

HIGH COURT OF DELHI

Bench : Hon'ble Mr. Justice Suresh Kumar Kait

Hon'ble Mr. Justice Manoj Jain

Date of Decision: April 30, 2024

W.P.(CRL) 240/2023

FARUKH @ CHAPTA ...PETITIONER

VERSUS

UNION OF INDIA & ANR. ...RESPONDENTS

Legislation and Rules:

Narcotic Drugs & Psychotropic Substances Act, 1985 (NDPS Act), Section 20

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988, Section 3(1), Section 9(f)

Sections 307, 324, 34, 186, 353, 332, 392, 397, 25, 54, 59 of the Indian Penal Code (IPC)

Arms Act, 1959

Subject: Petition for quashing of a detention order and confirmation order under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988 – examination of the legal and factual grounds for the detention of the petitioner.

Headnotes:

Detention Order and Background – Petitioner, previously involved in three cases under the NDPS Act and various IPC matters, challenges the legality

of his detention order – background includes previous acquittal and ongoing trials where the petitioner is either bailed or acquitted [Paras 3-7].

Authority's Justification – Detaining authority's order emphasized ongoing and planned illicit activities by the petitioner, deemed a continuous threat to national health and security; basis of detention scrutinized [Paras 8, 24].

Legal Challenge – Primary contention is the improper use of detention despite existing custody without adequate justification of future conduct or risk upon release; issues of past case acquittals and misuse of authority also argued [Paras 11, 27-28].

Court's Analysis and Conclusion – High Court finds detention order unjustified given the petitioner's existing custody and lack of concrete evidence or reasoning for imminent release and re-engagement in illicit activities; detention order and confirmation order quashed [Paras 22-30].

Referred Cases:

- Haradhan Saha Vs. State of West Bengal [1975] 3 SCC 198
- Union of India Vs. Ankit Ashok Jalan [2020] 16 SCC 185
- Dharmendra Suganchand Chelawat & Anr. Vs. UOI & Ors.
- Taimoor Khan Vs. Union of India and Another [2024] SCC OnLine Del 416

Representing Advocates:

For the Petitioner: Mr. U.A. Khan, Mr. Shahrukh Khan, and Mr. Tushar Upadhyaya, Advocates

For the Respondents: Mr. Amit Tiwari, CGSC for UOI, Ms. Nandita Rao, ASC (Crl) for State with Insp. Manmohan Yadav, PS Seema Puri

MANOJ JAIN, J

1. Detenu seeks quashing of detention order¹ and confirmation order².
2. Let us first take note of the background facts which resulted in passing of the aforesaid detention order.
3. The Sponsoring Authority i.e. Deputy Commissioner of Police, District Shahdara, Delhi presented before the Detaining Authority, the details of the cases in which detenu was already involved. As far as cases under Narcotic Drugs & Psychotropic Substances Act, 1985 (in short NDPS Act) are concerned, detenu was reported to have following three involvements: -

S. No.	FIR No.	Under Section	Police Station	Quantity of Recovered Contraband	Date of Arrest
1	135/16	20 NDPS Act	Nand Nagari, Delhi	37 kgs ganja	10.02.2016
2	3/20	20 NDPS Act	Seema Puri, Delhi	4.6 kgs ganja	01.01.2020
3	46/21	20 NDPS Act	Shahdara, Delhi	23.5 kgs ganja	09.02.2021

4. While passing the aforesaid detention order, concerned detaining authority noted the details of the aforesaid three cases as well as about his complicity in other cases under Indian Penal Code.
5. As regards the aforesaid three cases under NDPS Act, it needs to be highlighted that in case FIR No. 135/2016, though the accused was allegedly found in possession of 37 kgs ganja but he was acquitted way back on 29.08.2019. In the second case, detenu and his co-accused were booked for being found in possession of 4.6 kgs ganja. The detenu was, however, directed to be released on bail on 12.03.2020, though said case was pending

¹ Detention Order No. U-11011/18/22-PITNDPS passed on 16.09.2022 by the Joint Secretary, Govt. of India u/s 3 (1) of Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substance (PITNDPS) Act, 1988 ² Confirmation Order No. U-11012/16/22-PITNDPS passed on 07.12.2022 by the Director, Govt. of India u/s 9 (f) of Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substance (PITNDPS) Act, 1988

trial when the detention order was passed. As regards third case, accused had been arrested on 09.02.2021 for being found in possession of commercial quantity. It was also pending adjudication though detenu was released on interim bail for a short period. Importantly, the detention order was passed during his such interim release only. Thus, actually speaking, there were only two pending cases against the detenu. In one, he was on regular bail and in the other he was in custody, though, at the relevant time, he had been given interim bail for 10 days only.

6. Detaining authority also took note of the fact that besides the aforesaid three cases of illicit trafficking of contraband, detenu was tangled in other IPC matters. All such cases related to PS Seema Puri, Delhi and the details thereof have been mentioned in the detention order. These are as under: -

S. No.	FIR No	Sections	Police Station
1	219/2010	307/324/34 IPC	Seema Puri, Delhi
2	763/2013	307/34 IPC	Seema Puri, Delhi
3	578/2014	186/353/332 IPC	Seema Puri, Delhi
4	840/2015	307/34 IPC	Seema Puri, Delhi
5	672/2015	392/397/34 IPC	Seema Puri, Delhi
6	352/2009	25/54/59 Arms Act	Seema Puri, Delhi

7. Though the above-said cases had been allegedly registered against the detenu, it seems that the Detaining Authority was not even briefed as to what was the status of all such cases – whether these were pending trial or disposed of or whether the detenu was in custody in such cases or not.
8. Be that as it may, detaining authority passed the detention order while observing as under: -

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3. *In view of the facts mentioned above, I have no hesitation in arriving at the conclusion that you i.e. Farooq @ Chapta 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. Farooq @ Chapta 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. Farooq @ Chapta 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 Farooq @ Chapta i.e. you to repeat the above serious prejudicial acts. Hence, I am satisfied that in the meantime you i.e. Farooq @ Chapta should be immobilized and there is a need to prevent you i.e. Farooq @ Chapta from engaging in such illicit traffic of narcotic drug and psychotropic substances in future by detention under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988.

4. *In view of the overwhelming evidences discussed in foregoing paras, detailing how you i.e. Farooq @ Chapta have indulged in organizing the illicit trafficking of Narcotics 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. Farooq @ Chapta 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. Farooq @ Chapta 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. Farooq @ Chapta from engaging in above illicit traffic of narcotics and psychotropic substances specified under schedule to the NDPS Act, 1985.*

5. *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 incident and passing of the Detention Order as well as object of your detention has been well maintained.*
9. The Central Advisory Board also came to the conclusion that there was sufficient cause for such detention. Accordingly, detention order was confirmed and it was directed that detenu be detained for a period of one year to be reckoned from 17.09.2022.
10. Clearly, the aforesaid period of one year has already elapsed.
11. Mr. U.A. Khan, learned counsel for petitioner/detenu has contended that detaining authority has passed the detention order on totally non-existing and vague grounds and also without recording its subjective satisfaction. Prime contentions, *inter alia*, are as under: -
- (i) *Detenu was already in custody and there was nothing before the detaining authority which could have even remotely suggested that despite the fact that he was in custody, there was compelling reason to detain him.*
- (ii) *There was nothing to indicate that there was any likelihood of his being released him in near future and that after his such release, he would indulge in prejudicial activities. Detenu was already running in custody in case FIR No. 46/2021 PS Shahdara and there was no chance of his getting released in the above matter in view of the bar contained under Section 37 of NDPS Act and despite knowing the above fact, the detaining authority has not even attempted to elucidate as to what compelled it to pass such order.*
- (iii) *Detaining authority has given unnecessary and unwarranted weightage to FIR No. 135/2016 PS Nand Nagari despite knowing fully that in the said case, detenu was acquitted in the year 2019. Moreover, the order of such acquittal would clearly indicate that acquittal was not on the ground of „not proved beyond reasonable doubt“ but it was because of the fact that there was false and frivolous accusation and the detenu had been falsely implicated by the police. So much so, the concerned DCP was directed by*

learned Trial Court to hold inquiry against such police officials and to take appropriate action against them.

(iv) *Detenu was arrested in the third case on 09.02.2021 and was running in continuous judicial custody and detaining authority has not explained as to how, despite his being behind bars for more than 18 months, there was any chance of his indulging in such activities.*

(v) *The detention order is ostensibly motivated. In the third case i.e. FIR No. 46/2021, the detenu had sought interim bail on the ground of illness of his wife and when he was on interim bail for a period of 10 days upto 22.09.2022, the present detention order was passed on 16.09.2022 so that he is immediately sent behind the bars. Such order was, therefore, passed merely to frustrate said judicial order.*

12. It is thus claimed that the impugned orders be quashed.
13. Reliance has also been placed upon the judgments viz. *Pramod Singla Vs. Union of India & Ors.*², *Sama Aruna Vs. State of Telengana & Anr.*³, *Dharmendra Suganchand Chelawat & Anr. Vs. UOI & Ors.*⁴, *Ramlal Ratanlal Anjana Vs. UOI & Ors.*⁵, *Amritlal & Ors. Vs. Union Govt. through Secretary Ministry of Finance & Ors.*⁶ and *Ramesh Yadav Vs. District Magistrate, Etah & Ors.*⁷
14. Detention order has been defended by the respondents.
15. 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, reformatory 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

² SLP Criminal No. 10798/2022

³ (2018) 12 SCC 150

⁴ (1990) Cri.L.J. 1232

⁵ (2003) Cri.L.J. 1976

⁶ (2001) 1 SCC 341

⁷ (1985) 4 SCC 232

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 argued that in the first case, there was huge recovery of ganja. Respondents have relied upon *Haradhan Saha Vs. State of West Bengal & Ors.*⁹ and contended that the basis of detention is satisfaction of the Executive about reasonable probability of the likelihood of detenu to involve in similar acts and to prevent him from doing the same. Thus, the aim of pre-emptive detention was not to punish but rather to prohibit him from doing such acts which may jeopardize the security of the Nation and its citizens.

16. It is argued that there is no ground to interfere with the subjective satisfaction of Executive in the present matter as it was arrived at after comprehensive and appropriate analysis of the facts.
17. We have given our anxious consideration to said contentions.
18. It is true that such power of preventive detention is a precautionary one which can be exercised on reasonable anticipation.
19. There is also no dispute that detention order can be passed even if any such person is already in custody.

20. In *Union of India Vs. Ankit Ashok Jalan*¹⁰, 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 _____ (1975) 3 SCC 198¹⁰ 2020 16 SCC 185 hand, there was, actually speaking, nothing before the detaining authority which could have indicated that there was any such possibility.

21. We may also refer to one judgment passed by this Court only i.e. *Taimoor Khan Vs. Union of India and Another*¹¹ wherein it has been observed as under:
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“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”.

22. Here, as already noted above, the petitioner was in custody and there was nothing before such authority, suggesting that any bail application had been filed, much less there being a real possibility of his getting released on bail, particularly when, he had been found in possession of commercial quantity of contraband. The release on interim bail for ten days cannot be confused or equated with regular bail. Viewed thus, it is not very clear as to on what basis, such authority felt that he was likely to be released on regular bail in said case. It was thus *sine qua non* on the part of detaining authority to record compelling reasons, particularly in light of the fact that detenu was already languishing in jail for last more than 18 months.

23. We may also refer to *Dharmendra Suganchand Chelawat*¹¹ 2024 SCC OnLine Del 416 (*supra*) wherein it has been observed that 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.

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

25. In *Sama Aruna (supra)*, 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 but detaining authority must accord its subjective satisfaction after due

consideration. Reference be also made to *T.A. Abdul Rahaman v. State of Kerala & Ors.*⁸.

26. In the case in hand, we have no hesitation in holding that livelink got severed as the petitioner was already in custody for around 18 months and there was nothing before the Detaining Authority to suggest that the detenu was carrying on any prejudicial activity, while from inside the jail.
27. As is evident, the detention order is conspicuously silent about crucial aspects. It neither records that he is likely to be released on bail nor mentions about any reason, much less a compelling one that once released, he would indulge in trafficking.
28. The involvement of detenu in IPC matters is hardly of any consequence, particularly when the detaining authority was not even apprised about the status of such cases. Moreover, these were not recent cases and there is nothing to portray that his involvement in such IPC matters had any nexus with his alleged activities of trafficking in contraband.
29. Though the Courts, normally, do not interfere with satisfaction of detaining authority. Such satisfaction is “subjective” in nature and the court, generally, cannot substitute its opinion for the subjective satisfaction of the detaining authority and interfere with the order of detention. However, that does not mean that the subjective satisfaction of the detaining authority is immune from judicial reviewability. In the case in hand, we are compelled to intervene as there was no material before said authority to have recorded any such satisfaction and to pass detention order.
30. In view of our foregoing discussion, we hereby allow the petition and quash the Detention Order dated 16.09.2022 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-11011/18/22PITNDPS and Order dated 07.12.2022 passed by the Director, 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-11012/16/22-PITNDPS.
31. The petition stands disposed of in aforesaid terms.

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⁸ (1989) 4 SCC 741

*Disclaimer: Always compare with the original copy of judgment from the official website.