

(2012) 02 KL CK 0011

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31329 of 2011

Sushma Bharadwaj

APPELLANT

Vs

Addl. Chief Secretary To Government and Another

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Constitution of India, 1950 — Article 141, 21
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21(c), 27A, 28, 29, 41(1)
Penal Code, 1860 (IPC) — Section 120B, 332, 34, 353, 365
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 10, 11, 3(1), 8, 9

Citation : (2013) ALLMR(Cri) 1 : (2012) CriLJ 3418 : (2012) 2 KarLJ 441 : (2012) 2 KLJ 441

Hon'ble Judges : Thottathil B. Radhakrishnan, J;C.T. Ravi Kumar, J

Bench : Division Bench

Advocate : Vikram Chaudhri; Sumer Brar and P. Venugopal, for the Appellant; P.C. Iype and Sujith Mathew Jose (GP), for the Respondent

Final Decision : Allowed

Judgement

C.T. Ravi Kumar, J.—This writ petition carries the challenge against an order of preventive detention passed against the petitioner's husband Rajesh Bharadwaj, hereinafter referred to as "the proposed detenu", u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short "PITNDPS Act"). The facts, in succinct, relevant for the purpose of deciding the issues involved are as hereunder:- The proposed detenu is the 6th accused in S.C.No. 40 of 2008 on the file of the Additional District & Sessions Court (Special Court, NDPS Act cases), Vatakara. The proposed detenu along with the other co-accused are indicted under sections 8(1) and 8(c) read with sections 21(c), 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act"). The prosecution case against the proposed detenu is that in his bank account, an amount of Rs. 2,00,000/- and Rs. 4,00,000/- were deposited on 31.1.2008 and 3.3.2008 respectively, being the amount towards

the part-value of heroin purchased by Habeeb Rahman (A1) from one Chottu (A4). In execution of the warrant of arrest issued by that court, the proposed detenu was arrested from Chandigarh on 24.7.2011 and after obtaining production-cum-transit remand from duty Magistrate, Chandigarh he was produced before the Special Court, NDPS Act cases, Vadakara on 26.7.2011 and since then he has been in judicial custody.

2. Earlier, the Government of Kerala, with a view to prevent the aforesaid Rajesh Bharadwaj, the husband of the petitioner, from engaging in illicit traffic in narcotic drugs and psychotropic substances, have issued Ext.P1 order of detention/Ext.R1(a), on 27.8.2008 u/s 3(1) of the PITNDPS Act. Admittedly, the said order of detention is still to be executed. On 5.8.2011, Ext.P5 memo was filed by the Additional Public Prosecutor, Vatakara before the Special Court, NDPS Act cases, Vadakara stating that Ext.P1 detention order has been issued against the said Rajesh Bharadwaj, the 6th accused therein, and it is pending execution with Home Department, Chandigarh Administration, Union Territory of Chandigarh and it is yet to be received back from Chandigarh Administration. Accordingly, it is prayed for extension of the judicial custody till the execution of the said detention order. Against the same, Ext.P6 counter was filed by the proposed detenu, inter alia, highlighting that Ext.P1 detention order was not executed for the past three years or thereabouts and, therefore, it has outlived its life, purpose and objective. No orders have so far been passed on Ext.P5.

3. Earlier, the proposed detenu himself had filed W.P.(C) No. 812 of 2009 before this Court challenging Ext.P1 order of detention at the pre-execution stage. As a matter of fact, Ext.P1 order is still to be executed. The aforesaid writ petition was dismissed as per Ext.P15 judgment holding that the detention order could not be challenged at the pre-execution stage. Later, the proposed detenu was arrested on 24.7.2011. The said arrest was not in execution of Ext.P1 detention order, whilst, it was made in execution of the warrant of arrest issued by the Special Court, NDPS Act cases, Vadakara in S.C.No. 40 of 2008. Consequently, the petitioner herein submitted Ext.P7 representation to the 2nd respondent seeking for revocation of Ext.P1 order of preventive detention. Thereafter, detailing such developments the petitioner herein had moved the Hon"ble Apex Court by filing W.P.(Crl.) No. 207 of 2011 seeking for quashment of Ext.P1 order. As per Ext.P16 order, the said writ petition was disposed of observing that the petitioner ought to have filed writ petition before the High Court and further that its disposal would not prevent the petitioner from moving the High Court for appropriate relief. That is how the petitioner is now before us.

4. Based on the indisputable position that Ext.P1 is yet to be executed despite the lapse of more than three years since its issuance it is contended that it has outlived its life period, purpose and objective. According to the petitioner, the unreasonable delay in execution of the detention order snapped the link between the grounds of detention and the avowed purpose of detention. Various other contentions, such as absence of live proximate link between the prejudicial

activity and the purpose of detention, abuse of power in issuing the same based on solitary incident on apparent absence of previous prejudicial activities, violation of fundamental rights under Article 21 of the Constitution of India have also been raised. To buttress such contentions the petitioner is relying on various decisions of the Hon"ble Apex Court. In short, according to the petitioner, it would be a travesty of justice to continue with the order of detention without a trial at this stage. The petitioner seeks issuance of appropriate writ, order or direction quashing the unexecuted Ext.P1 order dated 27.8.2008 passed u/s 3(1) of the PITNDPS Act against the husband of the petitioner, the proposed detenu. Relying on the decision of the Hon"ble Apex Court in Deepak Bajaj v. State of Maharashtra and another, 2009 KHC 4327 the learned counsel for the petitioner contended that Ext.P1 order of preventive detention is open to challenge in the pre-execution stage. The learned counsel for the petitioner further contended that the five grounds mentioned in the decision of the Hon"ble Apex Court in Additional Secretary to the Government of India and others v. Smt. Alka Subhash Gadia and another, 1992 KHC 969 for a pre-execution challenge of a preventive detention order are only illustrative and not exhaustive in view of the decision in Deepak Bajaj's case (supra)

5. A counter affidavit has been filed in this writ petition on behalf of respondents 1 and 2. In the counter affidavit it has been stated that on 24.4.2008 the Senior Intelligence Officer Sri. P.M. Vijayan and two other officers namely S. Radesh and Sayed Mohammed along with other Officials of the Central Excise Commissionerate, Chandigarh visited the house of the proposed detenu and asked him to accompany them to the Central Excise Office, Chandigarh for verification. Accordingly, he along with Sri. S. Radesh proceeded in his car to the office of the Central Excise, Chandigarh. It is the contention that instead of coming to the Central Excise Office, the said vehicle took some other route and it was intercepted enroute by the son of the proposed detenu and one of the friends of his son. Later, Sri. Radesh was forcibly taken by them in their vehicle and only after the intervention of the Chandigarh Police that the said Radesh could be freed. A crime was registered against the proposed detenu and his son and also his son's friend for abducting Radesh. At this juncture, it is relevant to note that the number of the crime registered in connection with the said alleged incident has not been disclosed in the counter affidavit. It is further stated in the counter affidavit that subsequently the Officials of the Central Excise Department, Chandigarh conducted search in the residence of the proposed detenu and also at Hotel Le Crown, of which the proposed detenu is a Director. However, he was not available there. Later, Department of Revenue Intelligence, Calicut Unit, sent summons to the proposed detenu under the NDPS Act requiring him to appear before the Senior Intelligence Officer, Calicut. Admittedly, he replied to it. However, he did not turn up. Later, another summons was issued requiring him to appear before the Assistant Director, Directorate of Revenue Intelligence, Ludhiana, taking note of the reply sent by him to the first summons. Later, the proposed detenu appeared in the DRI Office, Ludhiana and he

produced an order dated 6.5.2008 of the Additional Sessions Judge, Chandigarh to the effect that three days advance notice should be given to him for his arrest. It is also stated in the counter affidavit that in view of the said direction he could not be arrested. In the meanwhile, after the investigation, the DRI filed Ext.P2 complaint before the Additional District & Sessions Court (Special Court, NDPS Act cases), Vatakara. According to the statements in the counter affidavit, on 26.6.2008 the DRI Officials visited the house of the proposed detenu, after obtaining non-bailable warrant u/s 41(1) of the NDPS Act, from the Additional District & Sessions Court (Special Court, NDPS Act cases), Vatakara. As he was absconding, it could not be executed, it is stated therein. According to respondents 1 and 2 it was in consideration of the aforesaid facts and circumstances and pursuant to a proposal from the Directorate of Revenue Intelligence, Calicut Unit that Ext.P1 order of detention dated 27.8.2008 was issued against Rajesh Bhradwaj, the proposed detenu. Shortly, thereafter viz., on 30.8.2008 Ext.R1(b) communication was forwarded to the Home Secretary, Chandigarh Administration for immediate execution of Ext.P1, along with a copy of Ext.P1 order with grounds and other documents relied upon. Further, it is stated in the counter affidavit that repeated reminders were sent to Chandigarh Administration for the aforesaid purpose. Later, Ext.P1 order of detention was returned unserved by the Joint Secretary, Home Department, Chandigarh Administration along with a communication dated 2.2.2009 of IGP, Chandigarh with Ext.R1(c) covering letter. As per the said communication, the proposed detenu had gone to Delhi. Later, as per Ext.R1(d), Ext.P1 detention order with grounds were again forwarded to the Joint Secretary, Home Department, Chandigarh Administration, requesting to ascertain the place of residence of the proposed detenu and to forward the detention order to his counterpart in Delhi for immediate execution. As per Ext.R1(e) letter dated 22.6.2009, the Joint Secretary, Home Department, Chandigarh Administration informed that the proposed detenu was vainly searched many a times in his house. On the premise that the proposed detenu had been absconding or concealing himself to prevent execution of Ext.P1 order, Government of Kerala, in exercise of the powers under Clause (b) of sub-section (1) of section 8 of PITNDPS Act, issued an order dated 27.1.2010 directing the proposed detenu to appear before the Inspector General of Police, Union Territory of Chandigarh, at his office within 30 days from the date of publication of the said order that was published as per Ext.R1(f) Gazette notification dated 27.1.2010. Copy of Ext.R1(f) notification was then, communicated to the Secretary, Home Department, Chandigarh Administration as per Ext.R1(g). According to respondents 1 and 2 there was no response to Ext.R1(g). Subsequently, the proposed detenu was arrested on 24.7.2011 by DRI Ludhiana in execution of the warrant of arrest issued by the Additional District & Sessions Court (Special Court, NDPS Act cases), Vatakara on 27.1.2010 and was later, produced before that court. As per Ext.R1(h) dated 2.8.2011 the Chandigarh Administration was addressed to return the unexecuted Ext.P1 detention order. On receipt of the unexecuted detention order it was forwarded to the District Police Chief, Kozhikode Rural for execution on 20.8.2011. Since the

proposed detenu is in judicial custody, the respondents thought it fit to obtain a formal permission from the Special Court, Vatakara for keeping the proposed detenu in custody before keeping him in preventive detention. It was in the said circumstances that Ext.P5 memo was filed before the Additional District & Sessions Court (Special Court, NDPS Act cases), Sessions Court, Vatakara. Ext.R1(j) would reveal that a petition was filed before that Court to permit execution of Ext.P1 detention order. The said petition was adjourned for hearing the counsel of the proposed detenu. Ext.R1(k) is the copy of the said application dated 21.8.2011. So far no order has been passed on Ext.R1(k), it is further stated. In sum and substance, the contention of respondents 1 and 2 is that the detention order could not be executed as the proposed detenu was absconding and the contentions that Ext.P1 order has lost its relevance and that it had outlived its purpose were denied. It is also stated in the counter affidavit that Ext.P7 representation submitted by the petitioner was rejected as per Ext.R1(q) dated 14.9.2011. In the above factual background, it is contended by respondents 1 and 2, in the light of the decision in Additional Secretary to the Government of India & Ors. v. Smt. Alka Subhash Gadia & Anr., 1992 (Suppl. 1) SCC 496 that Ext.P1 order of detention cannot be challenged at the pre-execution stage as the case on hand would not fall within the parameters of Alka Subhash Gadia's case.

6. We have heard the learned counsel Sri. Vikram Chaudhri appearing for the petitioner and the learned Government Pleader appearing for the respondents.

7. The proposed detenu himself had earlier approached this Court by filing W.P. (C) No. 812 of 2009. The maintainability of the said writ petition at the pre-execution stage of Ext.P23 viz., Ext.P1 order of detention herein, was considered by the learned Single Judge of this Court and ultimately the said writ petition was dismissed. In paragraph 8 of the said judgment it was clarified as hereunder:-

It is clarified that the findings herein are only to decide the maintainability of this writ petition at the pre- execution stage of Ext.P23 and should not be construed on pronouncement on the merits of the order.

In the counter affidavit filed by respondents 1 and 2 it has been stated that an appeal has been preferred against Ext.P15 judgment and the same is now pending before this Court as W.A.No. 554 of 2009. Normally, in the said circumstances, we would not have entertained the challenge against Ext.P1 in this writ petition. It is apposite to note in this context that on account of the subsequent developments viz., arrest of the proposed detenu on 24.7.2011 in execution of the warrant of arrest and in view of his remaining in judicial custody, the petitioner herein had approached the Hon'ble Apex Court by filing W.P.(Crl.) 207 of 2011 with the prayer to quash Ext.P1 order of detention. That writ petition was disposed of as per Ext.P16 order. In Ext.P16 it has been ordered thus:-

In our view, the writ petition ought to have been filed before the High Court.

Accordingly, this writ petition is disposed of. But this will not prevent the petitioner from moving the High Court for appropriate relief.

In view of Ext.P16 and in view of the clarification in Ext.P15 to the effect that the said judgment should not be construed as a pronouncement on the merits of Ext.P23 order (Ext.P1 order), we are inclined to proceed further with the consideration of this writ petition.

8. Is there any inviolable position that an order of preventive detention could not be challenged at the pre-execution stage? That question is no more *res integra* in view of the decision of the Hon''ble Apex Court in Alka Subhash Gadia's case (Supra). It has been held by the Hon''ble Apex Court in that case that in exceptional cases such a pre-execution challenge against a preventive detention order is maintainable. Whether the said exceptional circumstances indicated in Alka Subhash Gadia's case (Supra) viz., the five grounds contained therein are only illustrative or exhaustive? In *Deepak Bajaj v. State of Maharashtra & Anr.*, AIR 2009 SC 629 it was held by the Hon''ble Apex Court that exceptions indicated in Alka Subhash Gadia's case (Supra) are only illustrative and not exhaustive. In fact, this question was elaborately discussed by this Court in *Allex C. Joseph v. Union of India and Others*, 2011 (4) KHC 923.

9. Firstly, we will deal with the contention of the learned Government Pleader that Ext.P1 order is unassailable at the pre- execution stage and only after its execution any challenge against the same could be entertained. We are afraid, such a contention cannot be countenanced in the light of the decisions of the Hon''ble Apex Court in Alka Subhash Gadia's case (supra) and Deepak Bajaj's case (supra) and also that of this Court in *Allex C. Joseph's* case (supra). In Alka Subhash Gadia's case (supra) the Hon''ble Apex Court made it clear that though such cases are few courts have power to interfere with the detention orders even at the pre-execution stage and it would not be proper for the courts to do so except in exceptional cases. Paragraph 17 of Deepak Bajaj's case (supra) is relevant in this context and it in so far as relevant reads thus:- "If a person against whom a preventive detention order has been passed can show to the Court that the said detention order is clearly illegal why should he be compelled to go to jail ? To tell such a person that although such a detention order is illegal he must yet go to jail though he will be released later as a meaningless and futile exercise." Settled position is that courts have power to interfere with the detention orders even at the pre-execution stage and that the discretion of the Court should be exercised judicially and only in exceptional cases. In this case, as already noticed hereinbefore, though Ext.P1 order of detention is still to be executed, the proposed detenu is in judicial custody. In view of the decisions referred supra the aforesaid contention raised relating the maintainability of this writ petition carrying a pre-execution challenge against Ext.P1 detention order is only to be repelled. In other words, the contention of the respondents that the legality and sustainability of Ext.P1 order of detention could be considered only after execution of the said order of detention cannot be countenanced. As held

by the Hon''ble Apex Court, if in a given case the order of detention is clearly illegal and unsustainable, to tell the proposed detainee that its legality or sustainability would be looked into only after its execution that is, only after his/her detention would be meaningless and uncomprehensible. Nonetheless, the position is that pre-execution challenge against preventive detention orders could be entertained only in exceptional circumstances.

10. Having upheld the contention that a pre-execution challenge against a preventive detention order is maintainable in exceptional cases, we are inclined to proceed further to consider whether the case in hand is such an exceptional case and in that context, whether the grounds for pre-execution challenge against a preventive detention order indicated in Alka Subhash Gadia's case (Supra) are illustrative or exhaustive. As stated earlier, the question whether the grounds mentioned in Alka Subhash Gardia's case are illustrative or exhaustive was elaborately considered by a Division Bench of this Court in Alex C. Joseph's case (supra). This Court took note of the fact that a Division Bench of three Judges of the Hon''ble Apex Court in the decision in Sayed Taher Bawamiya Vs. Joint Secretary to the Govt. of India and Others, held that the five grounds for pre-execution challenge of a preventive detention order mentioned in Alka Subhash Gadia's case (Supra) were not illustrative but, exhaustive. Subsequently, a Division Bench in Union of India and others v. Muneesh Suneja, (2001) 3 SCC 92 and yet another Bench of three Judges in Naresh Kumar Goyal Vs. Union of India (UOI) and Others, also took the same view. The contra view taken by a Division Bench of two Judges of the Hon''ble Apex Court in Deepak Bajaj's case (supra) to the effect that the grounds for a pre-execution challenge mentioned in Alka Subhash Gadia's case (Supra) were only illustrative and not exhaustive, was also taken note of. Relying on the decision of the Hon''ble Apex Court in Union of India and another v. Raghubir Singh (Dead) by Lrs. & Others, 1989 KHC 384 holding that a pronouncement of law by a Division Bench of the Hon''ble Apex Court is binding on a Division Bench of the same or smaller number of Judges and in order that such a decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench, it was held that the view of a Bench of three Judges which was followed by a Division Bench of two Judges and later, by a Bench of three Judges to the effect that the grounds for pre-execution challenge are exhaustively laid down in Alka Subhash Gadia's case (Supra) must hold the field and, therefore, be treated as the law under Article 141 of the Constitution of India. We are in respectful agreement with the decision in Alex C. Joseph's case (supra). Therefore, the contention of the petitioner that the grounds for pre-execution challenge mentioned in Alka Subhash Gadia's case are not exhaustive but, only illustrative cannot be upheld.

11. Having answered the aforesaid questions thus, we may, now, proceed to consider whether Ext.P1 order of preventive detention calls for interference on the ground of inordinate delay for its execution. As noticed hereinbefore, Ext.P1 order of preventive detention is yet to be executed and the petitioner's husband,

the proposed detenu is under judicial custody because of the execution of warrant of arrest (non- bailable) dated 9.5.2011 issued by the Special Court for NDPS Act cases, Vadakara in S.C.No. 40 of 2008 on its file. It is true that Ext.P5 petition has been filed by the prosecution before that Special Court praying for extension of judicial custody of the petitioner's husband till the execution of Ext.P1 preventive detention order. We got no doubt in our mind that pendency of such a petition cannot divest the jurisdiction of this Court to entertain a pre-execution challenge against the same. We may, hasten to add that we are not expressing anything with regard to the extension or otherwise of the judicial custody and certainly, it is a matter for that Special Court to decide, in accordance with law.

12. Ext.P1 (Ext.R1(a)) order of preventive detention issued u/s 3(1) of the PITNDPS Act is dated 27.8.2008. Obviously, the contention of the respondents is that its non-execution is solely owing to the abscondance of the proposed detenu. While considering the question whether there is inordinate delay in its execution and whether on that count the proposed detenu is entitled to any relief certain factors have to be looked into. Whether the proposed detenu was an abscondee? Whether the delay in issuing and also executing the detention order are fatal? Incidentally, the issue whether any serious effort had been made for executing Ext.P1 order of preventive detention has also to be looked into. The specific contention of the petitioner is that Ext.P1 order has been issued based on a solitary incident that lacks even an iota of truth. The sum and substance of the allegation is that Rs. 2,00,000/- and Rs. 4,00,000/- were deposited on 31.1.2008 and 3.3.2008 respectively in the Bank account of the proposed detenu towards part value of heroin purchased by the first accused one Habeeb Rahman and the 4th accused one Chotu in S.C.No. 40 of 2008 on the files of the Special Court for NDPS Act cases, Vadakara. The question whether there is evidence or truth in the allegations against the proposed detenu is not a matter that falls within the scope of this writ petition. However, it is a fact that despite the specific contention of the petitioner that Ext.P1 order was issued based on a solitary incident, as stated above, that fact and the contention that there was no previous prejudicial activity were not refuted by respondents 1 and 2 in the counter affidavit. As noticed earlier, Ext.P1 preventive detention order was issued on 27.8.2008. The contention of the petitioner is that there is considerable delay in issuance of order of preventive detention and it has not been properly explained. It is also an undisputed fact that Ext.P1 order of preventive detention is not yet executed. In terms of section 11 of the PITNDPS Act, the maximum period of detention, at any circumstances, can only be two years. Thus, at any rate, under an order of preventive detention under PITNDPS Act one cannot be detained, for the purpose for which it was issued, beyond a maximum period of two years. It is contended that, thus, the maximum period in view of the provisions under the Act provided for preventive detention counting from the date of detention order viz., 27.8.2008 has already over. The facts required for answering the questions whether the proposed detenu was absconding, whether

there is any fatal delay in executing the detention order and whether any serious effort had been made for its execution are intertwined. According to the counter affidavit filed on behalf of respondents 1 and 2, after the issuance of Ext.P1 (Ext.R1(a)) dated 27.8.2008 a copy of the same along with the grounds and other documents relied on were forwarded to the Home Secretary, the Chandigarh Administration for its immediate execution on 30.8.2008 as per Ext.R1(b). Further, it is stated therein that repeated reminders were sent to the Chandigarh Administration. As per Ext.R1(c)-2 forwarding letter dated 13.2.2009 the Joint Secretary, Home Department, Chandigarh Administration returned the detention order as unserved stating that the warrantee had gone to Delhi for work. The detention order with grounds were again forwarded to the Joint Secretary, Home Department, Chandigarh Administration requesting to ascertain the place of residence of the warrantee viz., the proposed detenu, in Delhi and to forward the detention order to his counter part in Delhi for immediate execution as per Ext.R1(d). As per Ext.R1(e) communication the Joint Secretary, Home Department, Chandigarh Administration informed that the proposed detenu was searched several times at his house and he was not available. It is further stated in the counter affidavit that in answer to the repeated correspondences the Chandigarh Administration replied that they were keeping vigil. The question is, whether such efforts could be described as earnest efforts and could be assigned as a reasonable explanation for the delay in execution of the detention order? In this context, it is relevant to note the incontrovertible and un-controverted position that the proposed detenu was regularly appearing before the Court of JMIC, Rewari, Haryana since 2008 in connection with a case involving allegation of commission of offences punishable under sections 467, 468, 471, 120B I.P.C. The learned counsel for the petitioner made available a copy of the orders passed by the Chief Judicial Magistrate, Chandigarh in a crime registered against the proposed detenu Rajesh Bharadwaj, as Crime No. 253 dated 24.4.2008 of Police station Sector 17, Chandigarh. It would reveal that FIR No. 253 dated 24.4.2008 was registered by the said police station against the proposed detenu alleging commission of offences under sections 332, 353, 365, 506 read with section 34 of the Indian Penal Code. The order would further reveal that the proposed detenu was granted anticipatory bail as per order dated 30.4.2008 and taking note of the said fact and also the fact that he had not misused the same he was admitted to regular bail subject to the conditions made thereunder. That order was passed on 18.12.2009. Subsequently, in the said case the proposed detenu and the other co-accused were charge sheeted by the court on 9.1.2010. The above facts discernible from the said orders, the contentions made in paragraph 4(e) of the writ petition and also the statements in paragraph 4 of the counter affidavit would undoubtedly show that the crime allegedly committed and described thereunder are one and the same. These facts would go to show that the proposed detenu had, in fact, appeared before the courts at Chandigarh on several occasions. These crucial aspects have not been refuted by the respondents. That apart, in execution of the warrant issued by the Special Court, NDPS Act cases, Vadakara the proposed detenu was arrested on 24.7.2011.

Thereafter, on obtaining the requisite production cum transit remand from the duty Magistrate, Chandigarh he was produced before the Special Court, NDPS Act cases, Vadakara on 26.7.2011 and since then he has been in judicial custody. Even during the said period Ext.P1 order of detention was not executed. In fact, the order with the grounds and documents relied on were not served on him till date. The attempts alleged to have been made by the executing agency can only be taken as a feeble attempt in the above explained circumstances. Such inordinate delay in execution of the order, according to the petitioner, indicates the absence of genuine satisfaction on the part of the detaining authority regarding the necessity of immediate detention of the proposed detenu, in order to prevent him from engaging in illicit traffic in Narcotic Drugs and Psychotropic Substance. The specific contention of the petitioner that there is no previous prejudicial activity alleged against the proposed detenu and it had not been refuted by the respondents. So also, there is no case for the respondents that the proposed detenu had indulged in any such prejudicial activity subsequent to the issuance of Ext.P1 order. In the circumstances, the learned counsel for the petitioner submitted that the delay in passing Ext.P1 order of detention coupled with the fact that the order of detention has not so far been executed and the other contentions raised above would reveal that the order of detention is not one passed with the avowed purpose. According to the petitioner, the live and proximate link between the ground of detention and the purpose of detention has snapped. In this context, it is relevant to refer to the decision of the Hon''ble Apex Court in Naresh Kumar Goyal Vs. Union of India (UOI) and Others, . After referring to the judgments of the Hon''ble Apex Court in P.U. Iqbal Vs. Union of India (UOI) and Others, and Ashok Kumar v. Delhi Admn., (1992) 2 SCC 403 it was held therein thus:-

8. It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the antisocial and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that 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 so. It, therefore, becomes imperative on the part of the detaining authority as well as the executing authority to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detenu and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority will defeat the very purpose of preventive action and turn the detention order as a dead letter and frustrate the entire proceedings. Inordinate delay, for which no adequate explanation is furnished, led to the assumption that the live and proximate link between the grounds of detention and the purpose of detention is snapped. (See

P.U. Iqbal Vs. Union of India (UOI) and Others,) and Ashok Kumar v. Delhi Admn., (1992) 2 SCC 403).

As already noticed in this case, the contention of the petitioner is that there is inordinate delay in the matter of issuance of Ext.P1 order and the same has not been properly explained. In Union of India v. Muneesh Suneja, (2001) 3 SCC 92 the High Court quashed the order of detention at the pre-arrest stage on the ground that there had been delay in making the order of detention and that after making the order of detention no effective steps had been taken to execute the same except to make a vague allegation that the respondent was absconding. The Hon''ble Apex Court after noticing the exceptional circumstances justifying interference at pre-arrest stage enumerated in Alka Subhash Gadia's case (Supra) set aside the order passed by the High Court and observed thus:-

This Court has been categorical that in matters of pre- detention cases interference of court is not called for except in the circumstances set forth by us earlier. If this aspect is borne in mind, the High Court of Punjab and Haryana could not have quashed the order of detention either on the ground of delay in passing the impugned order or delay in executing the said order, for mere delay either in passing the order or execution thereof is not fatal except where the same stands unexplained in the given circumstances of the case and if there are good reasons for delay in passing the order or in not giving effect to it, the same could be explained and those are not such grounds which could be made the basis for quashing the order of detention at a pre-detention stage. Therefore, following the decisions of this Court in Additional Secretary to the Government of India & Ors. v. Smt. Alka Subhash Gadia & Anr., 1992 (Suppl. 1) SCC 496 and Sayed Taher Bawamiya Vs. Joint Secretary to the Govt. of India and Others, we hold that the order made by the High Court is bad in law and deserves to be set aside.

(emphasis supplied)

In view of the judgment of the Hon''ble Apex Court in Muneesh Suneja's case (supra) it cannot be contended that there is an inviolable position that even in case of inordinate delay and in the absence of proper explanation for the same or absence of good reasons for the delay an order of detention could not be interfered with. As held by the Hon''ble Apex Court, all such matters have to be looked into in the light of the facts of each case. The inescapable conclusion is that in a case where there is an inordinate delay in the matter of execution of a preventive detention order the executing authority has to explain the reasons therefor. If proper and good reasons are assigned then, it could not be made the basis for quashing an order of detention at a pre-execution stage. In this case, admittedly, the preventive detention order dated 27.8.2008 has not so far been executed. It is a fact that even subsequent to the arrest of proposed detenu on 24.7.2011 in execution of the warrant issued by the Special Court, NDPS cases, Vadakara Ext.P1 order has not been executed. The ground of detention and the documents thereof are also not served on the proposed detenu. All the

aforementioned circumstances persuade us to come to the conclusion that the proposed detenu was not absconding and that the delay in executing Ext.P1 order and not serving Ext.P1 order along with the grounds and the documents relied therefor have not been properly explained. That apart, no good and sustainable reasons have been assigned for the delay. Evidently, if the authorities were earnest in their efforts in executing Ext.P1/Ext.R1(a) order of detention it could have been executed by now. The cumulative impact of all the circumstances compel us to uphold the contention of the petitioner that Ext.P1 order was passed for a wrong purpose or that it was passed on vague grounds and, in either case, it would be sufficient to bring the case in hand within the purview of the judgment of the Hon''ble Apex Court in Alka Subhash Gadia's case (Supra). Section 11 of PITNDPS Act provides the maximum period of detention. It reads thus:-

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.

Thus, it is obvious that in the case in hand, reckoning from the date of detention order the maximum period provided thereunder has already over. As held by the Hon''ble Apex Court the order of detention is not curative or reformatory or punitive action but it can only be a preventive action. In this case, Ext.P1 order would reveal that the avowed object was to prevent the proposed detenu from engaging any illicit traffic in narcotic drugs and psychotropic substances. It is also pertinent to note that there is no case for the respondents that the proposed detenu had engaged in any illicit traffic in narcotic drugs and psychotropic substances. We have also found that in view of the facts obtained in this case, the proposed detenu cannot be said to be an abscondee. The circumstances emerging in this case therefore, constrain us to uphold the contention that the order of detention was issued either with a wrong purpose or that it was passed on vague grounds. Certainly, the inordinate delay in execution of Ext.P1, in the circumstances explained above, in the absence of proper explanation and good reasons, is fatal. In such circumstances, the case in hand would fall within the grounds mentioned in Alka Subhash Gardia's case (supra). In view of the aforesaid discussions and findings, we are of the view that we need not go into any other grounds raised by the petitioner. We quash Ext.P1 order dated 27.8.2008 as no useful purpose will be served by keeping Ext.P1/Ext.R1(a)

detention order alive any further.

The writ petition is accordingly, allowed.