

(2022) 09 SC CK 0129

In the Supreme Court Of India

Case No : Criminal Appeal No. 1708 Of 2022

Sushanta Kumar Banik

APPELLANT

Vs

State Of Tripura & Ors

RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21(B), 22(b), 22(c), 29, 37

Citation : (2022) 14 Scale 424

Hon'ble Judges : Uday Umesh Lalit, CJ; S. Ravindra Bhat, J; J.B. Pardiwala, J

Bench : Full Bench

Advocate : Madhumita Bhattacharjee, Srija Choudhury, Anant, Nachiketa Joshi, Himadri Haksav, Sucheta Joshi, K.M. Nataraj, Akshay Amritanshu, Shailesh Madiyal, Bani Dikshit, Mukesh Kumar Maroria

Final Decision : Allowed

Judgement

J.B. Pardiwala, J

1. Leave granted.

2. This appeal is at the instance of a detenu detained under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, 'PIT NDPS Act') and is directed against the judgment and order passed by the High Court of Tripura at Agartala dated 01.06.2022 in Writ Petition (Civil) No. 6 of 2021 by which the High Court rejected the writ application filed by the appellant herein questioning the legality and validity of the detention order passed by the Government of Tripura dated 12.11.2021 and thereby affirming the order of detention.

3. It all started with a proposal dated 28th of June, 2021 submitted by the Superintendent of Police, West Tripura District, Sub-Divisional Police Officer, Amtali, West Tripura to the Superintendent of Police (C/S), West Tripura, Agartala with a request to move the appropriate authority for passing an appropriate

order of detention under the provisions of the PIT NDPS Act.

4. The proposal reads thus:-

"GOVERNMENT OF TRIPURA OFFICE OF THE SUB DIVISIONAL POLICE OFFICER
WEST TRIPURA, AGARTALA

No. 1445/SDPO(AMT)/21 To

Dated, 28th June, 2021

The Superintendent of Police (C/S),

West Tripura, Agartala.

Subject: Proposal for Preventive Detention order of accused Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS Amtali, West Tripura U/-3 of PIT NDPS Act, 1988.

Sir,

With reference to the subject cited above, it is to inform that I am submitting a proposal for issuance of preventive detention order against the accused Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura U/-3 of PIT NDPS Act, 1988.

Ongoing through the proposal and the relevant records collected from various sources, the following grounds have been found for detention of Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura U/-3 of PIT NDPS Act, 1988.

1. Sri Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura was charge sheeted in Amtali PS Case No. 2019/AMT/208 dated 05/11/2019 U/S 22(b)/22(C)/29 of NDPS Act, 1985 which was registered following seizure of 92 gm brown sugar (Heroin) & 7600 nos yaba tablets. Investigation of the case has revealed that he is involved in running of illegal business of narcotic drugs throughout the State and outside the State. The subject was arrested on 05/11/2019 and forwarded to the Ld. Court. He has already been charge sheeted in this case vide Amtali PS C/S No. 11/20 dated 09/02/2020 (Copy of FIR, seizure list, inventory, arrest memo, SFSL report, statement of witnesses are enclosed).

2. Sri Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura again got involved in East Agartala PS Case No. 2021 EAG 052 dated 25/04/2021 U/S-21(B)/29 of NDPS Act wherein on 25/04/2021 the said Susanta Kumar Banik S/o Lt. Santi Ch. Banik was again caught red handed while dealing with NDPS substance near Badharghat Railway Station. One pouch filled with suspected heroin was recovered from his possession along with cash Rs.20,400/- & a

android mobile. It has made very much clear that the said Sushanta Kumar Banik is a habitual drug dealer and sells drug to youths hence running the lives of young fellows as well as the entire society as a whole. The investigation of the above referred case is under progress and the said Susanta Kumar Banik is learned to be in Judicial Custody.

In view of the above it can be stated that Sri Susanta Kumar Banik is a kingpin in illegal trafficking of narcotic drugs inside the state as well as outside the state. He did not stop his illegal activities of narcotics drugs and psychotropic substances even after his arrest in previous case vide Amtali PS Case No. 208/19 and East Agartala PS Case No. 52/2021. It shows his determination is to continue his illegal NDPS business. It is further mentioned that illicit trafficking in narcotic drugs and psychotropic substances caused a serious threat to the health and welfare of the people and to protect the society from this menace it is required to take stern action against the subject.

The appropriate authority may please be moved to issue detention order against Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura U/s-3 of PIT NDPS Act, 1988 to prevent him from engaging in illicit trafficking of narcotic drugs and psychotropic substances further.

Yours sincerely,

Enclo: List of relied documents. Sd/- 28/6/21 (Anirban Das)

Superintendent of Police,

West Tripura District,

Sub-Divisional Police Officer

Amtali, West Tripura."

5. The Secretary (Home Department), Government of Tripura acting on the proposal dated 14.07.2021 forwarded by the Director General of Police proceeded to pass the detention order dated

12.11.2021 which reads thus:

"No. F. 15(9)- PD/2021(III)

GOVERNMENT OF TRIPURA

HOME DEPARTMENT

12th November, 2021

ORDER

Whereas, the Director General of Police has sent a proposal for detention of Shri Sushanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat,

Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura under PITNPS Act, 1988 along with records under Section 3(1) of the Prevention of Illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

AND

Whereas, on perusal of records as submitted by the Director General of Police, Tripura, it appears that Shri Sushanta Kumar Banik, S/o. Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura under PITNPS Act. 1988 was involved in the following cases :-

(i) Amtali PS Case No. 2019/AMT/208 dated 05.11.2019 22(b)/22(C)/29 of NDPS Act, 1985.

(ii) East Agartala PS Case No. 2021 EAG 052 dated 25.04.2021 U/S 21(B)/29 of NDPS Act.

AND

Whereas, he has association with the smugglers of NDPS articles and illicit drug traffickers in connection with Amtali PS Case No. 2019/AMT/208 dated 05/11/2019 U/S 22(b)/22(C)/29 of NDPS Act, 1985 and East Agartala PS Case No. 2021 EAG 052 dated 25/04/2021 U/S - 21(B)/29 of NDPS Act.

AND

Whereas, the person is still active in illicit trafficking of NDPS articles revealed from field information but could not be arrested red-handed again and issue of detention order under PITNDPS will also help Police in initiating financial investigation laid down under Chapter-V(A) of NDPS Act.

AND

Whereas, Shri Sushanta Kumar Banik, S/o. Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura was charge sheeted in Amtali PS Case No. 2019/AMT/208 dated 05.11.2019 U/S 22(b)/22(C)/29 of NDPS Act, 1985 which was registered following seizure of 92 gm brown sugar (Heroin) and 7600 nos yaba tablets. Investigation of the case has revealed that he is involved in running in illegal business of narcotics drugs throughout the State and outside the State.

AND

Whereas, he is a kingpin in illegal trafficking of narcotic drugs inside the State as well as outside the State. He did not stop his illegal activities of narcotics drugs and psychotropic substances even after his arrest in previous case vide Amtali PS Case No. 208/19 and East Agartala PS Case No. 52/2021. It shows his determination is to continue his illegal NDPS business. Illicit trafficking in narcotic drugs and psychotropic substances caused a serious threat to the health and welfare of the people and to protect the society from this menace it is required to

take stern action against the person.

AND

Whereas, Director General of Police, Tripura has proposed to prevent Shri Sushanta Kumar Banik, S/o. Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura from continuing his harmful and prejudicial activity by engaging in illicit traffic of narcotic drugs and psychotropic substances in the interest of society.

AND

Now, therefore, the undersigned, being the specially empowered officer of the State Government in exercise of powers conferred by sub-section (1) of section (3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and careful examination of the proposal of the Director General of Police, Tripura and other supporting documents, found sufficient grounds for detention of Shri Sushanta Kumar Banik and being satisfied that with a view to preventing him from engaging in illicit traffic in NDPS, it is necessary to detain him and accordingly it is directed for detention of Shri Sushanta Kumar Banik S/o. Late Shanti Ch. Banik of Siddhiashram, Badharghat. Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura.

It is mentioned that the accused Shri Sushanta Kumar Banik S/o. Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura may submit his representation to the Central/State Government against this order of detention. Such representation may be submitted to the undersigned for onward transmission to the Central/State Government. The accused is to be informed that he will get all reasonable opportunity for making representation against this order to the Central/State Government, he may therefore state to the undersigned what opportunity he needed for this purpose. The accused is to be appraised of his right to make representation before the undersigned against this detention order. The accused is to be informed that he also has a right to be heard before the Advisory Board.

The concerned Superintendent of Central Jail/District Jail/Sub-Jail is requested to depute a responsible officer at the time of effecting detention order to the addressee who will explain in details the contents of this order along with grounds of detention. Even assistance of another Government official or any other person may be taken to brief him about the order etc. in the language which the said accused person understands in presence of two witness on receipt signature or thumb impression in token from the accused.

The concerned Superintendent of Central Jail/District Jail/Sub-Jail is directed to extend all assistance to the accused in making representation to the concerned authority. The assistance provided by the Superintendent of Central Jail/District Jail/Sub-Jail may include stationary and any other items as desired by the accused. The Superintendent of Central Jail/District Jail/Sub-Jail will also provide

a literate person who shall assist the accused, if he is not literate, in drafting the representation to the Central/State Government.

Sd/- 12.11.2021

(A. Roy)

Secretary to the

Government of Tripura”

6. Thus, from the aforesaid, it appears that the order of preventive detention came to be passed essentially on the ground that in the past two First Information Reports (FIR) were registered against the appellant herein for the offences punishable under Sections 22(b)/22(C)/29 and 21(B) resply of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act, 1985') and is a habitual offender. The first FIR is dated 05.11.2019 and the second FIR is dated 25.04.2021. At the end of the investigation of the FIR dated 05.11.2019, the charge sheet came to be filed and the trial is pending as on date. The investigation so far as the FIR dated 25.04.2021 is concerned, the same is shown to have been pending on the date of the proposal. However, what is important to note is that in both the aforesaid cases registered under the NDPS Act, 1985, the appellant herein was ordered to be released on bail by the Special Court, Tripura.

7. The appellant questioned the legality and validity of the detention order by filing the Writ Petition (Civil) No. 6 of 2021 in the High Court of Tripura at Agartala. The High Court vide the impugned judgment and order dated 01.06.2022 rejected the writ application thereby affirming the order of preventive detention.

8. In such circumstances referred to above, the appellant (detenu) is before this Court with the present appeal.

ANALYSIS:

9. We have heard Ms. Madhumita Bhattacharjee, the learned counsel appearing for the appellant detenu and Mr. Nachiketa Joshi, the learned counsel appearing for the State of Tripura.

10. Manifold contentions have been raised by the learned counsel appearing on both the side.

11. We are persuaded to allow this appeal on the following two grounds:

(i) Delay in passing the order of detention from the date of proposal thereby snapping the “live and proximate link” between the prejudicial activities and the purpose of detention & failure on the part of the detaining authority in explaining such delay in any manner.

(ii) The detaining authority remained oblivious of the fact that in both the

criminal cases relied upon by the detaining authority for the purpose of passing the order of detention, the appellant detenu was ordered to be released on bail by the special court. The detaining authority remained oblivious as this material and vital fact of the appellant detenu being released on bail in both the cases was suppressed or rather not brought to the notice of the detaining authority by the sponsoring authority at the time of forwarding the proposal to pass the appropriate order of preventive detention.

DELAY IN PASSING THE ORDER OF DETENTION

12. We may recapitulate the necessary facts which have a bearing so far as the issue of delay is concerned. The proposal to take steps to preventively detain the appellant at the end of the Superintendent of Police addressed to the Superintendent of Police (C/S) West Tripura, Agartala is dated 28th of June 2021. The proposal in turn forwarded by the Assistant Inspector General of Police (Crime) on behalf of the Director General to the Secretary, Home Department is dated 14.07.2021. The order of detention is dated 12th of November, 2021. There is no explanation worth the name why it took almost five months for the detaining authority to pass the order of preventive detention.

13. There is indeed a plethora of authorities explaining the purpose and the avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would suffice to refer to the decision of this Court in *Ashok Kumar v. Delhi Administration and Ors.*, (1982) 2 SCC 403, wherein the following observation is made:

“Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing.”

14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the “live & proximate link”

between the grounds of detention & the avowed purpose of detention.

16. In *Sk. Nizamuddin v. State of West Bengal*, (1975) 3 SCC 395, this Court while examining the necessity of securing the arrest of the detenu immediately after the order of detention has held thus:

"It would be reasonable to assume that if the District Magistrate 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 in securing the arrest of the petitioner immediately after the making of the order of detention, 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 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."

Having held as above, Bhagwati, J. (as the learned Chief Justice then was) pointed out that if there is any delay in arresting the detenu pursuant to the order of detention which is prima-facie unreasonable, the State must give reasons explaining the delay.

17. A similar contention was raised in *Suresh Mahato v. The District Magistrate, Burdwan, and Ors.*, (1975) 3 SCC 554, on the basis of the dictum laid down in two decisions of this Court, namely, *SK. Serajul v. State of West Bengal*, (1975) 2 SCC 78, and *Sk. Nizamuddin* (supra) contending that the delay of the arrest of the detenu in that case showed that the detaining authority was not really and genuinely satisfied as regards the necessity for detention of the detenu for otherwise he would have tried to secure the arrest of the detenu promptly and not left him free to carry on his nefarious activities. Bhagwati, J. (as the learned Chief Justice then was) while dealing with this submission, made the following observation:

"Now, there can be no doubt--and the law on this point must be regarded as well settled by these two decisions--that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner."

18. Chinnappa Reddy, J. speaking for the Bench in *Bhawarlal Ganeshmalji v. State of Tamil Nadu*, (1979) 1 SCC 465, has explained as follow:

"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."

(Emphasis supplied)

19. Sabyasachi Mukharji, J. (as the learned Chief Justice then was) in *Shafiq Ahmed v. District Magistrate, Meerut and Ors.*, (1989) 4 SCC 556, having regard to the fact that there was a delay of two and a half months in detaining the petitioner (detenu) therein, pursuant to the order of detention has concluded that "there was undue delay, delay not commensurate with the facts situation in that case and the conduct of the respondent authorities betrayed that there was no real and genuine apprehension that the detenu was likely to act in any manner prejudicial to public order. The order, therefore is bad and must go". However, the learned Judge observed that "whether the delay was unreasonable depends on the facts and circumstances of each case."

20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.

VITAL MATERIAL OR VITAL FACT WITHHELD AND NOT PLACED BY THE

SPONSORING AUTHORITY BEFORE THE DETAINING AUTHORITY

22. As noted above, in the case on hand, in both the cases relied upon by the detaining authority for the purpose of preventively detaining the appellant herein, the appellant was already ordered to be released on bail by the concerned Special Court. Indisputably, we do not find any reference of this fact in the proposal forwarded by the Superintendent of Police, West Tripura District while requesting to process the order of detention. The reason for laying much stress on this aspect of the matter is the fact that the appellant though arrested in connection with the offence under the NDPS Act, 1985, the Special Court, Tripura thought fit to release the appellant on bail despite the rigours of Section 37 of the NDPS Act, 1985. Section 37 of the NDPS Act, 1985 reads thus:

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

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

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

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

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

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

23. A plain reading of the aforesaid provision would indicate that the accused arrested under the NDPS Act, 1985 can be ordered to be released on bail only if the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. If the appellant herein was ordered to be released on bail despite the rigours of Section 37 of the NDPS Act, 1985, then the same is suggestive that the Court concerned might not have found any prima facie case against him. Had this fact been brought to the notice of the detaining authority, then it would have influenced the mind of the detaining authority one way or the other on the question whether or not to make an order of detention. The State never thought to even challenge the bail orders passed by the special court releasing the appellant on bail.

24. In *Asha Devi v. Additional Chief Secretary to the Government of Gujarat and Anr.*, 1979 CrLJ 203, this Court pointed out that:

"... if material or vital facts which would influence the minds of the detaining

authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal."

25. In *Sk. Nizamuddin* (supra) this Court observed as under:

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

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

27. It is clear to our mind that in the case on hand at the time when the detaining authority passed the detention order, this vital fact, namely, that the appellant detenu had been released on bail by the Special Court, Tripura despite the rigours of Section 37 of the NDPS Act, 1985, had not been brought to the notice and on the other hand, this fact was withheld and the detaining authority was given to understand that the trial of those criminal cases was pending.

28. The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to.

29. In view of the aforesaid discussion, this appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court of Tripura is set aside. The order of preventive detention passed by the State of Tripura dated 12.11.2021 is hereby quashed and set aside. The appellant herein is ordered to be released forthwith from custody if not required in any other case.

30. Pending application, if any, also stands disposed of.