

(1990) 01 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Habeas Corpus Writ Petition No. 7903 of 1989

Parvez Quadar Khan

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-01-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(2)
Criminal Procedure Code, 1973 (CrPC) — Section 82, 83
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 3, 43
Penal Code, 1860 (IPC) — Section 302
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 3(1), 8, 8(1)

Citation : (1990) CriLJ 2072

Hon'ble Judges : Usha Kant Verma, J; Giridhar Malaviya, J

Bench : Division Bench

Advocate : Vinod Prasad, for the Appellant; Standing Counsel and Central Govt., for the Respondent

Final Decision : Dismissed

Judgement

Giridhar Malaviya, J.—Petitioner Parvez Quadir Khan has been detained in Naini Central Jail, Allahabad since 3-1-1989 in pursuance of a detention order passed by Sri K. L. Verma, Joint Secretary to the Government of India on 7-7-1989 u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (New Act No. 46 of 1988 w.e.f. 8-9-1988). The allegations against the petitioner in the grounds of detention are as follows :---

2. On the basis of confidential information the officials of the Narcotic Control Bureau, Varanasi intercepted an auto rickshaw No. U HZ 648 coming from the side of Varuna bridge on 14-6-1988 at 9.50. hrs in front of the gate of Taj hotel near Taksal Cinema in the city of Varanasi. The petitioner and his associate one Raghu Nandan Sharma s/o Ram Ballabh were sitting in the auto rickshaw but as soon as the auto rickshaw was stopped by the officers of the Narcotics Control

Bureau they tried to run away towards north after alighting from the auto rickshaw. However they were apprehended by the officials. When the petitioner and Raghu Nandan Sharma were searched in the presence of the witnesses then from the polythene packet in the hand of Raghunandan Sharma some brown coloured powder was recovered. The powder being tested by the officers with the help of the test kit, it was found to be heroine/brown sugar. As possession, concealment etc. of heroine/brown sugar was in violation of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 punishable u/s 21 of the said Act, the recovered brown sugar which weighed 700 gms. was sealed in presence of the witnesses after taking its sample. The recovered brown sugar packets were sealed as also signed by the petitioners and the witnesses. A copy of the recovery memo prepared on the spot was handed over to the petitioner and Reghunandan Sharma. In the statement given by the petitioner to the officers of the Narcotics Control Bureau the petitioner admitted his arrest etc. as is mentioned above and stated that he along with Raghunandan Sharma was going to deliver the said heroine to a trader. He also admitted that at the instance of one Nisar he was going to Taj hotel and that in the past also he and Raghunandan Sharma had taken the material for Nisar. The petitioner also admitted that the work done by him was illegal and entailing severe punishment. Almost identical statement was made by Raghunandan Sharma to the officials of Narcotic Control Bureau. Exercising the powers u/s 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985 the officers arrested the petitioner and Raghunandan Sharma and produced them before the Chief Judicial Magistrate Varanasi on 15-6-1988 who remanded them to judicial custody for 14 days. The ground further states that the petitioner applied for bail on 16-6-1988 which was rejected by the Chief Judicial Magistrate. It was also disclosed that in the bail application the petitioner had denied that any brown sugar etc. had been recovered from them. It was thereafter mentioned that bail application of the petitioner was allowed by IInd Addl. District Judge, Varanasi on 23-6-1988. The ground further went to say that Reghunandan Sharma had also applied for bail which had been rejected by the Chief Judicial Magistrate on 16-6-1988 whereafter he had moved the application for bail before the Court of Session, Varanasi which too was rejected on 20-6-1988. The order further narrates that Raghunandan Sharma had also made an application for bail again on 2-7-1988 which was pending. The ground went on to say that it was not desirable to divulge the source of secret information which resulted in the arrest of the petitioner. However as the activity of the petitioner indicated that the petitioner was likely to transport heroine in future hence with a view to prevent him from acting in that fashion it was necessary to pass the order of detention hence the said order was passed against him.

3. The petitioner challenged his detention under the aforesaid order by means of the present petition. Consequently a notice was issued to the opposite parties. The counter affidavit was filed by Sri K. L. Verma detaining authority whereafter the rejoinder affidavit was also filed. The petitioner again filed supplementary

affidavit raising some new points to which the supplementary counter affidavit was also filed. We will deal with these points hereafter.

4. Learned counsel for the petitioner Sri Vinod Prasad has made the following submissions in this case.

5. The first contention of the learned counsel for the petitioner is that the Ordinance No. 7 of 1988 had come into force on 4-7-1988, The activity of the petitioner for which he has been detained was of 14th June, 1988 i.e. before coming into force of the aforesaid ordinance. Learned counsel for the petitioner contends that for passing a detention order under this ordinance, the detaining authority could not have considered the activity of the petitioner prior to 4-7-1988 unless the petitioner would have done something after 4-7-1988 also, when alone, learned counsel for the petitioner contends that the activity prior to that date could be noticed as a background. According to him the ordinance had come into force on 4-7-1988 and the order of detention was passed on 7-7-1988. The only activity of the petitioner communicated in the ground of detention is dated 14-6-88 on account of which the petitioner had been arrested and thereafter released on bail 23-6-1988. As there was no further activity of the petitioner between 23rd June, 1988 up to 4th July, 1988 on which date the ordinance had come and even as there was again no activity of the petitioner between 4th July, 1988 and 7th July, 1988 on which the detention order was passed, learned counsel for the petitioner contends, that the petitioner could not be preventively detained for an act done prior to 4-7-1988. In other words the petitioner's learned counsel says that the activity of the petitioner dated 14-6-1988 should be considered as non-existent for the purposes of the present detention order as according to him the ordinance cannot be applied retrospectively to the activities of the petitioner which were prior to its promulgation. In this Connection learned counsel has also referred to Section 3 of the Act where words used are:

".....with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained".

Learned counsel wanted to say that in view of the word "engaging" in Section 3 aforesaid a detention order could be passed only if a person was found doing something at the time when the order under the Act was proposed to be passed against him. What learned counsel fails to note in this connection is that the object to pass the order of detention is to prevent a person from engaging in illicit traffic in narcotic drugs etc. It is the settled view that on the basis of the past conduct of a person his tendency to act in a similar fashion again in future is judged. Unless a person has, therefore, engaged in a similar activity, there can be no indication of his tendency to act in that manner again. The argument of the learned counsel on this point is totally devoid of force and is to be rejected.

6. So far as the contention of the learned counsel about the retrospectivity of the

act viz. the detaining authority while passing an order could not take into consideration the activity prior to the promulgation of the ordinance is concerned, it will be relevant to refer to the object of the Act. A perusal of the act indicates that this is an act to provide for detention in certain cases for the purposes of preventing illicit traffic in narcotic drugs and psychotropic substance and for matters connected therewith. Thereafter the preamble goes on to say that since the illicit traffic in narcotic drugs etc. poses a serious threat to the health and welfare of the people and as the activities of the persons connected in such illicit traffic has a deleterious effect on the national economy and as such activities were clandestinely organised and carried on; for effective prevention of such activities an act to provide for detention of persons concerned in any manner therewith was necessary. It is thus clear that the legislature had considered the activities in the past of such persons and had thus enacted the Ordinance/Act to prevent those persons from carrying on similar activities. It would have defeated the very purpose and object of the Act if the act was to apply only after some persons had continued to carry on further activities to have a deleterious effect on the national economy and health of the people. It is, therefore, legitimate to believe that on the basis of the past activities of the persons which had prompted the legislature to enact an act for their preventive detention, the persons so engaged could be preventively detained. Therefore even this contention of the learned counsel for the petitioner is devoid of merit and is liable to be rejected. Sri Shrish Chandra learned counsel for Central Government has rightly placed reliance on the observation of this court made in the case of Panna Lal Vs. The State of Uttar Pradesh and Others, in paragraph 17 which reads as under :--

"Learned counsel for the petitioner next argued that the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 came into force only with effect from 19-12-1974. It was only when this Act came into force that the State Government acquired jurisdiction to make detention orders u/s 3 thereof. Prior to that date, the authority which was making detention orders under the Maintenance of Internal Security Act was the District Magistrate. Accordingly till that stage all the information with regard to the alleged objectionable activity of the petitioner had been collected and processed by the District Magistrate. The State Government acquired jurisdiction to act. under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 only on 19-12-1974. It is impossible to believe that any material on the basis of which the State Government could have the requisite satisfaction had been placed before it after the midnight of 18th and 19th January, 1974, so as to enable it to make the detention order under the provisions of Section 3(2) of the Act, before 1.30 p.m. on 19-12-1974. This argument pre-supposes that the State Government did not have any information prior to 19-12-1974 with regard to the prejudicial activities carried on by the petitioner and that it could act only on the basis of the information which had been collected after the coming into force of the 1974 Act. In the supplementary counter affidavit filed on behalf of the State, it has been

stated that even before the 1974 Act came into force on 19-12-1974 the information which provided the basis for State Government's satisfaction had already been communicated to it by the Customs Authorities. While the Act was in the bill form, the State Government had applied its mind to the material facts and had formed the requisite satisfaction. It may be that so long as the 1974 Act did not come into force, the State Government could not act upon the satisfaction or the opinion formed by it on the basis of the information supplied to it, but then it did not mean that as soon as the 1974 Act came into force on 19-12-1974, the State Government's satisfaction disappeared and got erased. The State Government continued to be so satisfied and so long as that satisfaction was there, based on relevant material, it could pass necessary orders u/s 3(2) of the Act. Accordingly, merely because the impugned detention order was passed by the State Government on the basis of material which had already been collected before the 1974 Act came into force, no inference that it recorded its satisfaction mechanically or that the same had been arrived at without considering relevant material, can be drawn".

7. Although the observations made above are not exactly in the same context which is being dealt with by us here but the observations do, to a large degree, support the view which we have taken in this case.

8. Learned counsel for the petitioner then contended that there was considerable delay in passing of the order of detention and the activity of the petitioner. It is true that the petitioner's activity was of 14th June, 1988 and he had been released on bail also on 23-6-1988. In the normal course if the detaining authority was satisfied that the petitioner should have been detained to prevent him from acting in a manner which was prejudicial to the illicit traffic etc. as contemplated in the Act, then the order had to be passed without any loss of time and failure to pass such an order for some time would have indicated that there was no real apprehension of the petitioner indulging in any such activity again. However what is relevant in the instant case is that the ordinance had come into effect only on 4-7-1988. It was only after the Ordinance had come into force that, on the request of the appropriate authority the government or its officers could consider the question whether it was necessary to detain a particular person under the Act or not. It is obvious that no sooner the ordinance had come into force the matter of petitioner was placed before the relevant authorities with the result that the detention order was passed against the petitioner within four days of the coming into force of the ordinance i.e. on 7-7-1988. Under the circumstances any complaint that there was delay in passing of the order of detention against the petitioner is of no avail to the petitioner. This ground of challenge, therefore, also fails.

9. Learned counsel for the petitioner then contended that no detention order could be passed on the basis of a solitary activity of the petitioner. This argument again is devoid of force. Apart from the fact in a number of cases the Supreme Court has now held that a solitary act which may indicate that the detenu must

have been acting in connivance with some more persons, as is done by a gang, is sufficient to pass a detention order against a detenu, in the instant case the petitioner had himself admitted that He had on two or four earlier occasions also carried the narcotics at the instance of person whom the said narcotic drugs had to be delivered. In a sense, therefore, the petitioner has been repeating his activity in the past. The detaining authority could, therefore legitimately come to the conclusion that if not prevented, the petitioner might again have indulged in similar activities. This contention too is, therefore, devoid of any force.

10. The next contention of the petitioner was that the detenu was only 17 years old at the time of the alleged incident, as was disclosed by him in his statement given to the officers of Narcotic Control Bureau. Learned counsel for the petitioner contends that a young boy of 17 years of age could not act in such a manner. Learned counsel for the petitioner then contended that since in the case of *Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others*, the Supreme Court had held that a young boy of 17 years could not be preventively detained hence even the petitioner who was only 17 years old could not have been detained by the authorities. This contention of the learned counsel again merits rejection because in the instant case the petitioner had admitted that he had been indulging in the activity which needed to be prevented. Moreover we cannot lose sight of the fact that the problem of the use of Narcotic Drugs and Psychotropic Substances is maximum in the age group of persons who are in the schools and colleges. Such persons may be the most vulnerable couriers used by the gang of persons indulging in illicit traffic. Under the circumstances it will be wrong to suggest that any person in the age group of 17 or so cannot be a courier engaged in the illicit traffic of narcotic drugs and psychotropic substance. Therefore, the order passed against such persons under the Act would be a perfectly legitimate order.

11. In the end learned counsel for the petitioner said that the detention order had been passed on 7-7-88 but it could be served on the petitioner only on 3-1-89. According to the learned counsel for the petitioner no serious efforts were made to serve the order of detention on the petitioner over a period of almost six months and as such the apprehension of the detaining authority should be treated as not real and genuine with the result that continued detention of the petitioner should be held to be bad. In this connection paragraph 13 of his petition reads as under:

"13. That from 23-6-1988 onwards the petitioner started living a peaceful life but all of a sudden the police started searching for the petitioner and the property of the petitioner's father Abdul Qadar Khan was attached by the police. Consequently the petitioner surrendered before the court on 3-1-1989 from where he was sent to Naini Jail, Allahabad, on 6-1-1989."

In paragraph 14 it has been thereafter alleged that the detention order along with some papers were served on the petitioner in Naini Central Jail, Allahabad copies whereof were annexed as Annexure-1A, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and

12 respectively. Thereafter in paragraphs 14, 15 & 16 of the supplementary affidavit filed by the petitioner, the petitioner had categorically stated that no steps had been taken by the concerned authorities u/s 8(1)(a) of the Ordinance/ Act upto 21-9-88 and hence the continued detention of the petitioner was bad particularly as no gazette notification as contemplated u/s 8(1)(b) of the Act had been issued till the date of filing of the supplementary affidavit i.e. 26-7-1989. In reply to these allegations in the counter affidavit filed by Sri. K. L. Verma, the then Joint Secretary in the Ministry of Finance, Department of Revenue, New Delhi it has been asserted in paragraph 7 that after passing of the detention order under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (hereinafter referred to as the Ordinance, 1988) the petitioner had absconded and, therefore, could not be detained and despite every efforts by the officers of Narcotic Control Bureau including their application for proceedings u/s 82/ 83, Cr. P.C. in the complaint case filed against the petitioner under the Act of 1985 in which notice had also been issued to the sureties of the petitioner to produce him, the petitioner surrendered only on 3-1-1989 in the Court of Chief Judicial Magistrate, Varanasi when he was taken into custody and was sent to Jail whereafter the order of detention along with its grounds etc. was served on him. However the second supplementary counter affidavit specifically dealt with the point, of non-compliance of Section 8 of the Act which was raised in the supplementary affidavit by the petitioner. Paragraph 15 of the said second supplementary counter affidavit reads as follows :--

"15. That the contents of paragraph 14 of the supplementary affidavit are denied. It is submitted that the detaining authority had authorised the Deputy Director of Narcotics Control Bureau, Varanasi to arrange for the execution of the detention order on the petitioner. The authorities of the Narcotics Control Bureau, Varanasi made serious efforts to serve the order of detention on the petitioner but since the petitioner was absconding the order of detention could not be served. The authorities of the Narcotics Control Bureau, Varanasi after receiving the order of detention dated 7-7-1988 on 8-7-1988 went at the residence of the petitioner who were not available at his residence, the family members of the petitioner were not aware of the whereabouts of the petitioner and as such the authorities of the Narcotics Control Bureau, Varanasi were told by the family members of the petitioner that they do not know the whereabouts of the petitioner. Thereafter the authorities of the Narcotics Control Bureau, Varanasi kept surveillance on the petitioner at his residence but the petitioner could not be found as he was absconding. On secret information the authorities of the Narcotics Control Bureau, Varanasi came to know that the petitioner is available at Delhi and as such on 5-8-88. wrote a letter to Narcotics Control Bureau, New Delhi to make enquiry about the petitioner on the address which was communicated to them. The authorities of the Narcotic Control. Bureau, New Delhi by its letter dated 8-9-1988 which was received by the authorities of Narcotics Control Bureau, Varanasi on 16-8-1988 informed that the petitioner is

not available at Delhi too and various enquiries were made by the authorities of Delhi. It is incorrect to say that no efforts were made by the authorities for serving the order of detention on the petitioner. When the authorities of Narcotics Control Bureau, Varanasi failed to serve the order of detention on the petitioner, the authorities of Narcotics Control Bureau, Varanasi moved an application on 27-7-1988 before the Court of Session, Varanasi for cancellation of bail of the petitioner. It was on the persuasion of the authorities of the Narcotics Control Bureau, Varanasi that non-bailable warrants were issued against the petitioner by the court and on that basis the petitioner surrendered on 3-1-1989 before the Chief Judicial Magistrate, Varanasi and the order of detention was served on the petitioner on 3-1-1989. All these facts clearly show that the sincere and vigilant effort was made by the authorities of the Narcotics Control Bureau, Varanasi to serve the detention on the petitioner".

12. Whereas according to the learned counsel for the petitioner this delay in service of the detention order vitiates the continued detention of the petitioner, learned counsel for the Central Government says that a satisfactory explanation having been offered by the detaining authority, the delay is of no consequence. It will be relevant to refer to the cases which has been cited by the counsel for the respective parties in this regard.

13. Learned counsel for the petitioner relied on the case of Sk. Nizamuddin Vs. State of West Bengal, where the Supreme Court held that delay of about two and half months in arresting the detenu pursuant to the detention order coupled with the fact that the delay had not been explained had rendered the subjective satisfaction of the detaining authority as not genuine. A perusal of that case clearly indicated that there was absolutely no explanation for the delay and the Supreme Court had negated the plea of the State counsel that since the plea had not been raised in the petition, the State was not expected to offer any explanation for the delay hence the case of Sheikh Nizamuddin is of no assistance to the petitioner. However learned counsel for the petitioner also placed reliance on the case of Sk. Serajul Vs. State of West Bengal, which had been relied upon in the case of Sheikh Nizamuddin. It is relevant to quote the relevant passage of this judgment which read as under:--

"Though the last incident occurred on 15th January, 1972, the order of detention was not made until 24th August, 1972, and even after the order of detention was made, the petitioner was not arrested until 22nd February, 1973. There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the

petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine. But here we find that though an affidavit in reply to the petition was filed by the Deputy Secretary Homes (Special) Department, Government of West Bengal, no explanation was forthcoming in this affidavit as to why the order of detention was made as late as 24th August, 1972 when the last incident on which it was found occurred on 15th January, 1972 and why the petitioner was not arrested until 22nd February, 1973, though the order of detention was made on 24th August, 1972."

Thereafter the Supreme Court had again repelled the contention that although the point had not been raised in the petition it was not necessary for the State Govt. to have offered any explanation.

14. Learned counsel for the petitioner further relied on the case of *Nabi Rahman v. State of U.P.* reported in 1984 All Cri 61 where a detention order was struck down as what had happened between 22-7-1981 to 19-10-1981, the two dates when the proposal had been received by the State Government and the order of detention was passed, had not been explained. The facts of that case do not still apply to the facts of the present case and as such the said case also does not help the petitioner in any manner.

15. On the other hand Sri Shrish Chandra learned counsel for the respondents has relied on the case of *Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another*, . Paragraph 6 of the aforesaid judgment read as under:

"It is further true that there must be a "live and proximate link" between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is "snapped" if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest there is warrant to consider the "link" not snapped but strengthened. That precisely, is the state of affairs before us".

16. It is apparent from a perusal of these cases that once a person absconds after coming to know about the fact that an order of detention has been passed against him, he cannot make a grievance that there has been delay in service of

the detention order upon it. What however is necessary to be seen is that the delay has been explained. In the instant case as has been discussed in the earlier part of the judgment the detaining authority, after coming to know that the petitioner had absconded and entrusted the task of executing the order of detention on the petitioner to the Deputy Director, Narcotics Control Bureau, Varanasi. Paragraph 16 of his counter affidavit, quoted earlier, says that the authorities of the Narcotics Control Bureau were all along vigilant to get the order executed and served upon the petitioner. It having been admitted by the petitioner himself in paragraph 14 of his supplementary affidavit that proceedings u/s 8(1)(a) had been initiated on 21-9-88, and thereafter the fact that the petitioner surrendered on 3-1-1989 when the order of detention was served on him, cannot render the continued detention of the petitioner bad merely on the ground that the authorities concerned did not move the detaining authority to take action u/s 8(1)(b) of the Act, for affecting service of the order on the petitioner. Thereafter, in reply to the assertions of the petitioner in paragraph 16 of the supplementary affidavit, that notification in the official gazette u/s 8(1)(b) had not been issued till the date of the filing of that supplementary affidavit has been made by the detaining authority, in paragraph 17 of the second supplementary counter affidavit it is said that the authorities of the Narcotics Control Bureau were making sincere efforts to serve the order of detention on the petitioner, and when the petitioner surrendered in the court in pursuance of the attachment proceedings etc. on 3-1-1989, the order of detention was served on that very day. The argument of the learned counsel for the Union of India is that under these circumstances non publication of the notification in the official gazette could not render the continued detention illegal. We are satisfied with this explanation and in view of the fact that the detaining authority has explained the delay satisfactorily we do not find that the continued detention of the petitioner has been rendered illegal in any manner whatsoever.

17. Learned counsel for the petitioner then contended that the order of detention was passed on 7-7-1988 when the petitioner was not in jail but it was served on the petitioner on 3-1-1989 in jail after he had surrendered in the court. According to learned counsel for the petitioner the detaining authority after the surrender of the petitioner should have again applied his mind to the fact whether in view of the fact that the petitioner was in jail, his detention under the detention order passed by him was necessary or not. In this connection learned counsel for the petitioner has relied upon the case of Binod Singh v. D. M. Dhanbad, reported in 1986 ACC 567. In this case the Supreme Court had found that the activity of the petitioner, which was considered to detain him under the National Security Act, was a crime u/s 302, Indian Penal Code. By the time the order of detention was passed the petitioner had not been apprehended in criminal case and was at large. However the order was served on the detenu Binod Singh after he was in jail in the criminal case pending against him. It was in that background that the Supreme Court deemed it necessary that the detaining authority should have again examined the fact whether the petitioner

had been effectively prevented from acting in a prejudicial manner or not as he was then in jail in a case u/s 302, Indian Penal Code also and whether there was any apprehension that the petitioner was likely to come out of jail. It will be relevant to quote the following lines from the judgment of Binod Singh to appreciate this aspect:

"There must be awareness of the facts necessitating preventive custody of a person for social defence. 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."

However in the instant case the petitioner had already been released in the criminal case which was pending against him. Thereafter the notices had been given to the sureties to produce the petitioner before the court concerned so that the order of detention may be served upon the petitioner. Consequently the facts of the instant case are entirely different from the facts of the case of Binod Singh before the Supreme Court. Consequently even this contention of the learned counsel for the petitioner is devoid of merit.

18. Towards the end of his arguments learned counsel for the petitioner stated that there was no material before the detaining authority and consequently his satisfaction that the detention of the petitioner was necessary was vitiated. No serious argument was raised by the learned counsel in support of this contention. We are even otherwise satisfied that on the material disclosed in the grounds of detention there were sufficient grounds to enable the detaining authority to pass an order of detention against the petitioner.

19. In view of our discussion above, all the points taken in support of this petition fail. There is no merit in this petition which is accordingly dismissed.