detaining authority before passing of the detention order. The High Court, therefore, was justified in holding that the assertion made in the return that even if the material had been placed before the detaining authority, he would not have changed the subjective satisfaction as this has never been accepted as a correct proposition of law. It is incumbent to place all the vital materials before the detaining authority to enable him to come to a subjective satisfaction as to the passing of the order of detention as mandatorily required under the Act. This finding of the High Court is quite in accordance with the decisions of this Court in the case of Asha Devi v. K. Shivraj [(1979) 1 SCC 222 : 1979 SCC (Cri) 262] and S. Gurdip Singh v. Union of India [(1981) 1 SCC 419 : 1981 SCC (Cri) 168 : AIR 1981 SC 362].

(emphasis supplied)

21. Again, the Hon'ble Supreme Court in **Sushanta Kumar Banik vs. State of Tripura and Others 2022 SCC OnLine SC 1333** observed as under:

“27. From the above decisions, it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order.”

(emphasis supplied)

22. This fact of registration of FIR at the instance of the present Petitioner against the officials of the Narcotics Cell, Crime Branch (Delhi) was well within the knowledge of the Sponsoring Authority. It was incumbent upon the



Sponsoring Authority to place the same on record before the Detaining Authority for its perusal and due consideration. The fact that an FIR registered against the officials of the Sponsoring Authority was duly investigated would have been a factor which could have weighed the decision of the Detaining Authority one way or the other while issuing the detention order(s). In the opinion of this Court, non-placing of this vital information before the Detaining Authority would vitiate the order of detention.

23. In view of the above, the detention orders dated 31st August, 2023 and 29th November, 2023 are hereby set aside.

24. The present petition is allowed and disposed of accordingly.

25. Pending application(s), if any, also stand disposed of.

26. It is made clear that observation(s) made are with respect to the present petition only and not with respect to merits of any cases pending trial against the Petitioner.

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

AMIT SHARMA, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 06, 2024/sn