

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(HC) 6 of 2022

Sri Uttam Deb son of Sri Barindra Deb, resident of East Masli,
Shibbari, P.O.: Shibbari, P.S.: Manu, District- Dhalai, Tripura

-----Petitioner(s)

Versus

1. **The State of Tripura** represented by the Secretary,
Department of Home, Government of Tripura, New Secretariat
Building, P.O.: Kunjaban, P.S.: NCC, Dist- West Tripura

2. **The Secretary, Department of Home, Government of
Tripura**, New Secretariat Building, P.O.: Kunjaban, P.S.: New
Capital Complex, Dist- West Tripura

3. **The Director General of Police**, West Tripura.

4. **The Union of India**, represented by the Secretary,
Department of Home, Government of India, Jai Singh Marg,
Connaught Palace, New Delhi-110001.

-----Respondent(s)

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

For Petitioner(s) : Mr. P.K.Biswas, Sr. Advocate.
Mr. P.Mamjumder, Adv.
Ms. S.Debbarna, Adv.

For Respondent(s): Mr. Ratan Datta, PP
Mr. B.Majumder, ASG.
Mr. S.Ghosh, Addl. PP.

Date of hearing : **30.08.2022**
& Delivery of
Judgment/Order

Judgment and Order(Oral)

(Per S.G.Chattopadhyay, J)

[1] The petitioner, herein after referred to as the detinue, has been detained pursuant to order No.F.15 (9)-PD /2021(P-XII)/3528 dated 02.12.2021[**Annexure-1** to this petition] issued by the Home Secretary to the Government of Tripura in exercise of powers conferred under sub-section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988(for short PIT NDPS Act).

[2] The Detaining authority has disclosed the following grounds on the basis of which he has been detained:

“[1] As per report of Director General of Police, Tripura, the aforesaid Sri Uttam Deb S/O Sri Barendra Deb of Shibbari, PS- Manu, Dhalai District was involved in the following cases:

(i)Manu PS. Case No. 2018MNU018 dated 05.06.2018 u/s 20(c)/25/29(i) of NDPS Act, 1985.

(ii)Kanchanpur PS. Case No. 2020KCP006 dated 23.02.2020 u/s 341/323/34 of IPC and Sections 21(c)/25/29 of NDPS Act,1985.

[2] He has association with the smugglers of NDPS articles and illicit drug traffickers in connection with Manu PS. Case No. 2018MNU018 dated 05.06.2018 u/s 20(c)/25/29(i) of NDPS Act, 1985 and Kanchanpur PS. Case No. 2020KCP006 dated

23.02.2020 u/s 341/323/34 of IPC and Sections 21(c)/25/29 of NDPS Act,1985.

[3] The person is still active in illicit trafficking of NDPS articles as revealed from filed information and this refers Manu PS GD Entry No.8 & 10 dated 27.08.2021, GD Entry No.14&25 dated 20.09.2021 and GD Entry No.18 & 23 dated 02.10.2021, but could not be arrested red handed again and issue of detention order under PITNDPS and that the Police has started financial investigation against the accused.

[4] The person has been involved in illicit transportation of significantly large commercial quantities of narcotic substances, involving cannabis and contraband psychotropic substances, use of different vehicles and in close association with different accused persons. This clearly indicates the extent of his involvement as a key player in the inter-State nexus of narcotics trafficking. Keeping such a person on bail is likely to empower him to organize crime further.

[5] It is very dangerous for the society at large where several youths are heading towards drug addiction, which further decrease the national productivity in all walks of life. Despite of arrest in case, Shri Uttam Deb did not mend his ways and continuously spoiling the future generation. It is essential to prevent Shri Uttam Deb to continue his harmful and prejudicial activity by engaging in illicit traffic of narcotic drugs and psychotropic substances in the interest of society

[6] This drug addiction not only spoils the individual drug addict also spoils the career of youths. Under influence of drugs, youths are easily inclined towards crime which may further lead of communal violence, hatred among communities and even international tensions, since Tripura is having Indo-Bangladesh Border."

[3] The detainee was apprised of his right to make representation to the authority who passed the detention order and also his right to be heard before the Advisory Board as constituted in terms of Section 9 of the PITNDPS

Act. The report in respect of the detention order was also forwarded to the Central Government within the stipulated time in terms of sub-section (2) of Section 3 of the PITNDPS Act.

[4] In this case, the detainee had submitted written representation to the detaining authority against the detention order contending, inter alia, that he was falsely implicated in MANU P.S. case No.18 of 2018 and Kanchanpur P.S. Case No.6 of 2020 and in both the cases he was granted bail for lack of proof against him. It was further claimed by the detainee that though the detention order was founded on MANU P.S GD entry No. 8 & 10 dated 27.08.2021 and GD entry No.14 & 25 dated 20.09.2021 as well as GD entry No.18 & 23 dated 02.10.2021 he was never informed about the substance of those GD entries since copies of those GD entries were not served on him along with the detention order and non supply of those vital documents had prevented him from making an effective representation against the detention order.

[5] The detenue also asserted that the report of the Director General of Police which was also considered by the detaining authority for issuing the detention order was not also supplied to him as a result of which he was deprived of the opportunity of making an effective representation against the detention order which infringed his right guaranteed under Article 22(5) of the Constitution.

[6] The detaining authority under Order No.F.15 (9)-PD/2021(P-XII)/696, dated 05.03.2022, rejected the representation of the detenue. In the said rejection order, the detaining authority did not say anything about the assertion of the detenue that the proposal of the DGP and the relevant GD entries of Manu P.S were not served on him. Rather, it was stated by the detaining authority that copies of the said GD entries were sent to the detenue along with the order whereby his representation was rejected by the detaining authority.

[7] The State Government under Order No.F.15(9)-PD/2021(P-XII)/45 dated 05.01.2022 made a

reference in respect of the detention to the Advisory Board in terms of Section 9(b) of the PIT NDPS Act to make a report under sub-clause (a) of Clause 4 of Article 22 of the Constitution.

[8] The Advisory Board, having considered the materials placed before it and having examined the detenue in person was of the view that the detaining authority having applied its mind to the facts and circumstances of the given case came to the conclusion that preventive detention of the petitioner was necessary to prevent him from carrying out harmful and prejudicial activities against the interest of the society. The State Advisory Board finally opined that preventive detention of the petitioner was absolutely justified.

[9] Pursuant to the report dated 15.02.2022 of the State Advisory Board, the state government in exercise of power conferred under Section 9(f) read with Section 11 of the PITNDPS Act confirmed the detention order for a period of 01 year w.e.f the date of the detention under Order No.F.15(9)/PD/2021(P-XII)/569 dated 23.02.2022.

[10] Heard Mr. P.K. Biswas, learned Sr. Advocate, appearing for the detenue along with Mr.P.Majumder and Ms.S.Debbarmma, learned advocates.

Heard Mr.S.Ghosh, learned Addl. PP representing the State respondents.

[11] Mr.P.K.Biswas, learned Sr. Advocate appearing for the detenue has submitted that with the detention order dated 02.12.2021, the copy of the proposal of the Director General of Police and the relevant GD Entries of Manu P.S. which formed the foundation of the detention order were not supplied to the detenue. The detnnue was supplied only with the bare grounds of detention. According to Mr.Biswas learned Sr. Counsel, Article 22(5) obligates the detaining authority to supply the materials considered by the detaining authority for enabling the detenue to make an effective representation within the meaning of Article 22(5) of the Constitution. Counsel of the detneue contends that said plea was also raised by the detenue in his representation submitted to the detaining authority. The detaining authority rejected his

representation without addressing his grievances. Counsel contends that admittedly the proposal of the DGP and copy of the relevant GD entries were not supplied to the detainee for which the detention order is violative of the right of the detainee as guaranteed under Article 22(5) of the Constitution and hence the detention order is liable to be quashed. Counsel further contends that the detaining authority has referred to 02 pending cases as Manu P.S Case No. 2018 MNU018 dated 05.06.2018 and another case as Kanchanpur P.S. case No.2020 KCP 006 dated 23.02.2020. It is contended by Mr. Biswas, learned Sr. counsel that Manu P.S case was registered on 05.06.2018 and the Kanchanpur P.S. case was registered on 23.02.2020 whereas the detention order was issued on 02.12.2021. The detaining authority has failed to establish any proximate and live link between those old and stale matters with the detention order. Counsel has finally argued that in Manu P.S case the detainee has already been acquitted after full trial for want of evidence by judgment and order dated 03.08.2022 passed by the Special Judge (NDPS) in Special NDPS case No.08 of 2018

and in the Kanchanpur P.S. case, accused detainee has already been enlarged on bail. But there is no reference to the bail order in the detention order which indicates that the same was not placed before the detaining authority and counsel contends that had the bail order been produced before the detaining authority, it would have influenced the subjective satisfaction of the detaining authority dissuading them from issuing the detention order. Counsel, therefore, urges the court to set aside the detention order.

[12] Mr. S.Ghosh, learned Addl. PP, has opposed the contention of the counsel of the detainee. Learned Addl. PP contends that the relevant GD entries of Manu P.S were supplied to the detainee along with the order whereby his representation against the detention order was rejected. Counsel contends that all other relevant documents were supplied to the detainee along with the detention order and as such plea of the detainee that he was prevented from filing an effective representation against his preventive detention is not acceptable. State counsel has further contended that the detainee is a

habitual offender against whom 02 cases under NDPS Act were pending when the detention order was issued. He being a habitual offender, his preventive detention was absolutely necessary to prevent him from repeating such offence. Counsel, therefore, urges the court to reject the petition.

[13] Mr. B.Majudmer, learned ASG has contended that copy of the detention order has been communicated to the Central Government within the stipulated period of time in terms of Section 3(2) of the PIT NDPS Act.

[14] As stated, the main grounds on which the detinue has challenged his preventive detention are as under:

(i) The relevant documents which formed the foundation of his preventive detention were not supplied to him.

(ii) There is no live and proximate link between the past cases and the detention order.

(iii) The fact that the detinue was already released on bail in all the past cases were not considered by the detaining authority.

[15] It is a settled proposition of law that in a case of preventive detention, the documents which formed the

foundation of the detention order are required to be supplied to the detenue since non supply thereof would prevent the detenue from making an effective representation against the detention order and thereby prejudice the detenue.

[16] It is apparent on the face of the record that the proposal of the DGP and Manu PS. GD Entry No.8 & 10 dated 27.08.2021, GD Entry No.14 & 28 dated 20.09.2021 and GD entry No. 18 & 23 dated 02.10.2021 formed the foundation of the detention order which also find mention in the detention order dated 02.12.2021 which reads as under:

".....
Whereas, the Director General of Police has sent a proposal for detention of Shri Uttam Deb S/O Shri Barendra Deb of Shibbari, PS – Manu, Dhalai District under PIT NDPS 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 Uttam Deb S/O Shri Barendra Deb of Shibbari, PS – Manu, Dhalai District, under PIT NDPS Act,1988 was involved in the following cases:

(i)Manu PS. Case No. 2018MNU018 dated 05.06.2018 u/s 20(C)/25/29 of NDPS Act,1985.

(ii)Kanchanpur PS. Case No. 2020KCP006 dated 23.02.2020 u/s 341/323/34 of IPC and Section 21(C)/25/29 of NDPS Act, 1985.

AND

Whereas, the person is till active in illicit trafficking of NDPS articles as revealed from filed information and this refers to Manu PS GD Entry No.8 & 10 dated 27.08.2021, GD Entry No.14 & 25 dated 20.09.2021, and GD Entry No. 18 & 23 dated 02.10.2021, but could not be arrested red-handed again and issue of detention order under PIT NDPS and that the Police has started financial investigation against the said accused.

AND

Whereas, the person has been involved in illicit transportation of significantly large commercial quantity of narcotics substances involving cannabis and contraband psychotropic substances, use of different vehicles and in close association with different accused persons. This clearly indicates the extent of his involvement as a key player in the inter state nexus of narcotics trafficking . Keeping such a person on bail is likely to empower him to organize crime further.

AND

.....”

[17] In his representation against the detention order the detenue has categorically raised these issues and claimed that non supply of these essential documents prevented him from making an effective representation within the meaning of Article 22(5) of the Constitution and thus infringed his right guaranteed under Article 22(5) of the Constitution. As stated, the said representation of the detenue was rejected by the

detaining authority by an order issued on 05.03.2022. The detaining authority remained silent on the claim of the detainee that the proposal of DGP was not communicated to him along with the detention order and on the issue of non supply of the relevant GD entries of Manu PS, the detaining authority stated in the rejection order that the same was being supplied to the detainee along with the rejection order dated 05.03.2022.

[18] In similar fact situation we examined the same issues and discussed the law in detail in WP(C)(HC)No.2 of 2022[**Md.Nejam Uddin Vs. The State of Tripura & Ors**] which are applicable to this case.

[19] The apex court in the case of **A.C.RAZIA Versus STATE OF KERALA AND OTHERS** reported in **(2004)2 SCC 621** while dealing with the constitutional safeguards provided under Article 22(4) and Article 22(5) of the Constitution held that the grounds of detention together with the supporting documents should be made available to the detainee in a language known to him. The observation of the apex court is as under:

"10. We are concerned here with clause (5) of Article 22. The dual rights under clause (5) are : (i) the right to be informed as soon as may be of the grounds on which the order has been made, that is to say, the grounds on which the subjective satisfaction has been formed by the detaining authority, and (ii) the right to be afforded the earliest opportunity of making a representation against the order of detention. By judicial craftsmanship certain ancillary and concomitant rights have been read into this Article so as to effectuate the guarantees/ safeguards envisaged by the Constitution under Clause (5) of Article 22. For instance, it has been laid down by this Court that the grounds of detention together with the supporting documents should be made available to the detenu in a language known to the detenu. The duty to apprise the detenu of the right to make representation to one or more authorities who have power to reconsider or revoke the detention has been cast on the detaining authority. So also the duty to consider the representation filed by or on behalf of the detenu with reasonable expedition has been emphasized in more than one case and where there was inordinate delay in the disposal of representation, the detention was set aside on that very ground."

[20] The apex court has restated the law in **ADISHWAR JAIN VS. UNION OF INDIA AND ANOTHER** reported in **(2006)11 SCC 339** as under:

"29. What is, therefore, relevant was as to whether the documents were material. If the documents were material so as to enable the detenu to make an effective representation which is his constitutional as also statutory right, non-supply thereof would vitiate the order of detention.

30. It is a trite law that all documents which are not material are not necessary to be supplied. What is necessary to be supplied is the relevant and the material documents, but, thus, all relevant documents must be supplied so as to enable the

detenue to make an effective representation which is his fundamental right under Article 22(5) of the Constitution of India. Right to make an effective representation is also a statutory right. [See Sunila Jain v. Union of India and Another [(2006) 3 SCC 321]]"

[21] In **Union of India Vs. Ranu Bhandari** reported in **(2008) 17 SCC 348**, the apex court further consolidated the law by stating that the documents both against and in favour of the detenue which has been relied upon by the detaining authority for arriving at a subjective satisfaction must be supplied to the detenue to enable him to make an effective representation against the detention order in order to maintain the safeguards provided under Article 22(5) of the Constitution.

[22] In the case of **Union of India Vs. Dimple Happy Dhakad** reported in **AIR 2019 SC 3428**, the Apex Court on similar issue held as under:

"22. There is no statutory obligation on the part of the detaining authority to serve the grounds of detention and relied upon documents on the very same day; more so, when there is nothing to show that the detaining authority was guilty of inaction or negligence. The principle laid down by the Supreme Court in Mehdi Mohamed Joudi v. State of Maharashtra and others (1981) 2 SCC 358:(AIR 1981 SC 1752) that non-supply of documents and material pari passu would vitiate the detention order must be understood in the context of Section 3(3) of the COFEPOSA Act. Serving of detention

order, grounds of detention and supply of documents must be contemporaneous as mandated within the time limit of five days stipulated under Section 3(3) of the COFEPOSA Act and Article 22(5) of the Constitution of India.”

[23] Admittedly the proposal of the DGP and the copies of the relevant DG entries of Manu P.S were not served on the detainee along with his detention order. The said GD entries, copies of which are made available before us, contained incriminating information against the detainee. There is, therefore, no doubt that for non supply of these essential documents, the detainee was seriously prejudiced since he was not given an opportunity to explain these incriminating circumstances by filing an effective representation. Similarly, there is no proof of supply of the copy of the proposal of the DGP to the detainee.

[24] There cannot be any amount of doubt that non supply of those essential documents has curtailed the right of the detainee which has been protected under Article 22(5) of the Constitution. Obviously, the detainee was unable to make an effective representation due to non supply of these documents.

[25] This apart, apparently the past cases which were considered by the detaining authority for formation of its opinion about the need of preventive detention of the petitioner were registered in June, 2018 and February, 2020. The last case was thus registered about 22 months before the impugned preventive detention order was issued. There is no doubt that these are all old and stale incidents. In **Sama Aruna Vs. State of Telengana and Anr** reported in **(2018)12 SCC 150**, the Apex Court held that incidents which are old and stale cannot be considered to have any relevance for detaining a citizen and deprive him of his liberty without trial. Observation of the Apex Court is as under:

"21. Incidents which are old and stale and in which the detenu has been granted bail, cannot be said to have any relevance for detaining a citizen and depriving him of his liberty without a trial. This Court observed the following in Khudiram Das v. State of W.B (SCC p.92, para9):

"9.....The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or

the manner or extent to which it should be exercised, the exercise of the power would be bad. **Partap Singh v. State of Punjab**. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider."

22. We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute."

[26] Relying on the decision **Sama Aruna**(supra), the apex court in **Mallada K Sri Ram Vs.State of Telengana & Ors** reported in **Criminal Appeal No.561 of 2022 arising out of SLP (Crl.)No.1788 of 2022** held that the preventive detention order that is passed without examining a live and proximate link between the event and the detention tantamounts to punishment without trial. The following observation of the apex court in **Sama Aruna**(supra) was reproduced in the judgment of **Mallada K.Sri Ram**(supra):

"17. It is also relevant to note, that in the last five years, this Court has quashed over five detention

orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public order [V Shantha v. State of Telangana, (2017) 14 SCC 577; Banka Sneha Sheela v. State of Telangana, (2021) 9 SCC 415] and relying on stale materials while passing the orders of detention[Sama Aruna v. State of Telangana, (2018)12 SCC 150; Khaja Bilal Ahmed v. State of Telangana,(2020)13 SCC632]. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards.”

[27] The impugned detention order clearly demonstrate that in the given case the detaining authority passed the impugned order without examining and justifying the proximate link between the past cases and the detention order.

[28] As stated, the accused was granted bail in both the past cases. It could not be ascertained whether the detaining authority was made aware of these bail orders before the detention order was issued. Submission of petitioner’s counsel that non consideration of the bail orders by the detaining authority amounts to non

application of mind cannot be discarded. In the case of **M. Ahmedkuty Vs. Union of India & Anr.** reported in **(1990)2 SCC 1** the Apex Court has succinctly held that the bail orders constitute relevant and important materials for consideration of the detaining authority. We can profitably quote para 25 of the Judgment wherein the apex court has held as under:

"25. Non-consideration of the bail order would have, therefore, in this case amounted to non-application of mind. In Union of India v. Manoharlal Narang, (1987) 2 SCC 241, the Supreme Court's interim order in pending appeal against High Court's quashing of a previous order of detention against the same detenu was not considered by the detaining authority while making the impugned subsequent order against him. By the interim order Supreme Court had permitted the detenu to be at large on condition of his reporting to the police station daily. It was held that nonconsideration of the interim order which constituted a relevant and important material was fatal to the subsequent detention order on ground of non-application of mind. If the detaining authority considered that order one could not state with definiteness which way his subjective satisfaction would have reacted and it could have persuaded the detaining authority to desist from passing the order of detention. If in the instant case the bail order on condition of the detenu's reporting to the customs authorities was not considered the detention order itself would have been affected. Therefore, it cannot be held that while passing the detention order the bail order was not relied on by the detaining authority. In S. Gurdip Singh v. Union of India (1981) 1 SCC 419, following Ichhu Devi Choraria v. Union of India (1980) 4 SCC 531 and Shalini Soni v. Union of India (1980) 4 SCC 544 it was reiterated that if the documents which

formed the basis of the order of detention were not served on the detenu along with the grounds of detention, in the eye of law there would be no service of the grounds of detention and that circumstances would vitiate his detention and make it void ab initio.” [Italics supplied by us]

[29] In a later decision in the case of **Rushikesh Tanaji Bhoite Vs. State of Maharashtra & Ors.** reported in **(2012) 2 SCC 72**, the Apex Court observed that in the case where the detenu was enjoying his freedom under the bail order passed by the court at the time of passing the order of detention, such bail order must have to be placed before the detaining authority to arrive at a proper satisfaction about the need of detention. Observation of the apex court in para 9 and 10 of the judgment are as under:

“9. In a case where the detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated 15-8-2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have affected the satisfaction of the detaining authority but suffice it to say that non-placing and non

consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.”

[30] The bail orders are, therefore, the most pertinent and proximate material which cannot be discarded as irrelevant in the given fact situation of the case and as such those orders should have been placed before the detaining authority for consideration and arriving at a subjective satisfaction as contemplated under sub-section (1) of Section 3 of PIT NDPS Act.

[31] In view of what is stated above, we are of the considered view that non supply of the proposal of the Director General of Police and copies of the relevant GD entries of Manu P.S which formed the foundation of the detention order prevented the detenu from making an effective representation against the detention order. Together with it, failure of the detaining authority to establish the existence of a live and proximate link between the past cases and the detention order and non consideration of the bail orders have vitiated the impugned detention order.

[32] Consequently, the petition of the detinue stands allowed and the impugned detention order is set aside. The detinue be released forthwith unless his detention is required in any other case.

The order shall be communicated to the superintendent of jail where the petitioner is now detained.

[33] In terms of the above, the matter stands disposed of.

Department's file be returned through PP.

(S.G.CHATTOPADHYAY), J

(INDRAJIT MAHANTY), CJ