

(2021) 06 GAU CK 0156

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 14 Of 2020

Debarshi Kashyap

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

Date of Decision : 25-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 21, 22(5)

Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 —
Section 3(1), 9(a), 10, 11

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 22(C), 29, 37

Citation : (2021) 06 GAU CK 0156

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : B. K. Mahajan, N. Mahajan, S. S. Roy, D. Nath

Final Decision : Allowed

Judgement

1. By filing this writ petition, the son of the detenu has approached this court assailing the order of detention dated 20/07/2020 issued under section

3(1) the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act) by the Secretary to the Government

of Assam, Home & Political Department, detaining him under the provisions of the PITNDPS Act until further order.

2. The undisputed facts of the case, as emerging from the materials on record, are that the detenu viz Sri Pradip Talukdar was arrested on 29.05.2020

in connection with CID P.S. Case No.10/2020 registered under Sections 22(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985

(NDPS) on charges of committing offences under the Act of 1985. Pursuant to his arrest, the learned District & Sessions Judge, Kamrup(M) had

remanded the detenu to five days Police Custody. Thereafter, the detenu was

remanded to judicial custody whereby, he was lodged in the Central Jail at Guwahati. While he was in the judicial custody, the Order of Detention dated 20/07/2020 was issued, which was followed by the Grounds of Detention dated 22/07/2020. The Detention Order dated 20/07/2020 as well as the Grounds of Detention dated 22/07/2020 were served upon the detenu only on 04/08/2020 through the Superintendent of the Central Jail, Guwahati after a delay of 14 days. On 12/08/2020, the detenu had submitted his representation before the State Government of Assam as well as the Central Government praying for revoking the Detention Order. By the order dated 16/10/2020, the Secretary to the Government of Assam, Home and Political Department, i.e. the detaining authority, had rejected the representation submitted by the detenu. The representation submitted by the detenu was also rejected by the Central Government vide memorandum dated 04/12/2020. Meanwhile, the State Government had constituted an Advisory Board in exercise of powers conferred under section 9 (a) of the PITNDPS, Act and referred the matter to the Board on 25/08/2020. The Advisory Board had submitted its report dated 30/09/2020, approving the order of detention, based on which, the Government of Assam had confirmed the detention of the detenu for a period of one year.

3. The order of detention dated 20/07/2020 has been put under challenge on several grounds. According to Mr. B. K. Mahajan, learned counsel for the writ petitioner, the order of detention has been issued in a most mechanical manner, without proper application of mind to the relevant facts in as much as the detaining authority had failed to take note of the fact that the detenu was already in jail and his anticipatory bail application had been dismissed by the High Court. Under such circumstances, mere pendency of the bail application could not have been a valid ground for issuing the detention order without recording satisfaction as regards any likelihood of his being released on bail.

4. The learned counsel for the petitioner further submits that the grounds of detention was issued on 22.07.2020 i.e. after the order of detention was issued and therefore, the same was evidently post-dated. Mr. Mahajan submits that in the Grounds of Detention, there is no mention of the Police Report, based on which, the detention order was issued. Mr. Mahajan further submits that the police report relied upon by the detaining authority was

not furnished to the detenu so as to enable him to make an effective representation.

5. Referring to the delay of 65 days in disposal of the representation by the Government of Assam and the delay of 144 days in disposal of his

representation by the Central Government, Mr. Mahajan submits that the order of detention is liable to be set aside only on the ground of such un-

explained delay. In support of his aforesaid argument, Mr. Mahajan has relied upon the following decisions :-

1. (2001) 1 SCC 341 [Amritlal and others vs. Union Govt., Through Secy., Ministry of Finance and others].

2. 2007 AIR SCW 6974 [Sayed Abdul Ala vs. Union of India and others]

3. 1999 (1) GLT 370 [Purna Bora @ Dilip Bora @ Baba @ Lara @ Kamandu vs. State of Assam and others]

4. 1998 (1) GLT 259 [Silvister Narzary vs. State of Assam and others]

5. 1999 (3) GLT 236 [Lala Paite vs. State of Manipur and others]

6. 1999(3) GLT 173 [Lipkaroy vs. State of Assam and others]

7. 1989 (3) GLT 277 [Aslam Ahmed Zahire Ahmed Shaik vs. Union of India and others]

8. (1992) 2 GLR 205 [Mrs. Nurjahan Begum vs. The State of Manipur & others]

9. (1995)4 SCC 51 [Kamaleshkumar Ishwardas Patel vs. Union of India and others]

10. 2008(2) GLT 876 [Robi Dhekial Phukan vs. Union of India and others]

6. Mr. D. Nath, learned Senior Government Advocate, Assam, on the other hand, has argued that the detenu has been found to be a habitual offender

who had repeatedly indulged in drug trafficking. Taking note of the antecedents of the detenu and in view of the seriousness of the offences alleged to

have been committed by him, the authorities, upon arriving at a subjective satisfaction in the matter, had issued the order of detention with a view to

prevent the detenu from further indulging in acts of drug trafficking. Mr. Nath submits that the delay in disposal of the representation submitted by the

detenu was due to pandemic situation and since the detenu was infected with covid-19, the detention order could not be served upon him immediately.

It is also the submission of Mr. Nath that the "police report" referred to in the detention order is nothing but a forwarding letter with regard to the

materials collected by the police and since all such supporting materials were furnished to the detenu, no prejudice can be said to have been caused to

him merely due to non-furnishing of the police report. Mr. Nath further submits that the detenu had filed Bail Application No.1244/2020 before the

Gauhati High Court which was subsequently withdrawn by him on 27.11.2020 and therefore, it cannot be said that there was no reasonable ground for

the authorities to believe that there was likelihood of his release on bail. Mr Nath has also resisted the prayer made in this writ petition by submitting

that charge sheet has already been submitted against the detenu in connection with CID, PS Case No 10/2020 and investigation in the other two cases

registered against him is at an advance stage. In support of his aforesaid argument Mr. Nath has relied upon the following decisions :-

1. (1990) 1 SCC 746 [Dharmendra Suganchand Chelawat & Another Vs. Union of India and others]

2. (2005)3 SCC 666 [Collector & District Magistrate, W.G. District, Eluru, A.P. and others Vs. Sangala Kondamma]

3. 2013 (1) MPLJ 202 [Shiv Shankar Agarwal vs. Union of India and others]

7. Mr. S. S. Roy, learned Central Govt. Counsel, had substantively adopted the arguments advanced by Mr. D. Nath, learned Sr. Govt. Advocate,

Assam and further submits that delay in disposal of the representation has been explained in the counter-affidavit filed by the Director, PITNDPS,

Department of Revenue, Government of India. He further submits that the order of detention has been passed on proper application of mind.

In the light of the aforesaid contentions advanced by the rival parties, this Court is called upon to examine the validity of the detention order dated

20/07/2020.

8. From a perusal of the materials on record, it transpires that the Order of detention dated 20/07/2020 is based on a police report submitted by the

Special Superintendent of Police, CID, Assam dated 05/06/2020 reporting that the detenu was acting in violation of the NDPS Act 1985. In the

detention order it has also been indicated that the police report had mentioned that there were as many as three cases registered against the detenu

under sections 22(C)/29 of the NDPS Act, 1985 viz. (1) CID PS Case No 37/2016, (2) CID, PS Case No 20/2018 and (3) CID, PS Case No 10/2020.

Taking note of the report submitted by the CID, Assam, the Detention Order

dated 20/07/2020 had been issued with a view to prevent the detenu from engaging in further illegal activities on being released on bail by the Gauhati High Court. It was also mentioned that the detenu had filed a Bail application being BA No 1244/2020 before the High Court seeking bail in connection with CID. PS Case No 10/2020 and was likely to be released on Bail.

9. The Grounds of Detention dated 22/07/2020 indicates that information was received confidentially to the effect that the detenu, along with some of his associates, has been engaged in the business of Narcotic Drugs, since past several years, on the pretext of being a drug distributor. Due to his above illegal activities, as many as three CID Police Cases have been registered against the detenu. The grounds of detention dated 22/07/2020 further mentions that based on raids conducted by the Police, a large number of bottles of Codeine Phosphate based cough syrup had been seized from different persons and those accused persons have implicated the detenu. It has further been mentioned that the detenu has been alluring many youth into such illegal but lucrative trade for easy money, thereby diverting regulated drugs through illegal channels which has resulted in ruining many families and in spite of his arrests on earlier occasions, the detenu had failed to mend his ways. The detenu has been found to be a repeat offender, who had resorted to getting his earlier licenses cancelled and thereafter applied for fresh drug distributor licenses so as to conceal his illegal activities and therefore, his release on bail would be seriously detrimental to the society as this may again lead to re-start of illegal trafficking of drugs. The Grounds of Detention however, did not mention about the police report submitted by the CID, Assam or the Bail application filed by the detenu before the Gauhati High Court.

10. From a careful examination of the order of detention dated 20/07/202 and the grounds of detention issued on 22/07/2020 it is apparent that the detaining authority had taken into consideration three factors (i) that the detenu was likely to be released on bail (ii) the antecedents of the detenu and (iii) that his release may restart illegal drug trafficking.

11. Plea regarding non-application of mind :-

11.1 It is apparent from the materials available on record that prior to his arrest, the detenu had moved an Anticipatory Bail Application bearing No.

AB 1223/2020 before this court. After perusing the Case Diary as well as the report submitted by the IO, by the order dated 28-05-2020 the learned

Single Judge had dismissed the Anticipatory Bail Application filed by the detenu by making the following observations-

“Sufficient complicity of the petitioner with the offence alleged has been indicated in the case diary as well as the status report and the offence

relate to is of huge commercial quantity. Accordingly, this court is of the opinion that the privilege of pre-arrest bail cannot be extended to the

petitioner as sought for and same is rejected”.

11.2 Section 37 of the NDPS Act contains certain stringent provisions imposing restrictions on the power of the court to grant bail to an accused

charged with an offence committed under the NDPS Act and therefore, while considering the likelihood of the accused being released on bail, the

detaining authority was required to take into consideration the restrictions imposed by section 37 of the Act of 1985, which has evidently not been done

in this case.

11.3 After the order dated 28-05-2020 was passed by this court rejecting the anticipatory bail application filed by the detenu, he was arrested by the

police on the very next day i.e. on 29/05/2020 and taken into police custody and thereafter, remanded to judicial custody. It appears that none of the

other arrested co-accused persons were granted bail by the court.

11.4 After the decision in the case of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and others reported in (1986)4 SCC 416, law is well settled

that while issuing the order of detention the detaining authority must record satisfaction as regards the likelihood of the detenu being released on bail. It

has been held that the mere fact that a bail application submitted by the detenu was pending consideration before the court, by itself, would not be a

ground to pass an order of detention.

11.5 In *Amritlal & Ors* (supra) the Hon’ble Supreme Court, while laying emphasis on the law laid down in the case of Binod Singh (supra), has

further observed that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The

inference must be drawn from the materials on record and must not be the ipse dixit of the officer passing the order of detention.

11.6 In the case of *Sayed Abdul Ala* (supra), the Supreme Court was called upon

to examine the validity of a detention order issued under section 3(1) of the PITNDPS, Act. While drawing a distinction between 'likelihood of moving an application for bail' and 'likelihood of being released on bail' it was observed that while arriving at a subjective satisfaction that there is likelihood of the detenu being released on bail, recording of satisfaction on the part of the detaining authority that merely because an application for grant of bail had been filed, would not be enough. It was further observed that the detaining authority should have also informed himself about the implication of section 37 of the Act of 1985. If the detenu was involved in a large number of cases and the prosecution was aware of the same, it would invariably be brought to the notice of the court while dealing with the application for bail filed by the detenu. Furthermore, the order of the court granting bail would be passed only when the court forms an opinion that there are reasonable grounds for believing that he is not guilty of such offence and that there was no likelihood to commit any offence while on bail.

11.7 In the case of Union of India Vs. Paul Manickam & another reported in (2003) 8 SCC 342 the Supreme Court has held that when detention order is passed in respect of a person already in jail the detaining authority should apply their mind and show their awareness in these regards in the grounds of detention and the chance of release of such person on bail. The necessity of keeping such person in detention under the preventive detention law is to be clearly indicated.

11.8 From a careful reading of the impugned order of detention dated 20.07.2020 as well as the grounds of detention dated 22.07.2020 it is evident that

the detaining authority was not aware that the anticipatory bail application earlier moved by the detenu had been rejected by the High Court after

perusing the case diary as well as the Report of the I.O. and that none of the co-accused persons had been granted bail in the connected cases, which

formed part of the same illegal transactions alleged against the detenu. Moreover, the provision of section 37 of the Act of 1985 was also not taken

note of. It is, therefore, apparent that save an except noting that the detenu had filed a bail application before the High Court, no other ground has

been recorded by the detaining authority forming the basis of subjective

satisfaction as regards the likelihood of the detenu being released on bail. As such, by applying the ratio of the law laid down by the Honâ??ble Supreme Court in the aforesaid decisions to the facts of the present case, the impugned order of detention dated 20/07/2020 would be liable to be interfered with holding the same as illegal.

12. Un-explained delay in disposal of representation :-

12.1 Coming to the next issue of delay in disposal of the representation submitted by the detenu, law in this regard is well settled that unexplained delay in disposal of the representation would have a fatal bearing on the detention. In the instant case, the petitioner has taken a specific plea as regards un-explained delay in disposal of his representation, both by the State Government as well as the Central Government. It transpires from the materials available on record that there has been a delay of 65 days on the part of the Government of Assam in disposing of the representation submitted by the detenu whereas the delay on the part of Central Government on such court was 144 days.

12.2 The Deputy Secretary to the Government of Assam, Home and Political Department, has filed an affidavit contesting the writ petition. However, in the said affidavit there is not even an iota of explanation as regards the delay of 65 days in disposal of the representation by the State government.

During the course of oral submission Mr. Nath learned Sr. Govt. Advocate has submitted that the delay was due to Covid-19 pandemic and also on account of the fact that the State Government was awaiting the opinion of the Advisory Board.

12.3 An affidavit has also been filed by the Director (PITNDPS) in the Department of Revenue, Ministry of Finance, Government of India, wherein, it has been mentioned that upon receipt of the representation submitted by the detenu the Central Government had sought for certain clarifications/comments from the State Government, the receipt of which was delayed due to the Covid-19 pandemic. Hence, the delay.

12.4 As noted above, in this case, the detention order itself was served upon the detenu after a delay of 14 days. According to the learned State Counsel, the delay had occurred since the detenu was himself suffering from Covid-19. Such explanation on behalf of the State is wholly unacceptable. Even if the detenu was infected with the virus, he was all along

housed inside the jail premises and the Jail authorities had also fulfilled his day to day needs. If that be so, there was no valid reason as to why, the detention order could not have been served upon the detenu immediately after the same was issued.

12.5 In *Aslam Ahmed Zaire Ahmed Shaikh (supra)*, the Honâ??ble Supreme Court has held that unexplained delay of 7 days on the part of Jail

Superintendent in transmitting the representation to the Central Government as a result of which, the same was received after 11 days, was avoidable

and unexplained delay rendering the continued detention of the appellant as illegal and constitutionally impermissible.

12.6 In the case of *Nongkhogin vs. State of Manipur* and others reported in 1991 (2) GLJ 60 a Division Bench of this Court has held that delay of 40

days in disposal of representation would have a vitiating effect on the order of detention. Rejecting the submission of the Government Advocate that

the delay had occurred due to the fact that the file had to move from one officer to the other which took some time, the order of detention was set

aside on the ground of undue delay in disposal of representation.

12.7 In *Lipkaroy (supra)* two months delay in disposal of representation submitted by the detenu was held to be unacceptable by the Division Bench. It

was held that unexplained delay in disposal of representation of the detenu was violative of constitutional guarantee under Article 22(5) having a

vitiating effect on the order of detention. Similar view was expressed in *Lala Paite (supra)* wherein, a Division Bench of this Court had set aside the

order of detention on the ground of want of satisfactory explanation for the delay of 17 days in disposal of the representation of the detenu.

12.8 As noted above, the learned Senior Government Advocate, Assam has offered explanation for the delay in disposal of the representation by the

State Government by citing the pendency of the matter before the Advisory Board. In the case of *Mrs. Nurjahan Begum (supra)* a Division Bench of

this Court has held in categorical terms that in the matter of disposal of representation made by the detenu, the appropriate Government is required to

exercise its opinion and judgment before sending the matter to the Advisory Board. It was held that consideration of the representation of the detenu

by the appropriate authority is entirely independent of any action of the Advisory Board. The delay of 31 days in considering the representation made

by the detenu was held to have vitiated the detention order. Therefore, the above mentioned submission of the learned Government Advocate does not merit acceptance by this court.

12.9 Having regard to the facts and circumstances of the case , this court is of the opinion that there has been no proper explanation for the delay of

14 days in serving the order of detention upon the detenu as well as the delay of 65 days by the State Government and 144 days by the Central

Government in disposing of the representation filed by the detenu. In view of the aforementioned judicial pronouncements, this court is, therefore, of

the view that the detention is liable to be set â"aside only on the ground of unexplained delay in disposing of the representation submitted by the detenu.

13. Failure to furnish copy of Police report and other documents to the detenu :-

13.1 As noted above, the order of detention dated 20.07.2020 has admittedly been issued on the basis of police report received from the CID, Assam.

It is, however, the admitted position of fact that the police report was never furnished to the detenu.

13.2 In the case of Silvester Narzary (supra) a Division Bench of this Court has held that the detenu was entitled to receive copy of the documents

examined by the police while preparing the report and failure to supply the relevant documents relied upon and also referred to in the order of

detention would be fatal.

13.3 Likewise, in the case of Purna Bora (supra) it has been held that failure to furnish the â" dossiersâ" and the â" police reportâ" to the detenu

based on which, order of detention was issued, would have a vitiating effect on the detention order. In the aforesaid decision the Division Bench had

taken note of the fact that the grounds of detention came into existence subsequent to issuance of the order of detention and in the grounds, there was

no mention about the â" dossiersâ" and the â" police reportâ" based on which, the order of detention was issued. It was held that the fact that the

â" dossiersâ" and the report of the Superintendent of Police not having mentioned in the grounds of detention, that itself was a ground to strike down

the order of detention.

13.4 In the present case also the detention order was issued on 20.07.2020 and the grounds of detention came to be issued two days later i.e. on

22.07.2020. However, as mentioned above, there is no reference of the "police report" in the grounds of detention. Therefore, applying the ratio

laid down in the case of Purna Bora (supra) the order of detention would be liable to be set aside on such count as well .

13.5 In view of the discussions made herein above, I am of the view that the decisions relied upon by the learned Government Advocate would not be

of any assistance to him in the facts and circumstances of the case. In the present case, the detaining authority has failed to adhere to the procedural

safe guards available to the detenu under the constitutional scheme thereby rendering the order of detention as un-sustainable in the eye of law.

14. Having held as above, the attention of this Court has been also been drawn to the maximum period of detention permissible in this case. Section 11

of the Act of 1988 provides that save and except cases coming within the purview of Section 10, the maximum period of detention would be for a

period of one year. Section 11 is reproduced herein below for ready reference :-

"11. Maximum period of detention."The maximum period for which any person may be detained in pursuance of any detention order to which

the provisions of section 10 do not apply and which has been confirmed under clause (f) of section 9 shall be one year from the date of detention, and

the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 10 apply and which

has been confirmed under clause (f) of section 9, read with sub-section (2) of section 10, shall be two years from the date of detention:

Provided that nothing contained in this section shall affect the power of appropriate Government in either case to revoke or modify the detention order

at any earlier time."

15. Section 10 of the Act of 1988 deals with cases under which persons may be detained for periods longer than three months without obtaining the

opinion of the Advisory Board. Section 10 is reproduced herein below :-

"10. Cases in which and circumstances under which persons may be detained for periods longer than three months without obtaining the opinion of

Advisory Board."(1) Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is

made under this Act at any time before the 1 [31st day of July, 1999] may be detained without obtaining, in accordance with the provisions of sub-

clause (a) of clause (4) of article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purposes of this section by that Government, is satisfied that such person engages or is likely to engage in illicit traffic in narcotic drugs and psychotropic substances into, out of, through or within any area highly vulnerable to such illicit traffic and makes a declaration to that effect within five weeks of the detention of such person.

Explanation1.â?"In this sub-section, â??area highly vulnerable to such illicit trafficâ?? meansâ?

- (i) the India customs waters;
- (ii) the customs airports;
- (iii) the metropolitan cities of Bombay, Calcutta, Delhi, Madras and the city of Varanasi;
- (iv) the inland area one hundred kilometers in width from the coast of India falling within the territories of the States of Andhra Pradesh, Goa, Gujarat, Karnataka, Kerala, Maharashtra, Orissa, Tamil Nadu and West Bengal and the Union territories of Daman and Diu and Pondicherry;
- (v) the inland area one hundred kilometres in width fromâ?
 - (a) the India-Pakistan border in the States of Gujarat, Punjab and Rajasthan;
 - (b) the India-Nepal border in the States of Bihar, Sikkim, Uttar Pradesh and West Bengal;
 - (c) the India-Burma border in the States of Arunachal Pradesh, Manipur, Mizoram and Nagaland;
 - (d) the India-Bangladesh border in the States of Assam, Meghalaya, Tripura and West Bengal;
 - (e) the India-Bhutan border in the States of Arunachal Pradesh, Assam, Sikkim and West Bengal;
 - (vi) such other area or customs station, as the Central Government may, having regard to the vulnerability of such area or customs station, as the case may be, to illicit traffic, by notification in the Official Gazette, specify in this

behalf.

Explanation 2. "For the purposes of Explanation 1, 'customs station' has the same meaning as in clause (13) of section 2 of the Customs Act, 1962 (52 of 1962).

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, section 9 shall have effect subject to the following modifications, namely:

(i) in clause (b), for the words 'shall, within five weeks', the words 'shall, within four months and two weeks' shall be substituted;

(ii) in clause (c),

(a) for the words 'the detention of the person concerned', the words 'the continued detention of the person concerned' shall be substituted;

(b) for the words 'eleven weeks', the words 'five months and three weeks' shall be substituted;

(iii) in clause (f), for the words 'for the detention', at both the places where they occur, the words 'for the continued detention' shall be substituted.

16. It is not the pleaded case of the respondents that the instant case would come within the fold of Section 10 of the Act of 1988 nor is there any

material available on record to support such a view. The detenu was arrested on 28.05.2020 and while in judicial custody, the order of detention dated

20.07.2020 was issued, detaining him for a period of one year. The said period of one year would come to an end on 19.07.2021. If that be so, it is

apparent that by efflux of time, the order of detention dated 20.07.2020 would lapse with effect from 19/07/2021. Therefore, although Mr. Nath has

submitted that some time be granted for referring the detention order to the Advisory Board for reviewing the same, such an exercise, in the opinion of

this Court at this point of time, would be redundant.

17. In the case of *Rekha vs. State of Tamil Nadu* reported in (2011)5 SCC 244 the Apex Court has observed that the history of liberty is the history of

procedural safe guards. Procedural rights are not based on sentimental concerns for the detenu and those are not devised to coddle criminals or

provide technical loopholes, through which dangerous persons can escape the consequences of their acts. They are basically societies assurance that

the authorities would behave properly within rules distilled from long centuries of concrete experiences. Personal liberty protected under Article 21 is

so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention

meticulously accords with the procedure established by law. The power of preventive detention must therefore, be confined to very narrow limits

otherwise the great right to liberty will become nugatory.

18. In the case of Rekha (supra) the Supreme Court had further held that whenever an order under preventive detention law is challenged, one of the

questions that the court must ask in deciding its legality is : was the ordinary law of the land sufficient to deal with the situation ? If the answer is in the

affirmative, the detention order would be illegal. Coming to the facts of the present case, it has been submitted by the State that charge sheet has

already been submitted against the detenu in one of the Police Cases. Nothing has been brought to the notice of this court to indicate that the

provisions of the NDPS, Act 1985 would not be adequate to deal with the detenu. If that be so, the impugned order of detention, in the opinion of the

court, is clearly unsustainable.

19. For the reasons stated in the foregoing paragraphs, this Court is of the opinion that the order of detention dated 20.07.2020 is unsustainable in the

eye of law.

The same is accordingly set aside. The writ petition stands allowed.

The detenu be released forthwith, if his custodial detention is not required in connection with any other pending proceeding.

The records be returned.