HIGH COURT OF DELHI

BENCH : HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

Date of Decision: April 15, 2024

W.P.(CRL) 224/2023

SHAHID KHAN @ CHOTE PRADHAN ... Petitioner

VERSUS

UNION OF INDIA & ANR. ... Respondent

Legislation:

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 (PITNDPS Act)

Subject: Petition challenging the detention order under the PITNDPS Act and seeking release from preventive detention.

Headnotes:

Detention and Judicial Review – Detention Order Quashed - Detention of Shahid Khan under PITNDPS Act challenged due to lack of compelling evidence of imminent release and re-engagement in criminal activities - Despite substantial quantity of heroin recovery, absence of imminent release evidence undermines detention validity - Detention confirmed without sufficient grounds, quashed by the court [Paras 1-27].

Judicial Custody and Preventive Detention - Challenge based on the argument that preventive detention while under judicial custody was unjustified without clear, imminent risk of release and re-offence - High Court emphasizes necessity of specific imminent risk for preventive detention validity [Paras 8-18, 27].

Application of Judicial Mind - Critique of detaining authority's failure to demonstrate likelihood of petitioner’s release from custody and potential

future criminal conduct - High Court finds no substantial reason provided for detention, indicating procedural oversight [Paras 13-17, 19-27].

Legal Precedents and Detention Validity - Analysis of various precedents on preventive detention, particularly concerning individuals already in custody - Emphasis on the need for proximity in activities leading to detention and actual conduct threatening public order or state security [Paras 15-18, 21].

Decision: Petition allowed – Detention order dated 27.05.2022 and subsequent confirmation order dated 12.08.2022 under the PITNDPS Act quashed.

Referred Cases:

- S. Amutha Vs. The Govt. of Tamil Nadu & Ors. (2022) 2 CriCC 755
- Pramod Singla Vs. Union of India & Ors. 2023 SCC OnLine SC 374
- Sushanta Kumar Banik Vs. State of Tripura & Ors. Crl. Appeal No. 1708/2022
- T.A. Abdul Rahaman Vs. State of Kerala & Others (1989) 4 SCC 741
- Dharmendra Suganchand Chelawat & Anr. Vs. UOI & Ors. (1990) Cri.L.J. 1232
- Union of India Vs. Dimple Happy Dhakad (2019) 20 SCC 609
- Union of India v. Ankit Ashok Jalan 2020 16 SCC 185
- Taimoor Khan Vs. Union of India and Another 2024 SCC OnLine Del 416
- Dharmendra Suganchand Chelawat and Another v. Union of India & Others (1990) Cri.L.J. 1232

JUDGMENT

MANOJ JAIN, J

1. Petitioner has sought quashing of detention order dated 27.05.2022[1] and also consequent confirmation order dated 12.08.2022[2] and has prayed for his release from the preventive detention passed under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act 1988 (in short PITNDPS Act).

2. Petitioner has sought revocation of the above impugned orders on the ground that these have been passed in a perfunctory manner and there is nothing to

[1] Detention Order dated 27.05.2022 passed by the Joint Secretary, Govt. of India under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance (PITNDPS) Act 1988 vide Detention Order No. U-11011/06/22-PITNDPS

[2] Order dated 12.08.2022 passed by the Joint Secretary, Govt. of India under Section 9 (f) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance (PITNDPS) Act 1988 vide Detention Order No. U-11012/06/22-PITNDPS

indicate that the concerned authority had recorded its due satisfaction indicating necessity of detaining him. It is claimed that since petitioner was already in judicial custody for substantial period and since there was no material to show that he had indulged in any prejudicial activity while under such incarceration, there was no reason or occasion to have passed the detention order. It is also claimed that there was nothing before the concerned authority to suggest that there was any likelihood of his getting released from the custody or suggesting propensity on his part to engage in illicit traffic in narcotic drugs and psychotropic substance once he was to be released. Reliance has been placed on *S. Amutha Vs. The Govt. of Tamil Nadu & Ors.* (2022) 2 CriCC 755; *Pramod Singla Vs. Union of India & Ors.* 2023 SCC OnLine SC 374; *Sushanta Kumar Banik Vs. State of Tripura* & Ors. Crl. Appeal No. 1708/2022; *Sama Aruna Vs. State of Telangana & Anr.* (2018) 12 SCC 150; *T.A. Abdul Rahaman Vs. State of Kerala & Others* (1989) 4 SCC 741; *Dharmendra Suganchand Chelawat & Anr. Vs. UOI & Ors.* (1990) Cri.L.J. 1232; *Rashid Kapadia Vs. Medha Gadgil & Ors.* (2012) 11 SCC 745; *Ramlal Ratanlal Anjana Vs. UOI & Ors.* 2002 SCC OnLine Bom 996; *Nutan J. Patel (Ms.) Vs. S.V. Prasad & Anr.* (1996) 2 SCC 315; *Amritlal & Ors. Vs. Union Govt. through Secretary Ministry of Finance & Ors.* (2001) 1 SCC 341, *Dharampal Verma Vs. UOI & Ors.* 2002 SCC OnLine Del 1186; *Kamleshkumar Ishwardas Patel Vs. UOI & Ors.* 1995 4 SCC 51 and *Bachan Singh Vs. UOI & Ors.* 1990 SCC OnLine Del 245.

3. Let us note the facts germane to the disposal of present writ petition.

4. The Sponsoring Authority is Crime Branch (Narcotics), Delhi. Such Sponsoring Authority brought it to the notice of the concerned authority under PITNDPS Act about the involvement of the petitioner in three cases.

5. Details of these three cases are as under: -

S. No.	FIR No.	Under Section	Police Station
1	253/2021	21/25/29 NDPS Act	Crime Branch, Delhi
2	159/2021	21/25/29 NDPS Act	Crime Branch, Delhi
3	69/2021	21/25/29 NDPS Act	Crime Branch, Delhi

6. As far as first case i.e. FIR No. 253/2021 is concerned, petitioner along with his nephew was found in conscious possession of 20 kgs. heroin and they both were arrested on 18.08.2021.

Undoubtedly, it's quite a substantial quantity as the commercial quantity starts from 250 grams onwards.

7. Even as per the facts mentioned in the detention order, there was no conscious recovery of any contraband from the possession of the petitioner in relation to the second case i.e. FIR No. 159/2021. In said case, the concerned investigating agency had apprehended one person, namely, Hukum Chand @ Titu and from his possession contraband i.e. heroin was recovered and during course of the investigation, he disclosed that he had purchased the same from one Fizula @ Rohit. Hukum Chand was arrested on 16.08.2021 and at his instance, Fizula was arrested on 18.08.2021. There was recovery from the possession of accused Fizula also and in his supplementary disclosure, he named accused Shahid Khan (petitioner herein) as the person who had supplied him such contraband. On the basis of such disclosure statement, petitioner was arrested. Fact remains that his arrest is based on disclosure of his co-accused and there is no conscious recovery from him.

8. Situation is no different in the third case i.e. FIR No. 69/2021 as in that case also, there was no recovery of any contraband from the petitioner herein. His co-accused had been arrested earlier on 22.04.2021 and on the basis of disclosure made by him, the police arrested him (petitioner herein) as a co-conspirator.

9. As per the contents of detention order, the charge-sheets, in all the aforesaid three cases, had already been submitted before the concerned Court and the petitioner was in custody in all such three matters.

10. Detaining authority after giving brief details of the aforesaid three cases recorded as under: -

"…….

2. *As per the above mentioned facts and circumstances, it is proved that you Shahid Khan @ Chote Pradhan were involved in many NDPS and drug trafficking cases and you are a habitual offender.*

3. *That I am aware that in present you Shahid Khan @ Chote Pradhan is in judicial custody even then your above acts engaged yourself in prejudicial activities of Illicit Traffic of Narcotic & Psychotropic Substance which poses serious threat to the citizen of this country, in*

case you are released on bail you will again involve in prejudicial activities of NDPS Act.

4. *In view of the facts mentioned herein above, I have no hesitation in arriving at the conclusion that you Shahid Khan @ Chote Pradhan through your above acts engaged in yourself in prejudicial activities of Illicit Traffic of Narcotics & Psychotropic Substance, 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 1.e. Shahid Khan 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. Shahid Khan @ Chote Pradhan in a well planned manner clearly establishes your continued propensity and inclination to engage in such acts of the prejudicial activities. Considering the facts of the present case mentioned in the foregoing paras. I have no hesitation in arriving at the conclusion that there is ample opportunity for Shahid Khan @ Chote Pradhan i.e. you to repeat the above serious prejudicial acts. Hence, I am satisfied that in the meantime you i.e. Shahid Khan @ Chote Pradhan should be immobilized and there is a need to prevent you i.e. Shahid Khan@ Chote Pradhan from engaging in such illicit traffic of narcotic drug and psychotropic substance in future by detention under section 3(1) of the Prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substance (PITNDPS) Act 1988.*

5. *In view of the overwhelming evidences discussed in foregoing paras, detailing how you i.e. Shahid Khan @ Chote Pradhan have indulged in organizing the illicit trafficking of Narcotic Drugs & Psychotropic Substance 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. Shahid Khan @ Chote Pradhan would continue to so engage yourself in possessing, purchase, sale, transportation, storage, use of narcotics and psychotropic substance 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 Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substance (PITNDPS) Act 1988 in future also. I am, therefore, satisfied that there is full justification to detain you i.e. Shahid Khan @ Chote Pradhan under section 3(1) of Prevention of*
Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act 1988 with a view to preventing you i.e. Shahid Khan @ Chote Pradhan from engaging in above illicit traffic of narcotics and psychotropic substance specified under schedule to the NDPS Act 1985.

6. *Considering the magnitude of the operation, the chronicle sequence of events, the well organized manner in which such prejudicial activities have been carried on, the nature and gravity of the offence, the consequential extent of investigation involved including scanning/examination of papers, formation of grounds. I am satisfied that the nexus between the dates of incidents and passing of the detention order as well as objection of your detention has been well maintained.*

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

11. Above detention order was eventually confirmed on 12.08.2022.

12. We may also point out that the detention order was served upon petitioner when he was lodged in District Prison, Bareilly, Uttar Pradesh and his representation was placed before the Central Advisory Board which, as per the majority opinion, held that there was sufficient cause for his detention.

13. Detention order has been defended by the respondents.

14. It is contended that there were three cases against the petitioner. In the first case, there was huge recovery of heroin and while conducting investigation in other two cases, it came to fore that he was the supplier of the contraband with respect to the other two matters. It is contended that as per Statement of Reasons and Objects of the Prevention of Illicit Trafficking in Narcotics Drugs and Psychotropic Substances Act, 1988, order of detention needs to be passed where any person is found indulging in activities of illicit traffic of contraband which can have deleterious effect on the National Economy. It is argued that such order is not a curative, reformative or punitive but merely a preventive one so that such anti-social and subversive elements do not further indulge in illicit trafficking of contraband. It is argued that there is no prohibition in law to pass detention order in respect of a person who is already in custody as the object is not to punish a man for having done something already but to intercept before he repeats the same and, therefore, the objective is to prevent him from indulging in such type of activities while keeping in mind the safety and interest of the society. It is also contended that there were enough of compelling reasons before the detaining authority justifying detention order. It is also argued that merely because subsequently the petitioner had been discharged in the other two cases (case no. 2 & 3) would not mean that there was no application of mind on the part of concerned detaining authority. Respondents have relied on *Union of India Vs. Dimple Happy Dhakad* (2019) 20 SCC 609; *Kumarunnissa Vs. Union of India & Another* (1991) 1 SCC 128; *Huidrom Konungjao Singh Vs. State of Manipur & Others* 2012 7 SCC 181 and *Union of India Vs. Ankit Ashok Jalan* 2020 16 SCC 185.

15. There is no dispute that detention order can be passed even if any such person is already in custody. Admittedly, such power of preventive detention

is a precautionary one which can be exercised on reasonable anticipation. In *Union of India v. Ankit Ashok Jalan (supra),* Supreme Court has observed that even when a person is in judicial custody, he can be directed to be detained, supplementing further that there must be proper application of mind and detaining authority must be subjectively satisfied that there is a reason to believe that detenu would, in all probability, indulge in prejudicial activities if released on bail and that such authority should also form a view that there is a "real possibility" of such detenu being released on bail. In the case in hand, there was, actually speaking, nothing before the detaining authority which could have indicated that there was any such real possibility.

16. We may also refer to one judgment passed by this Court only i.e. Taimoor Khan Vs. Union of India and Another 2024 SCC OnLine Del 416 wherein it has been observed as under: -

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

17. Here, as already noted above, the petitioner was in custody in three cases and there was nothing before such authority suggesting that any bail application had been filed, much less that there was real possibility of his getting released on bail, particularly when, he had been found in possession of commercial quantity in one case. Viewed thus, it is not very clear as to on what basis, such authority felt that he was likely to be released on bail in all such cases. Since the petitioner was in custody in three cases, it was *sine qua non* on the part of detaining authority to record *compelling reasons*, particularly in light of the fact that such detenu was already languishing in jail for last around 9-10 months.

18. Moreover, there was nothing before the detaining authority which could have suggested that there was imminent possibility of his being released in near future and indulging in prejudicial activities. We may refer to the observations made by Hon'ble Supreme Court in *Dharmendra Suganchand Chelawat and Another v. Union of India & Others (1990) Cri.L.J. 1232* which read as under:-

"15. In Binod Singh v. District Magistrate, Dhanbad [(1986) 4 SCC 416 : 1986 SCC (Cri) 490] it has been laid down:

"If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent." In Smt Shashi Aggarwal v. State of U.P. [(1988) 1 SCC 436 : 1988 SCC (Cri) 178] this Court while referring to the decision in Rasmesh Yadav v. District Magistrate, Etah [(1985) 4 SCC 232 : 1985 SCC (Cri) 514] has observed:
"What was stressed in the above case is that an apprehension of the detaining authority that the accused if enlarged on bail would again carry on his criminal activities is by itself not sufficient to detain a person under
the National Security Act."

16. This Court has further observed:

"Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order."

17. In Vijay Kumar v. Union of India [(1988) 2 SCC 57 : 1988 SCC (Cri) 293] it has been held that two facts must appear from the grounds of detention, namely: (1) awareness of the detaining authority of the fact that the detenu is already in detention, and (2) there must be compelling reasons justifying such detention, despite fact that the detenu is already under detention.

18. Shetty, J. in his concurring judgment, has posed the question: what should be the compelling reason justifying the preventive detention, if the person is already in jail and where should one find it? The learned Judge has rejected the contention that it can be found from material other than the grounds of detention and the connected facts therein and has held that apart from the grounds of detention and the connected facts therein, there cannot be any other material which can enter into the satisfaction of the detaining authority. The learned Judge has also observed that if the activities of the detenu are not isolated or casual and are continuous or part of the transaction or racket, then, there may be need to put the person under preventive detention, notwithstanding the fact that he is under custody in connection with a case. The learned Judge has quoted the following observations from the

judgment of this Court in Suraj Pal Sahu v. State of Maharashtra [(1986) 4 SCC 378 : 1986 SCC (Cri) 452] :

"... but where the offences in respect of which the detenu is accused are so interlinked and continuous in character and are of such nature that these affect continuous maintenance of essential supplies and thereby jeopardize the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract
from the order being passed for preventive detention."

19. In N. Meera Rani v. Government of Tamil Nadu [(1989) 4 SCC 418 :
1989 SCC (Cri) 732] the legal position has been summed up as under :

"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."
In this case this Court has pointed out that there was no indication in the detention order read with its annexure that the detaining authority considered it likely that the detenu could be released on bail and that the contents of the order showed 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. The court held that the order for detention was invalid since it was made when the detenu was already in jail custody for the offence of bank dacoity with no prospect of his release.

21. The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from

custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

19. Since the petitioner was already in custody for around 9-10 months, there was time-lag between his alleged last offending act and the date of order of detention and, therefore also, it was incumbent on the part of detaining authority to have recorded its satisfaction that despite his being in incarceration for such considerable period, there were enough compelling reasons to pass detention order, while also elaborating such reasons.

20. We may also refer to observations made by Hon'ble Supreme Court in *T.A. Abdul Rahaman v. State of Kerala & Ors. (1989) 4 SCC 741* which read as under:-

"*6*……

There is no denying the fact that the impugned order has been passed after lapse of 11 months from the date of seizure of the eleven gold biscuits from the back courtyard of the house of the detenu. As repeatedly pointed out by this Court that there is no hard and fast rule that merely because there is a time lag between the offending acts and the date of order of detention, the causal link must be taken to be snapped and the satisfaction reached by the detaining authority should be regarded as unreal, but it all depends upon the facts and circumstances of each case and the nature of the explanation offered by the detaining authority for the delay that had occurred in passing the order. There is a catena of decisions on this point, but we feel that it is not necessary to recapitulate all those decisions except a salient few. This Court in Gora v. State of W.B. [(1975) 2 SCC 14 : 1975 SCC (Cri) 391 : (1975) 2 SCR 996] wherein there was a time lag of six months between the incident and the date of order of detention while answering a similar contention relied on the following passage from Golam Hussain v.
Commissioner of Police, Calcutta [(1974) 4 SCC 530, 534

"No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case."

and laid down the ratio of proximity as follows:

"There is, therefore, no hard and fast rule that merely because there is a time lag of about six months between the „offending acts" and the date of the order of detention, the causal link must be taken

to be broken and the satisfaction claimed to have been arrived at by the District Magistrate must be regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction must depend on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the „offending acts" and the order of detention. It is a subsidiary test evolved by the court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu and its utility, therefore, lies only insofar as it subserves that purpose and it cannot be allowed to dominate or drown it. The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a part of an organised operation of a complex of agencies collaborating to clandestinely and secretly carry on such activities and in such a case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely or secretly carried on by the detenu and it is, therefore, necessary to detain him with a view to preventing him from indulging in such activities in the future."

7. In Hemlata Kantilal Shah v. State of Maharashtra [(1981) 4 SCC 647 : 1982 SCC (Cri) 16] this Court held:

"Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily examined by the detaining authority."

8. See also *Sk. Serajul* v. *State of W.B.* [(1975) 2 SCC 78 : 1975 SCC (Cri) 425] , *Rekhaben Virendra Kapadia* v. *State of Gujarat* [(1979) 2 SCC 566 : 1979 SCC (Cri) 543 : (1979) 2 SCR 257] , *Harnek Singh* v. *State of Punjab* [(1982) 1 SCC 116 : 1982 SCC (Cri) 121] , *Shiv Ratan Makim* v. *Union of India* [(1986) 1 SCC 404 : 1986 SCC (Cri) 74] , *K. Aruna Kumari* v. *Government of Andhra Pradesh* [(1988) 1 SCC 296 : 1988 SCC (Cri) 116] and *Rajendrakumar Natvarlal Shah* v. *State of Gujarat* [(1988) 3 SCC 153 : 1988 SCC (Cri) 575].

9. In a recent decision in Yogendra Murari v. State of U.P [(1988) 4 SCC 559 : 1988 SCC (Cri) 992] , this Court has reiterated the earlier view consistently taken by this Court observing:

"... it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay.... It is necessary to consider the circumstances in each individual case to find out whether the delay has been satisfactorily explained or not."

10. The conspectus of the above decisions can be summarised 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 scrutinise 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.

21. In *Sama Aruna v. State of Telangana and Another (2018) 12 SCC 150*, it is observed that only those activities so far back in the past which lead to conclusion that such person was likely to engage in such activities again in the immediate future could be taken into account. Undoubtedly, there cannot be any hard and fast rule or rigid formula or mechanical test but detaining authority must accord its subjective satisfaction after due consideration.

22. In the case in hand, we have no hesitation in holding that livelink got severed as the petitioner was already in custody for around 910 months. Moreover, the detaining authority was neither in a position to hold that he was likely to be released in near future nor had any material which could have compelled it to observe that if released, he would indulge in prejudicial activities.

23. Relying on *Union of India v. Dimple Happy Dhakad* (supra), it is contended by respondents that the satisfaction of the detaining authority that the detenu is already in custody and he is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities is the subjective satisfaction of the detaining authority which is based on the materials and normally the subjective satisfaction is not to be interfered with. There cannot be any qualm about the legal position but in the same case, Supreme Court has further observed that though the court cannot substitute its opinion for the subjective satisfaction of the detaining authority and interfere with the order of detention but that does not mean that the subjective satisfaction of the detaining authority is immune from judicial reviewability. It also observed that by various decisions, the areas have been carved out within which the validity of subjective satisfaction could be tested. Unfortunately, despite careful analysis of the detention order, we could not find anything in the detention order which may substantiate, corroborate or

justify, even remotely, for reaching such subjective satisfaction. This leaves us with no choice but to interfere.

24. We may also note that the order regarding confirmation of detention was passed under Section 9 (f) of PITNDPS Act 1988 on 12.08.2022 whereby it was directed that petitioner be detained for a period of one year from the date of detention i.e. 31.05.2022.

25. Such period of detention is already over.

26. Interestingly, petitioner still continues to be in custody in case FIR No. 253/2021 PS Crime Branch which justifies the contention raised by the petitioner that the detaining authority had no material before it which could have suggested that he was likely to be released, much less that on his such release, he would continue with any prejudicial activity.

27. In view of our foregoing discussion, we hereby allow the petition and quash the Detention Order dated 27.05.2022 passed by the Joint Secretary, Govt. of India under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance (PITNDPS) Act 1988 vide Detention Order No. U-11011/06/22PITNDPS and Order dated 12.08.2022 passed by the Joint Secretary, Govt. of India under Section 9 (f) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance (PITNDPS) Act 1988 vide Detention Order No. U-11012/06/22-PITNDPS.

28. The petition stands disposed of in aforesaid terms.