A.F.R.

In Chamber

Case :- HABEAS CORPUS WRIT PETITION No. - 810 of 2022

Petitioner :- Rangesh Yadav

Respondent :- Suprintendent Of Jail, And 3 Others

Counsel for Petitioner :- Chandrakesh Mishra,Abhishek Kumar Mishra

Counsel for Respondents :- G.A.,A.S.G.I., Shri Patanjali Mishra and Sri Satyendra Tiwari, Kameshwar Singh

Hon'ble Rahul Chaturvedi,J.

Hon'ble Gajendra Kumar,J.

(Per : Hon'ble Gajendra Kumar,J.)

1. Heard Shri Daya Shankar Mishra, learned Senior Advocate, assisted by Shri Chandrakesh Mishra and Shri Abhishek Mishra Advocates, learned counsel appearing for the petitioner, Shri Patanjali Mishra and Sri Satyendra Tiwari, learned Additional Government Advocate for the State-respondents (1) Superintendent, District Jail, Azamgarh, (2) District Magistrate, Azamgarh and (3) State of Uttar Pradesh and Mr. Kameshwar Singh, learned counsel representing Central Government.

2. Pleadings between the contesting parties were exchanged and the matter is ripe for final submissions.

3. After hearing the counsels for the contesting parties on the earlier occasion on 21.04.2023, the Court has allowed the petition, directing the authorities to release the petitioner forthwith, if not wanted in any other case, though detailed judgment would follow. The operative portion of our order reads thus :

"Heard Sri Daya Shankar Mishra, learned Senior Counsel assisted by Sri Chandrakesh Mishra and Sri Abhishek Kumar Mishra, learned counsels appearing for the petitioner, Sri Patanjali Mishra and Sri Satyendra Tiwari, learned A.G.A. representing State as well as Sri Sanjay Kumar Srivastava holding brief of Sri Kameshwar Singh, learned counsel representing Central Government.

The pleadings have been exchanged between the parties and the matter is ripe for final submissions.

We have heard the parties at length and after hearing the parties, we are of the considered opinion that the present petition is liable to be allowed and accordingly, stands allowed. The order impugned dated 25.07.2022 is hereby set-aside. Reasons to be followed later on.

The petitioner-Rangesh Yadav is hereby set at liberty.

The Jail Superintendent, Azamgarh is directed to release the petitioner forthwith, if he is not wanted in some other cases."

4. By the instant judgement we are giving detailed judgement.

The instant Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner- Rangesh Yadav, who is in custody in District Jail, Azamgarh, through his brother, seeking issuance of a Writ of Habeas Corpus challenging his detention under an order dated 25.07.2022 passed under Section 3 (2) of the National Security Act, 1980 and the entire consequential proceedings and continued detention as being illegal and unconstitutional and a prayer has been made to issue writ of Habeas Corpus under Article 226 of Constitution of India commanding the respondents to release the petitioner from their alleged illegal custody.

5. The detention order dated 25.07.2021 states that the District Magistrate, Azamgarh has been satisfied that it has become necessary to pass a detention order under Section 3 (2) of the N.S.A. Act, 1980 to prevent the petitioner from acting in any manner which would be prejudicial to the maintenance of 'public order'. The grounds of detention are contained in a separate communication of the same date issued by the District Magistrate, Azamgarh which narrates the incident which led to the passing of the detention order. A first information report dated 21.02.2022, being Case Crime No. 39

of 2022, under section 272, 273, 302, 34 I.P.C. & Section 60 (A) of U.P. Excise Act was lodged at P.S. Ahraula, District Azamgarh by Vijay Sonkar against the petitioner and other co-accused namely Suryabhan, Puneet Kumar Yadav, Rambhoj and Ashok Kumar Yadav with the allegation that his father Jhabbu Sonkar purchased country made liquor (देसी शराब) from the shop of the petitioner Rangesh Yadav on 20.02.2022 and after consuming it, his father has fallen ill and thereafter become blind and his condition started deteriorating. He was admitted in hospital but eventually he died on 21.02.2022, during the course of treatment. When the complainant returned to village with dead body of his father, he came to know that co-villager Ramkaran Bind has also died due to consumption of liquor purchased from the shop of the petitioner- Rangesh Yadav .

6. The second F.I.R. being Case Crime No. 40 of 2022, under section 272, 273 IPC & section 60 (A) of U.P. Excise Act was lodged by the Excise Inspector at P.S. Ahraula against the petitioner and other unknown accused, who were involved in the business of adulterated country made liquor (Hooch).

7. On the ground of the same incident, a third F.I.R. being Case Crime No. 60 of 2022, dated 22.02.2022, under section 272, 273, 34, 302 IPC & section 60 (A) of U.P. Excise Act was lodged by one Rajendra Prasad Yadav against the petitioner and co-accused namely Suryabhan, Puneet Kumar Yadav, Rambhoj and Ashok Yadav with the allegation that his brother become serious. He also became blind and for the purpose of treatment he was admitted in the hospital on 21.02.2022 but he died during the course of treatment.

8. An another F.I.R. under section 3(1) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention)

Act, 1986 as Case Crime No. 97 of 2022 at P.S. Ahraula was lodged against the petitioner and other co-accused on 07.04.2022.

9. The impugned detention order dated 25.07.2022 was passed after three months mentioning that by virtue of exercising the power conferred under section 3(3) of National Security Act, 1980 (Act No.65/1980), Rangesh Yadav who is in Jail, as undertrial in Case Crime No.39 of 2022, under section 272, 273, 302, 34 IPC & section 60 (A) of U.P. Excise Act, P.S. Ahraula, District Azamgarh and Case Crime No. 97 of 2022, under section 3(1) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, P.S. Ahraula, District Azamgarh is retained in the custody of Superintendent, District Jail, Azamgarh as an ordinary prisoner. In grounds of detention it is stated that as a fallout of the alleged incident there is a sense of terror and anguish among the people and children were not being sent to schools, shops were being closed, additional police force has been deployed and tremendous publicity is being given in newspapers, general public has a perception that if people are fallen ill by consuming liquor from licensed shop and if petitioner is released from Jail he would indulge in some illegal acts, which would adversely impact on the normal tempo of general public. The offence committed by the petitioner, by virtue of involving in the business of adulterated country made liquor (Hooch), which resulted into death of seven people, the other people got afraid and panicky, the public order was disturbed and tranquility of the locality was disturbed. There is every likelihood that in the event the petitioner is bailed out, as his counsel and family members are trying hard, the petitioner after coming out of jail would have play in the society.

10. It has been averred in the writ petition that petitioner

is a law-abiding citizen and has no criminal history to his credit. The District Magistrate of Azamgarh has mechanically and in an arbitrary manner signed the detention order dated 25.07.2022. The petitioner has been in District Jail, Azamgarh, since 23.02.2023. The petitioner has never done any act in violation of the maintenance of public order. On 25.07.2022 there was no possibility/probability of getting out on bail of the petitioner nor the subjective satisfaction of District Magitrate, Azamgarh, therefore, order dated 25.07.2022 is illegal and unconstitutional and liable to be set-aside. Case Crime No. 97 of 2022 under section 3(1) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 was registered against the petitioner on 07.04.2022 and bail application thereunder was rejected on 19.05.2022. No second bail application has been moved in the court nor was any bail application moved in Hon'ble High Court. The District Magistrate Azamgarh did not consider this aspect of the case thus the impugned detention order is a punitive one therefore liable to be quashed and set-aside.

11. There is no cogent and reliable evidence against the petitioner in Case Crime No. 39 of 2022, Case Crime No. 40 of 2022, Case Crime No. 60 of 2022 and Case Crime No. 97 of 2022, this important fact has not been considered at any level. In the bail applications in Case Crime No. 40 of 2022 and Case Crime No. 60 of 2022, defence plea was taken regarding false implication and non-complicity of the petitioner, but bail applications, affidavits and annexures have not been forwarded by the sponsoring authority as well as the recommending authority to the District Magistrate, Azamgarh, thus the District Magistrate, Azamgarh, has been deprived of considering the same for subjective satisfaction, nor the same was forwarded to the State Government as well as to the Central Government for the consideration. The petitioner has

been provided only the copy of the index of the bail application in Case Crime No. 39 of 2022, bail application (first four pages) and letter dated 18.06.2022 of the office of Government Advocate of Hon'ble High Court along with detention order dated 25.07.2022. Affidavits and anexures with the bail applications have not been furnished to the petitioner nor have been sent to the State Government as well as Central Government for their perusal.

12. There is no evidence regarding the purchase of liquor from the licensed shop and the same was taken and was drunk by those persons who are alleged to have died, fallen ill and became blind. Shri Mishra, learned counsel submits that at least half a dozen deshi liquor shops in that area. Sponsoring authority and recommending authority have relied on news items in local newspapers which is not admisible in evidence. The petitioner has been deprived of effective representation as he has not been provided with important and relevant documents. A request has also been made through representation dated 06.08.2022 for the same.

13. Petitioner has also made request for the aid of legal friend and legal practitioner at the time of hearing but the same was not considered, while the sponsoring authority and recommending authority were represented by legal officers/practitioners, which is violation of Article 14 and 21 of the Constitution of India. Against the detention order dated 25.07.2022 through District Jail, Azamgarh representation dated 13.08.2022 was sent to the State Government, Central Government and Advisory Board, Lucknow but the same has been rejected in an arbitrary manner which is the violation of Constitutional Right and Procedural safeguards.

14. The representation dated 13.08.2022 of the petitioner was not expeditiously disposed off but decided with

negligence and latches being violative of Article 22(5) of the Constitution of India. The second representation dated 25.08.2022 was sent through speed post to State Government as well as Central Government of which no information has been sent back to the petitioner. The provisions of sections 3(2), 3(3), 3(5), 8, 10, 12, 14 of National Security Act and Article 14, 19, 21, 22(5) of the Constitution of India have not been complied with. Thus the impugned detention order is liable to be quashed/ set-aside.

15. On behalf of Suprintendent, District Jail, Azamgarh, counter affidavit has been filed by Sri Ranjit Kumar Singh stating that the petitioner was admitted in District Jail, Azamgarh on 23.02.2022. In pursuance of remand orders in Case Crime No. 39 of 2022, Case Crime No. 40 of 2022, Case Crime No. 60 of 2022 and remand order dated 15.04.2022 in Case Crime No. 97 of 2022. While the petitioner was in judicial custody in the aforesaid cases the said detention order dated 25.07.2022 along with grounds of the detention with all relevant materials was received in the office of the District Jail, Azamgarh on 25.07.2022 and the same was served on the petitioner on the same day. The petitioner was also informed to submit the representation at the earliest to the District Magistrate Azamgarh/detaining Authority within 12 days or before approval of the detention order whichever was earlier.

16. The aforesaid detention order was approved by the State Government on 02.08.2022, the communication of which was received on 03.08.2022 and the same was informed on the same day *i.e.* 03.08.2022. The petitioner submitted a first representation in two sets on 06.08.2022 which was sent to the Office of District Magistrate, Azamgarh on the same day. The aforesaid first representation was rejected on 09.08.2022, the communication of which was received on 10.08.2022 and the same was informed to the petitioner on the

same day. The petitioner again submitted a second representation in four sets on 14.08.2022 as to the Advisory Board, Home Department, Government of India, New Delhi and Home department, Government of Uttar Pradesh, Lucknow. The aforesaid second representation dated 14.08.2022 was rejected by the State Government on 29.08.2022, communication of which was received on 30.08.2022 and the petitioner was informed on the same day. The aforesaid representation dated 14.08.2022 was also rejected by the Central Government on 24.08.2022 the communication of which was received on 26.08.2022 and the petitioner was informed on the same day. The petitioner submitted third representation in three sets on 26.08.2022 to the Home Department, Government of India, New Delhi and Home Department Government, of Uttar Pradesh, Lucknow. The aforesaid third representation was rejected by the State Government on 30.09.2022, the communication of which was received on 01.10.2022 and the petitioner was informed on the same day. The aforesaid third representation was rejected by the Central Government on 15.09.2022 and the communication of which was received on 15.09.2022 and the petitioner was informed on the same day.

17. The information regarding hearing before the Advisory Board, Lucknow was received on 17.08.2022 and the petitioner was informed with regard to the date, time and place fixed before the Advisory Board at Lucknow on the very same day. The petitioner was also informed regarding his right of hearing through next friend (non-advocate), but no such request was made. Hence, petitioner was transferred to Lucknow on 21.08.2022 to produce himself before Advisory Board, Lucknow on the date of hearing *i.e.* on 22.08.2022. After the report of Advisory Board, Lucknow the said detention order was confirmed on 02.09.2022 by the State

Government initially for the period of three months from the date of detention *i.e.* from 25.07.2022. The communication of which received on 03.09.2022 and the petitioner was informed on the very same day. At present the petitioner is in custody in District Jail, Azamgarh under the National Security Act as well as in Case Crime No. 39 of 2022, Case Crime No. 40 of 2022, Case Crime No. 60 of 2022 and Case Crime No. 97 of 2022.

18. On behalf of District Magistrate, Azamgarh counter affidavit has been filed by Vishal Bhardwaj in which it is stated that the detention order and grounds of detention dated 25.07.2022 has been passed by the answering respondent while exercising power under 3(3) of National Security Act. A first information report dated 21.02.2022 in Case Crime No. 39 of 2022 registered by one Vijay Sonkar regarding the death of his father Jhabba Sonkar as a result of consumption of country made liquor purchased from the licensed shop of the petitioner and one other co-villager Ramkaran Bind has also died due to consumption of country made liquor purchased from the shop of the petitioner in which chargesheet has been filed. Another FIR in Case Crime No. 40 of 2022 was also filed for the involvement of the petitioner in the business of adulterated country made liquor in which chargesheet has been filed. Yet another FIR in Case Crime No. 60 of 2022 was filed against the petitioner and co-accused in which chargesheet has been filed. Bail application filed by the petitioner before the learned court below in Case Crime No. 39 of 2022 was rejected on 07.04.2022. The petitioner filed bail application before the Hon'ble High Court. Notice of which was given to the office of Government Advocate High Court of Allahabad on 18.06.2022. Yet another FIR was filed on 07.04.2022 against the petitioner and other co-accused under section 3(1) of UP Gangster and Anti-Social Activities

(Prevention) Act 1986 in Case Crime No. 97 of 2022.

19. Due to offence committed by the petitioner public order was disturbed and tranquility of the locality of the petitioner was disturbed and there was immense possibility of release of the petitioner as his bail application was pending before the Hon'ble High Court, therefore, the Station House officer/ sponsoring authority submitted his report to the Superintendent of Police, Azamgarh, through concerned Circle Officer and recommended for initiating the proceedings against the petitioner under National Security Act. The Circle Officer forwarded the report to the Additional Superindentent of Police (rural), Azamgarh, on the same day who forwarded the same to the Superintendent of Police, Azamgarh, on 19.07.2022. The Superintendent of Police, Azamgarh, sent his report dated 21.07.2022 to the District Magisrate, Azamgarh. The answering respondent/detaining Authority after going through the entire material available on record, report of the sponsoring authority and recording his subjective satisfaction passed the detention order dated 25.07.2022 exercising power under section 3(3) of National Security Act. Thereafter, the detention order and grounds of detention dated 25.07.2022 along with relevant records were supplied to the petitioner through Jail, Authorities on 26.07.2022. The petitioner along with other co-accused one was involved in illegal business of adulterated country made liquor and by consuming it seven people died as such activities of the petitioner are prejudicial to the society. Information was given on 17.08.2022 to the petitioner with regard to the opportunity of hearing before UP Advisory Board, Lucknow. The appearance of the petitioner before UP Advisory Board, Lucknow was made for hearing on 22.08.2022.

20. On behalf of State Government of UP counter affidavit has been filed by Sabhapati Bind in which it is stated

that detention order dated 25.07.2022, grounds of detention and all other relevant documents forwarded by the District Magistrate, Azamgarh vide order dated 25.07.2022 was received by the State Government on 28.07.2022. The State Government approved the order of detention on 01.08.2022 the same was communicated to the District Authorities on 02.08.2022 within 12 days from the date of detention order as required under section 3(4) of the Act. A copy of detention order, grounds of detention and all other relevant documents, received from the District Magistrate were also sent to the Central Government by the State Government as required under section 3(5) of the Act and provisions of the aforesaid sections of the Act have been fully complied with. A copy of petitioner's representation dated 06.08.2022 along with parawise comments was received on 11.08.2022, State Government sent a copy of the representation with parawise comments thereon to the Central Government, New Delhi through speed post and to the Advisory Board, Lucknow with separate letters both dated 11.08.2022. The State Government after due consideration rejected the representation finally on 23.08.2022 the information of which was sent to the District Authorities on 24.08.2022. Representation of the petitioner has been dealt with expeditiously at every stage of the Government. Copy of the petitioner's second representation dated 14.08.2022 along with parawise comments was received on 18.08.2022. The State Government sent copy of representation and parawise comments thereon to the Central Government and the same was finally rejected on 26.08.2022, informing the same was communicated by radiogram dated 29.08.2022, the representation has been dealt with expeditiously at every stage by the State Government. U.P. Advisory Board, Lucknow vide its letter dated 17.08.2022, informed by State Government that the case of the petitioner

would be taken up for hearing on 22.08.2022 and directed that the petitioner be informed that if he desires to attend the hearing before U.P. Advisory Board, Lucknow, along with his next friend (non-Advocate), he could do so and be allowed to take his next friend (non-advocate) along with him. The fact was accordingly communicated to the petitioner through the District Authorities by the State Government. The petitioner appeared for personal hearing before the Advisory Board, Lucknow, on 22.08.2022 the date fixed. The UP and Advisory Board, Lucknow, on the said date fixed, heard the petitioner in person and submitted its report to the State Government that there is sufficient cause for the preventive detention of the petitioner under the National Security Act 1980. The aforesaid report was received well within seven weeks from the date of the detention of the petitioner as provided in section 11(1) of the Act. The copy of the petitioner's representation dated 30.08.2022 was sent to the Central Government with parawise comments and was examined and finally rejected by the State Government on 14.09.2022. The information of which was duly communicated to the petitioner and the representation of the petitioner has been dealt with expeditiously at every stage by the State Government.

21. A counter affidavit has been filed by Smt. Meena Sharma on behalf of the Union of India also stating that copy of the representation dated 06.08.2022 of the detenue was sent to the ministry by the State Government and the same was duly considered and not acceded by the Central Government. Accordingly, the detenue along with Authorities concerned were informed vide wireless message dated 24.08.2022. Details of the processing of the representation has also been given in the counter affidavit. Representation dated 13.08.2022 and 26.08.2022 were duly considered and the request regarding revocation of the detention order dated

25.07.2022 passed by the District Magistrate, Azamgarh was not acceeded by the Central Government. The detenue along with Authorities concerned were informed vide wireless message dated 23.09.2022. Details of the processing of the representation has also been given in the counter affidavit. Due to absence of provisions in the Act for consideration of 2nd and 3rd representation, the Deputy Secretary was of the view not to entertain these representation for consideration of the Union Home Secretary, thereafter, with comments sent the file to the Joint Secretary on 07.09.2022. After due examination, representations dated 13.08.2022 and 26.08.2022 were rejected and sent the file back to the Joint Secretary on 22.09.2022 and the detenue and the Authorities concered were informed vide wireless message dated 23.09.2022. Representations of the detenue were dealt with promptly and efforts were made to examine the matter with utmost care and caution with promptitude, hence, there was no wilful and deliberate delay in disposal of the representations on part of the answering respondent. Action of the respondent no.4 has been in accordance with the provisions of National Security Act, 1980 and no rights of the detenue have been infringed.

22. The detention order has been challenged by means of the instant writ petition mainly on several grounds. The first ground of challenge is that the alleged incident was an offence against individuals which affected "law and order", but it does not affect "public order" so as to attract the provisions of Section 3(2) of the NSA, 1980. The second ground of challenge is that the incident which took place on 20.02.2022 is a stale incident which has no proximity with the detention order and the invocation of the provisions of the NSA, 1980 after a long delay on 25.07.2022 was neither warranted nor justified. The third ground of challenge is that copies of the entire relevant material referred to and relied upon in the

detention order have not been provided to the petitioner. The petitioner has been provided only the copy of the index of the bail application in Case Crime No. 39 of 2022, bail application (first four pages) and letter dated 18.06.2022 of the office of Government Advocate of Hon'ble High Court along with detention order dated 25.07.2022. Affidavits and anexures with the bail application have not been furnished to the petitioner nor they have been sent to the State Government as well as Central Government for their perusal. The copies of the report of the District Magistrate and that of the Advisory Board, Lucknow were not provided to the petitioner as also comments on the said applications have not been provided to the petitioner in violation of the principles of natural justice, which renders the detention order unsustainable in law. The fourth ground of challenge is that petitioner has not been given aid of legal friend/legal practitioner at the time of hearing despite a request made for the same. The fifth ground of the challenge is that State Government as well as Central Government have not dealt with representation made by the petitioner with expedition which is the violation of Constitutiona safeguards provided in favour of the petitioner. Lastly the detention order has been assailed on the ground that on 25.07.2022, i.e. on the date of passing of the detention order, the petitioner was already in custody and he had not even filed an application for bail in Case Crime No. 97 of 2022 under the U.P. Gangsters and Anti-Social Activities (Prevention) Act and there was no possibility of the petitioner acting in any manner prejudicial to the maintenance of public order and in these circumstances, the provisions of Section 3(2) of the NSA, 1980 are not attracted and the detention order is unsustainable in law.

23. In support of his submissions, Shri Daya Shankar Mishra, learned Senior Advocate has placed reliance on the

judgments in the cases of **Ichhu Devi Choraria Vs. Union of India and others, 1980 AIR 1983, Mohinuddin @ Moin Master Vs. District Magistrate, Beed and others, 1987 AIR 1977, State of U.P. Vs. Kamal Kishore Saini, 1988 AIR 208, M. Ahamedkutty Vs. Union of India, 1990 SCR (1) 209, Inamul Haq Engineer Vs. Superintendent, Division/District Jail, Azamgarh, 2001 Cri.L.J. 4398, Lallan Goswami Ajayn Vs. Superintendent, Central, 2002 (45) ACC 1089, Brijbasi Pathak Vs. State of Uttar Pradesh and others, 1985 (suppl.) ACC 273, Mrs. T. Devaki Vs. Government of Tamil Nadu and others, 1990 AIR 1086, Smt. Angoori Devi for Ram Ratan Vs. Union of India and others, 1989 AIR 371, Ram Manohar Lohia Vs. State of Bihar and another, AIR 1966 SC 740, Sant Singh Vs. District Magistrate and others, 2000 CriLJ 2230, Ram Kripal Singh Vs. State of U.P. And others, 1986 CriLJ 1437, Jitendra Nath Biswas vs. The State Of West Bengal AIR 1975 SC 1215, Banka Sneha Sheela Vs. The State of Telangana and others, (2021) 9 SCC 415, SK. Serajul Vs. State of West Bengal, AIR 1975 Supreme Court 1517, Jagan Nath Biswas Vs. The State of W.B, AIR 1975 Supreme Court 1516, Md. Sahabuddin Vs. The District Magistrate 24 Parganas and others, 1975 CRI. L.J. 1499, Rajammal vs. State of Tamil Nadu And Another AIR 1999 SC 684, Kundanbhai Dulabhai Shaikh vs. Distt. Magistrate, Ahmedabad And Ors, Raj Kishore Prasad vs. State of Bihar And Ors. AIR 1983 SC 320, Rama Dhondu Barode vs. Saraf, Commissioner of Police & Ors., Syed Mehtab vs. Supdt. Central Jail, Naini, Aftab Ahmad vs. District Magistrate, Gonda and others 2002 (45) ACC 422, Bhanu Sharan vs. Superintendent, Central Jail, Naini, Allahabad and others 2002 (45) ACC 599, Vishal @ Panda vs. District Magistrate, Mainpuri and others 2004 (50) ACC 928, Virendra Kumar Nayak vs. The Superintendent of Naini, Mohar Ali vs. State of U.P., Smt. Khatoon Begum Etc.**

Etc. vs. Union of India and Ors. 1981 AIR 12077, 1981 SCR (3) 137, Vijay Kumar Vs. State of J & K & Others 1982 AIR 1023, 1982 SCR (3) 522, Sk. Abdul Munnaf vs. State of W.B. 1974 0 Supreme (SC) 118, Rabindra Kumar Ghosel vs. State of W.B. 1975 0 Supreme (SC) 122, Vijay Kumar Misra vs. Superintendent, District Jail, Gorakhpur 2002 0 Supreme (All) 792, Mallada K Sri Ram vs. Stat of Telangana & Ors. 2022 0 Supreme (SC) 394, Satyapriya Sonkar vs. Superintendent, Central Jail, Naini LAWS (ALL)-1999-10-11, State of U.P. vs. Kamal Kishore Saini 1987 0 Supreme (SC) 833.

24. Opposing the writ petition, Shri Patanjali Mishra and Shri Satyendra Tiwari, learned A.G.A. have submitted that there is no thumb rule that the preventive detention can be ordered only if a bail application is pending. Its genesis lies under Article 22 of the Constitution of India. However, normally preventive detention is ordered only when a bail application is pending. As the petitioner was already in custody in several criminal cases, instant proceedings under the NSA, 1980 was invoked.

25. He has submitted that whether the case involves a threat to maintenance of "public order" or "law and order" depends upon the facts of each case and the order of preventive order has to be passed by the detaining Authority on the basis of his subjective satisfaction in this regard. Mr. Patanjali has submitted that the incident took place by which the public at large suffered the cons of consumption of adulterated liquor and resultantly several people lost their lives. Out of fear and terror caused by the anti-social activities of the petitioner and co-accused, the parents refrained from sending their kids to schools and nearby shops were closed, therefore, it involves breach of public order and not merely a law and order. He has submitted that the detention order under NSA, 1980 can be passed in any of the following conditions:

(a) if the accused is not in custody or when he is in custody (b) the detaining authority is satisfied that he may be enlarged on bail (c) where no bail application is pending.

26. Sri Patanjali Mishra has further submitted that even if the Court comes to the conclusion that the relevant material was not provided to the petitioner, it would not affect the validity of the detention order because the detention order has been passed on many grounds and not on one. Section 5 A of the NSA, 1980 provides that the detention order shall not be deemed to be invalid or inoperative merely because one or some of the grounds for passing the detention order is vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason, whatsoever. There is a live and proximate link between the incident and the detention order passed after recording the subjective satisfaction based on the material collected and forwarded by the sponsoring Authority to the detaining Authority. The impugned order is valid, there is no illegality therein as the mandatory procedure as envisaged in the Constitution as well as N.S.A. Act has been complied with in letter and spirit.

27. Sri Patanjali Mishra has placed reliance on judgments rendered in **Baby Devassy Chully alias Bobby Vs. Union of India and others, (2013) 4 SCC 531, Arun Ghosh Vs. West Bengal, 1970 SC 1228, Alijan Miya Vs. District Magistrate, 1983 SC 1130 and K.K. Saravana Vs. State of Tamil Nadu, (2008) 9 SCC 89 and Kamarunnissa Vs. Union of India and another, AIR 1991 SC 1640**.

28. Shri Kameshwar Singh, learned counsel appearing for the Central Governement has advanced his submissions opposing the writ petition and he has tried to justify the detention order. He has further submitted that representations

submitted and forwarded on behalf of the detenue have decided and rejected without laches and negligence with expedition. He has placed reliance on **Devesh Chourasia Vs. The District Magistrate, Jabalpur and Ors., WP No. 10177/2021** in The High Court of Madhya Pradesh (Indore Bench) Decided On: 24.08.2021 and **Pankaj Vs. State of U.P. and others, 2016 1 Crimes (HC) 8**.

29. The question of personal liberty of a person is sacrosanct and State Authority cannot be permitted to take it away without following the procedure prescribed by law, otherwise it would be violative of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

Article 21 of The Constitution Of India 1949 is as follows :-

21. Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 22 of the Constitution provides specific protections to undertrials and detainees in India. The framers of the Constitution, who were also our freedom fighters, were conscious of founding a polity that secured civil and political freedoms to its citizens. Dr B. R. Ambedkar, while proposing the article, noted the necessity of retaining the concept of preventive detention “in the present circumstances of the country”. However, the discontinuity from the colonial regime lay in the introduction of strict countervailing measures that ensured that “exigency of liberty of the individual is not placed above the interests of the State” in all cases.

The specific provisions relating to preventive detention under Article 22 were framed in the following terms:

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than

three months unless —

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may

in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).”

The text of Article 22 enshrines certain procedural safeguards, many of which are otherwise available in the Cr.P.C. In elevating these safeguards to a constitutional status, the framers imposed a specific “limitation upon the authority both of Parliament as well as State Legislature to not abrogate” rights that are fundamental to India’s constitution. Dr Bakshi Tek Chand, a conscientious dissenter to preventive detention in peaceful times, proposed a further safeguard in the provision of a right to make representation to the detenu, which was eventually accepted by the Constituent Assembly as a reasonable compromise, Therefore, preventive detention in independent India is to be exercised with utmost regard to constitutional safeguards.

This history of the framing of Article 22 is critical for the judiciary’s evaluation of a detenu’s writ petition alleging, inter alia, a denial of the timely consideration of his representation. Therefore the failure of the Central Government and the State Government to consider his representation of the detenu in a timely manner is most relevant.

Article 22(5) of the Constitution mandates that (i) the authority making the order shall “as soon as may be” communicate the grounds on which the order has been made to the person detained; and (ii) the detaining authority shall afford to the person detained “the earliest opportunity of making a representation against the order” Clause 5 of Article 22 incorporates a dual requirement: first, of requiring the detaining authority to communicate the grounds of detention

as soon as may be; and second, of affording to the detenu "an earliest opportunity" of making a representation. Both these procedural requirements are mutually reinforcing. The communication, as soon as may be, of the grounds of detention is intended to inform the detenu of the basis on which the order of detention has been made. The expression "as soon as may be" imports a requirement of immediacy.

The communication of the grounds is in aid of facilitating the right of the detenu to submit a representation against the order of detention. In the absence of the grounds being communicated, the detenu would be left in the dark in regard to the reasons which have led to the order of detention. The importance which the constitutional provision ascribes to the communication of the grounds as well as the affording of an opportunity to make a representation is evident from the use of the expression "as soon as may be" in the first part in relation to communicating the grounds and allowing the detenu "the earliest opportunity" of availing of the right to submit a representation. Article 22(5) reflects a keen awareness of the framers of the Constitution that preventive detention leads to the detention of a person without trial and hence, it incorporates procedural safeguards which mandate an immediacy in terms of time. The significance of Article 22 is that the representation which has been submitted by the detenu must be disposed of at an early date. The communication of the grounds of detention, as soon as may be, and the affording of the earliest opportunity to submit a representation against the order of detention will have no constitutional significance unless the detaining authority deals with the representation and communicates its decision with expedition.

30. As the detention order dated 25.07.2022 is passed under the provisions of National Security Act, the Objects and Reasons behind passing of the Act is also relevant for the

purpose of scrutiny and examination of the impugned order, which reads as follows :

> *"The National Security Act, 1980 was enacted to provide for preventive detention in certain cases and for matters connected therewith. The statement of objects and reasons reflects the circumstances which prevailed upon the Parliament to enact the law.These were : "In the prevailing situation of communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues, it was considered necessary that the law and order situation in the country is tackled in a most determined and effective way. The anti-social and anti-national elements including secessionist, communal and pro-caste elements and also other elements who adversely influence and affect the services essential to the community pose a grave challenge to the lawful authority and sometimes even hold the society to ransom. Considering the complexity and nature of the problems, particularly in respect of defence, security, public order and services essential to the community, it is the considered view of the Government that the administration would be greatly handicapped in dealing effectively with the same in the absence of powers of preventive detention. The National Security Ordinance, 1980, was, therefore, promulgated by the President on September 22, 1980. Subject to a modification, the Bill seeks to replace the aforesaid ordinance. The modification relates to the composition of Advisory Boards and is for providing that the Chairman of an Advisory Board shall be a person who is, or has been, a Judge of a High Court and the other members of the Advisory Board may be persons who are, or have been, or are qualified to be appointed as Judges of a High Court."*

31. The provisions of the NSA subscribe to the mandate of Article 22(5). Section 3(4) contains a requirement that once an order of detention has been made, the officer making the order must forthwith report the fact to the State Government, together with the grounds on which the order has been made and other particulars which have a bearing on the matter. No such order should remain in force for more than twelve days, unless it has been approved by the State Government. In the meantime, this period is subject to the proviso which stipulates that where the grounds of detention are communicated by the officer after five days (under Section 8) but not later than ten days from the date of the detention, sub-section (4) will apply as if the words fifteen days stands substituted for twelve days. Upon the State Government either making or approving the

order under Section 3, it is under a mandate under Section 3(5) to report the fact to the Central Government within seven days, together with the grounds on which the order has been made and other necessary particulars.

32. Section 8 of the NSA contains statutory provisions governing the disclosure of the grounds of detention. Section 8 is in the following terms:

> 8. Grounds of order of detention to be disclosed to persons affected by the order.—(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than [ten days] from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government. (2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

As noticed earlier, Article 22(5) of the Constitution provides for the communication of the grounds on which the order of detention has been made by the detaining authority "as soon as may be". Section 8(1) uses the expression "as soon as may be", qualifying it with the requirement that the communication of grounds should ordinarily not be later than five days and, in exceptional circumstances, for reasons to be recorded in writing not later than ten days from the date of detention. Section 8(1) also embodies the second requirement of Article 22(5) of affording to the detenu the earliest opportunity of making a representation against the order to the appropriate government.

Section 10 mandates a reference to the Advisory

Board constituted under the provisions of Section 9:

10. Reference to Advisory Boards.—Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of section 3, also the report by such officer under sub-section (4) of that section." Under Section 10, the appropriate government has to place the grounds on which the order of detention has been made within three days from the date of detention of the person together with a representation, if any, made by the person affected by the order. The Advisory Board, under the provisions of Section 11, has to submit its report to the appropriate government within seven weeks from the date of detention order after considering the relevant materials. It may call for further information from the appropriate government, or any person, or even the person concerned if they desire an opportunity to be heard in person.

Action on the report of the Advisory Board falls within the ambit of Section 12:

12. Action upon the report of the Advisory Board.—

(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the

detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith.

When the Advisory Board has reported that in its opinion there is a sufficient cause for the detention of a person, the appropriate government may approve an order of detention and continue the detention of the person for such period as it thinks fit. On the other hand, where the Advisory Board reports that in its opinion there is insufficient cause for detention, the appropriate government shall revoke the detention order and cause the person to be released forthwith.

Section 14 provides for the revocation of detention orders in the following terms:

14. Revocation of detention orders.—

(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified,—

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (3) of section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984 (60 of 1984) bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.

In terms of clause (a) and (b) of sub-section (1) of Section 14, both the State Government and the Central Government have the power to revoke an order of detention.

33. We shall now proceed to analyse the facts of the present case. At the outset, we would like to note that our analysis is limited to the grounds of challenge made by the appellant and the detention order dated 25.07.2022 passed by the District Magistrate/ Detaining Authority, the extension orders passed and the rejection of the first representations made by the appellant.

In **Ayya alias Ayub v. State of U.P. & Anr., AIR 1989 SC 364,** this Court held that the law of preventive detention is based and could be described as a “jurisdiction of suspicion" and the compulsion of values of freedom of democratic society and of social order sometimes might compel a curtailment of individual's liberty.

Whether subjective satisfaction of the detenue authority and detention order can be subjected to the judicial scrutiny, it has been held by the Apex Court in **Vijay Narain Singh Vs. State of Bihar (1984) 3 SCC 14**, which is as follows :-

"the view that "those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires" It is too perilous a proposition. Our Constitution does not give a carte blanche to any organ of the State to be the sole arbiter in such matters. Preventive detention is considered so treacherous and such an anathema to civilised thought and

democratic polity that safeguards against undue exercise of the power to detain without trial, have been built into the Constitution itself and incorporated as Fundamental Rights. There are two sentinels, one at either end. The Legislature is required to make the law circumscribing the limits within which persons may be preventively detained and providing for the safeguards prescribed by the Constitution and the courts are required to examine, when demanded, whether there has been any excessive detention, that is whether the limits set by the Constitution and the Legislature have been transgressed. Preventive detention is not beyond judicial scrutiny.

In **Rekha v. State of T.N., (2011) 5 SCC 244**, a three-Judge Bench of this Court spoke of the interplay between Articles 21 and 22 as follows:

"13. In our opinion, Article 22(3)(b) of the Constitution of India which permits preventive detention is only an exception to Article 21 of the Constitution. An exception is an exception, and cannot ordinarily nullify the full force of the main rule, which is the right to liberty in Article 21 of the Constitution. Fundamental rights are meant for protecting the civil liberties of the people, and not to put them in Jail, for a long period without recourse to a lawyer and without a trial.

"29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal."

30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the instant case the charge against the detenue is of selling adulterated country made liquor after consumption of which seven innocent people lost their lives. Surely, there are ample provisions in IPC as well as Exice Act etc. to deal with such a situation, hence, in the opinion of the Court the detention order in question is unsustainable in law.

20. Keeping in mind the aforesaid dictum of the Hon'ble Supreme Court, we proceed to examine the grounds of challenge to the validity of the detention order dated 25.07.2022. The first ground of challenge is that the alleged incident was an offence against individuals which affected "law and order", but it does not affect "public order" so as to attract the provisions of Section 3 (2) of the NSA, 1980.

34. Dr Ram Manohar Lohia v. State of Bihar (1966) 1 SCR 709 ; Pushkar Mukherjee v. State of W.B. WP No. 179 of 1968, decided on November 7, 1968 : (1969) 1 SCC 10 and Shyamal Chakraborty v. Commissioner of Police, Calcutta WP No. 102 of 1969, decided on August 4, 1969 : (1969) 2 SCC 426. In Dr Ram Manohar Lohia case [(1966) 1 SCR 709] this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act.

It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society.

In Dr Ram Manohar Lohia case examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

35. The petitioner is alleged to have committed the offence by selling adulterated country made liquor, consuming the same seven people died. There is nothing on record to suggest that the petitioner had inclination or tendency to commit the same offence in future also. It is true that we cannot sit in appeal over the satisfaction of the detaining authority but the satisfaction of the detaining authority must be based on material on the basis of which a reasonable person could come to the same kind of satisfaction. The material which was taken into account by the detaining authority in the instant case relates to a single incident of sale of adulterated country made liquor. There was no material before the detaining authority, nor any such material has been placed before the Court to suggest that the petitioner if not detained would have indulged into similar activities of sale of adulterated country made liquor.

36. The law which has emerged from the precedents on this point is that public order is said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. The contravention of law always affects order but before it can be said to affect public order, it

must affect the community or the public at large. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order or a disturbance to public order. It means therefore that the question whether a person has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society, which depends the facts of each particular case.

37. Applying the principles which emerge from the aforesaid precedents to the facts of the present case, we find that the allegation against the petitioner is that certain people purchased liquor from the license shop of the petitioner which was adulterated one, consuming the same seven people became blind and during treatment they died. Therefore, the offence was directed against individuals and not against the society. The alleged act directed against individuals was in violation of law, which obviously disturbed the order in the locality for some time. This conduct may be reprehensible and punishable, for which the petitioner is being prosecuted and tried in accordance with the penal statutes. But it does not add up to the situation where it may be said that the community at large was disturbed by the petitioner's act and there was a breach of public order or likelihood of a breach of public order.

38. Moreover, the detention order contains a bald averment that in case the petitioner comes out on bail, he may again indulge in crime but neither there is any reasonable basis to record this apprehension nor is there any averment that the

apprehended activity would be prejudicial to public order and, therefore, it is necessary to detain him with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. This power can be exercised only if the detaining authority on the basis of the past prejudicial conduct of the detenu is satisfied about the probability of the detenu acting similarly in future. This means that the past activity of the detenu on the basis of which such a prognosis is made must be reasonably suggestive of a repetitive tendency or inclination on the part of the detenu to act likewise in future, which is clearly missing in the present case.

39. Therefore, in our opinion, the act allegedly committed by the petitioner on 20.02.2022 did not cause a disturbance of public order as it did not disturb the society to the extent of causing a general disturbance of public tranquility and the single act of sale of adulterated country made liquor was not suggestive of a repetitive tendency or inclination on the part of the petitioner to act likewise in future so as to justify invocation of powers under Section 3 (2) of the NSA, 1980. The order of preventive detention passed under Section 3 (2) of the Act is unsustainable for this reason.

40. Now we proceed to examine the second ground of challenge, i.e. that the incident which took place on 20.02.2022 is a stale incident which is not proximate to the time when the detention order was passed on 25.07.2022 and there was no live link between the alleged prejudicial activity and the purpose of detention and for this reason, the invocation of the provisions of the NSA, 1980 after a long delay of about 5 months was neither warranted nor justified.

41. Sri. D. S. Misra, learned Senior Advocate appearing for the petitioner has placed reliance on the following dictum of the Hon'ble Supreme Court in the case **Ali Jaan Miyan Vs.**

District Magistrate, Dhanbad: -

".....when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily explained such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the casual connection has been broken in the circumstances of each case."

42. In the instant case, the offence was committed on 20.02.2022 and the detention order was passed on 25.07.2022. No explanation is forthcoming in the return while the petitioner has been continuously in jail since 23.02.2022. In these circumstances, we are of the opinion that the live link between the alleged incident and the detention order is snapped and there is no proximity between the crime committed and the order of detention."

43. In **Shalini Soni v. Union of India,** the Hon'ble Supreme Court while examining the validity of a detention order held as follow:-

".....It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote....."

44. In the present case, the incident in question took place on 20.02.2022, the petitioner was arrested on 23.02.2022, he was lodged in Jail, on 23.02.2022 and he was continuing to be in custody till now, meaning thereby the petitioner was already in jail on the date on which the impugned order of prevention was passed. The incident which occurred on 20.02.2022, i.e. about 5 months prior to passing of the detention order, is certainly a stale incident which is not proximate to the time when the detention order dated 25.07.2022 was passed and there was no live link between the alleged prejudicial activity and the purpose of detention and the invocation of the provisions of the NSA, 1980 against the

petitioner after a long delay of about five months was neither warranted nor justified.

45. The next ground of challenge to the detention order is that copies of the entire material referred to and relied upon for the detention order have not been provided to the petitioner. None of the affidavits and grounds of bail relating to Case Crime Nos. 40 of 2022 and 60 of 2022 which have been mentioned in the detention order coupled with grounds of detention order dated 25.07.2022 have not been provided to the petitioner. Petitioner has been provided with only the copy of the index of the bail application in Case Crime No.39 of 2022, bail application (4 pages) and letter dated 18.06.2022 of the office of Government Advocate of Hon'ble High Court along with detention order dated 25.07.2022. Affidavits and anexures with the bail application have not been furnished to the petitioner nor they have been sent to the State Government as well as Central Government for their perusal. The copies of the report of the District Magistrate and that of the Advisory Board, Lucknow were not provided to the petitioner as also comments on the said applications have not been provided to the petitioner, which vitiates the detention order.

46. An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is clear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual

inferences. The "grounds" must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the "grounds" must be supplied to the detenu as part of the "grounds". It would not therefore be sufficient to communicate to the detenu a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to clause (6) of Article 22 in order to constitute compliance with clause (5) of Article 22. One of the primary objects of communicating the grounds of detention to the detenu is to enable the detenu, at the earliest opportunity, to make a representation against his detention and it is difficult to see how the detenu can possibly make an effective representation unless he is also furnished copies of the documents, statements and other materials relied upon in the grounds of detention. There can therefore be no doubt that on a proper construction of clause (5) of Article 22, it is necessary for the valid continuance of detention that subject to clause (6) of Article 22, copies of the documents, statements and other materials relied upon in the grounds of detention should be furnished to the detenu along with the grounds of detention or in any event not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention. If this requirement of clause (5) of Article 22 read with Section 3 sub-section (3) is not satisfied, the continued detention of the detenu would be illegal and void.

47. It is immaterial whether the detenu already knew about their contents or not. In **Mehrunissa v. State of Maharashtra [(1981) 2 SCC 709]** it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of

the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in Jail, and has no access to his own documents. In **Mohd. Zakir v. Delhi Administration [(1982) 3 SCC 216]**, it was reiterated that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passu the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of constitutional safeguards enshrined in Article 22(5).

48. In **Khudiram Das v. State of West Bengal [(1975) 2 SCC 81]** this Court held that where the liberty of the subject is involved it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and that the subject is not deprived of his personal liberty otherwise than in accordance with law. The constitutional requirement of Article 22(5), is that all the basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to making the detention order must be communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention:

49. It is, therefore, not only the right of the court, but also its duty as well, to examine what are the basic facts and materials which actually in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence

its satisfaction. The court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the court can certainly require the detaining authority to produce and make available to the court the entire record of the case which was before it. That is the least the court can do to ensure observance of the requirements of law by the detaining authority.

50. In the present case, the petitioner was arrested on 23.02.2022 and he was lodged in Jail, on the same date and he was continuing to be in custody till now, the date on which the impugned order of detention was passed he was already in custody. Although the detention order makes a reference to Case Crime No. 39 of 2022, Case Crime No. 40 of 2022, Case Crime No. 60 of 2022 and Case Crime No. 97 of 2022. But he has been supplied with only copy of index of bail application in Case Crime No. 39 of 2022, bail application (4 pages) and letter dated 18.06.2022 of the Office of Government Advocate of High Court along with detention order dated 25.08.2022. Other papers along with the affidavits and annexures of the bail application have not been supplied with. The Court has to bear in mind that the petitioner is in Jail, and has no access to his own documents. It is immaterial whether the petitioner knew about the facts of Case Crime Nos. and the contents of his bail application or not. The bail application contained the grounds for bail and it has been referred to by the detaining authority. Therefore, the Court is unable to accept the submission of Sri Patanjali Mishra that the aforesaid documents were not relevant material and non-supply of the same would not have any legal effect on the order of detention. Therefore, the non-supply of the vital and important

documents to the petitioner, vitiates the detention order and its legal consequence is bound to follow.

51. The fourth ground of challenge is that depite the request made by the petitioner he is not being given the aid of legal friend/ legal practitioner. It has been specifically averred in the petition that he has made a request for legal friend and legal practitioner at the time of hearing before Advisory Board, Lucknow, but the same has not been considered. In the counter affidavit of District Magistrate/ detaining Authority and the State Government there is no denial of the fact that they have not availed the facility of legal practitioner at the time of hearing before the Advisory Board, Lucknow, though there is no order of Advisory Board, Lucknow available on record which might have been placed by the State Government or by District Magistrate/ detaining Authority. In absence of the same it can convently be inferred that State Government and the District Magistrate/ detaining Authority availed the facilities of legal practitioners while the petitioner was deprived of the same despite specific request made for the same through the first representation made to the Authorities concerned. Thus, there is a violation Article 14 of the Constitution of India which vitiates the impugned detention order.

52. Fifth ground of the challenge of the detention order is that under the Constitution as well as NSA Act there are certain safeguards which have to be observed while dealing with the representation made by the petitioner on the part of the State Government and the Central Government. In the counter affidavit filed on behalf of the State Government mention that representation dated 06.08.2022 of the petitioner was received on 11.08.2022 and the same was rejected after consideration on 23.08.2022, second representation dated 24.08.2022 was rejected on 26.08.2022. The representation

dated 30.08.2022 was examined and finally decided on 14.09.2022. In the counter affidavit of the Central Government it is stated that representation dated 06.08.2022 was not acceded and information of which was given on 24.08.2022. Representation dated 13.08.2022 and 26.08.2022 were duly considered and were rejected and information was sent vide wireless message dated 23.09.2022. From the aforesaid counter affidavit, there appears no plausible explanation of delay on the part of the Central Government of the period between 17.08.2022 to 24.08.2022. The representation of petitioner dated 06.08.2022 was rejected by the State Government on 23.08.2022 of which there is no plausible explanation available on record. Therefore, unexplained delay on the part of the Government in dealing with representation made by the petitioner is violative of Constitutional safeguards provided to the petitioner in this regard, and the detention order vitiates on this ground also.

53. Now we come to the last ground of challenge to the detention orders that on 25.07.2022, i.e. on the date of passing of the detention order, the petitioner was already in custody and he had not even filed an application for Bail in Case Crime No. 97 of 2022 under the U. P. Gangsters and Anti-Social Activities (Prevention) Act and there was no possibility of the petitioner acting in any manner prejudicial to the maintenance of public order and in these circumstances, the provisions of Section 3 (2) of the NSA, 1980 are not attracted and the detention order is unsustainable in law.

54. It is clear that if a person concerned is in custody and there is no imminent possibility of his being released, the rule is that the power of preventive detention should not be exercised. From a perusal of Apex Court's pronouncements, it is clear that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the

order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is real possibility of his being released on bail and, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in his behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question the same before a higher Court.

55. Keeping in view the fact that the petitioner was already in Jail, in a case under Sections 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, that he had not filed an application for bail in the aforesaid case before the Hon'ble High Court and that even when he would file an application for bail, he would not be released on bail unless (a) the Public Prosecutor is given an opportunity to oppose the application for such release, and (b) 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, it cannot be accepted that there was any material for recording the satisfaction of the detaining authority that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order it was necessary to detain the petitioner under the NSA, 1980. The satisfaction that it is necessary to detain the petitioner for the purpose of preventing him from acting in a manner prejudicial to the maintenance of public order is thus, the basis of the order under section 3 (2) of the NSA, 1980 and this basis is clearly absent in the present case. Therefore, the detention order dated 25.07.2022 is unsustainable in law on this ground also.

56. In view of the aforesaid discussion, the present Writ Petition is allowed. The impugned order dated 25.07.2022 passed by the District Magistrate, Azamgarh ordering detention of the petitioner Rangesh Yadav under Section 3 (2) of the NSA, 1980 is hereby **quashed.** The Respondents are commanded to release the petitioner from detention under the aforesaid order dated 25.07.2022 forthwith if not wanted in any other case.

Order Date :- 03.05.2023
Shiv