IN THE HIGH COURT OF ORISSA, CUTTACK

WPCRL No. 129 of 2024

An application under Articles 226 and 227 read with Articles 21 and 22(5) of the Constitution of India.

Nilakantha Pradhan ..... Petitioner

-Versus-

Government of India
& Others ..... Opp. Parties

For Petitioner: - Mr. Janmejaya Katikia
Advocate

For Opp. Party Nos.
1 to 3: - Mr. P.K. Parhi, DSGI
(for O.Ps. 1 & 2)
Mr.S.S. Kashyap
Sr. Panel Counsel
Govt. of India
(for O.P. No.3)

For Opp. Party Nos.
4 & 5: - Mr. P. S. Nayak
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE S.S. MISHRA

Date of Hearing: 31.01.2025 Date of Judgment: 19.02.2025

S.K. SAHOO, J. Hon'ble Justice V.R. Krishna Iyer (as he then was) said in his inimitable style in **Maneka Gandhi -Vrs.- Union of India reported in A.I.R. 1978 S.C. 597** that the spirit of man is at the root of Article 21 of the Constitution of India. Liberty makes the worth of a human being. Absent liberty, other freedoms are frozen. To frustrate Article 21 of the Constitution of India by relying on any formal adjectival statute, however, flimsy or fantastic its provisions be, is to rob what the constitution treasures. Procedure which deals with modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Procedure must rule out anything arbitrary, freakish and bizarre. In the words of Mahatma Gandhi, Father of the Nation, "To deprive a man of his natural liberty and to deny to him the ordinary amenities of life is worse than starving the body; it is starvation of the soul, the dweller in the body."

Challenging the detention order dated 23.07.2024 under Annexure-1 as well as the consequential confirmation order dated 18.10.2024 under Annexure-4, being illegal and arbitrary in the eyes of law, the petitioner Nilakantha Pradhan has filed this writ petition in the nature of habeas corpus under Articles 226 of the Constitution of India read with Articles 21 and

22(5) of the Constitution of India, with a further prayer for a direction to the opposite parties to set him at liberty.

2. The opposite party no.1 in exercise of the power conferred under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter to be called as '1988 Act', for short) passed the order of detention on dated 23.07.2024 under Annexure-1 detaining the petitioner with a view to prevent him from engaging in illicit trafficking of narcotic drugs and psychotropic substances in future and he was directed to be detained and kept in Circle Jail, Choudwar, Cuttack.

In the grounds of detention under Annexure-2, it appears that the sponsoring authority submitted proposal before the opposite party no.2 on 23.07.2024 that the petitioner was involved in three cases, i.e., **(i)** NCB Bhubaneswar Crime No.02/2024 dated 25.01.2024 in a case under N.D.P.S. Act in which charge sheet has not been submitted; **(ii)** Odisha Excise Case PR No. 1022/2022-23 under section 20(b)(ii)(C) of N.D.P.S. Act dated 12.03.2024 and **(iii)** F.I.R. No. 108/2017 dated 18.09.2017 in which charge sheet was submitted under sections 20(b)(ii)(C) and 29 of N.D.P.S. Act. It is further stated that the petitioner was actively involved in trafficking of narcotics drugs and psychotropic substances and he was a habitual offender. His

presence in the society was a threat to the innocent persons of the locality/State/Nation and his activities was prejudicial to society. It is further stated that the petitioner was on bail, however, considering his conscious involvement in illegal trafficking of drugs and psychotropic substances in a repeated manner to the detriment of the society, he had a high propensity to be involved in the prejudicial activities in future. It is further stated that the acts of the petitioner in engaging himself in prejudicial activities of illicit traffic of narcotics and psychotropic substances, which posed serious threat to the health and welfare not only to the citizens of the country but to every citizen in the world, besides deleterious effect on the national economy. The offences committed by the petitioner were held to be so interlinked and continuous in character and were of such nature that the same affected security and health of the nation. The grievous nature and gravity of offences committed by the petitioner in a well-planned manner clearly established his continued propensity and inclination to engage in such acts of prejudicial activities. Considering the facts presented, the opposite party no.2 came to the conclusion that there was ample opportunity for the petitioner to repeat the serious prejudicial acts and therefore, the petitioner should be immobilized and there was a need to prevent him from engaging in such illicit

traffic of narcotic drugs and psychotropic substances in future by detention under section 3(1) of 1988 Act. Since the petitioner was indulged in organizing the illicit trafficking of narcotic drugs and psychotropic substances as well as had a high propensity to engage in illicit activities, it was conclusively felt that if he was not detained under section 3(1) of the 1988 Act, he would continue to so engage himself in possessing, purchase, sale, transportation, storage, use of narcotics and psychotropic substances illegally and handling such activities, organizing directly in such activities and conspiring in furtherance of such activities which amounted to illicit trafficking of psychotropic substances under section 2(e) of the 1988 Act. It is further stated that considering the magnitude of the operation, the chronicle sequence of events, the well organised manner in which such prejudicial activities were carried on, the nature and gravity of the offence, the consequential extent of investigation involved including scanning/examination of papers, formation of grounds, the opposite party no.2 was satisfied that the nexus between the dates of incident and passing of the detention order as well as object of the detention of the petitioner is well maintained. The petitioner was informed in the grounds of detention that he had the right to represent against his detention to the Authority, to the Central Government as well as to the

Advisory Board. He was also informed that he shall be heard by the Advisory Board in due course, if the Board considers it essential to do so or if the petitioner so desired. The grounds were communicated to the petitioner for the purpose of clause (5) of Article 22 of the Constitution of India and as required under section 3(3) of the 1988 Act.

3. The order of detention with grounds of detention was served on the petitioner on 31.07.2024. On receipt of the same, the petitioner submitted a representation to the Joint Secretary (PITNDPS), Government of India, Ministry of Finance, Department of Revenue on 17.09.2024 as per Annexure-3. Thereafter, the matter was placed before the PITNDPS State Advisory Board, Odisha which was also of the opinion that sufficient cause was made out for detention of the petitioner. The Central Government by virtue of sub-section (f) of section 9 of the 1988 Act, confirmed the said detention under Annexure-4 on 18.10.2024 thereby directing to detain the petitioner (detenu) for a period of one year from the date of detention i.e. 31.07.2024.

4. The petitioner has filed the writ petition with the following grounds:

(i) The Detaining Authority has referred to NCB, Bhubaneswar Crime No.02/2024 dated 25.1.2024 in

which the petitioner is not the principal accused and basing on the statement of two co-accused, the petitioner has been entangled in the case and this Court has already granted bail to the petitioner in the said case;

(ii) So far as the 2nd case i.e. Odisha Excise Case PR No. 1022/2022-23 under section 20(b)(ii)(C) of the 1988 Act is concerned, the petitioner has been released on bail by this Court even more than one year prior to the issuance of the impugned order of detention and there lies no proximate link of the said case with the order of detention and no prima facie involvement of the detenu is visible;

(iii) So far as the 3rd case i.e. Kantamal P.S. F.I.R. No. 108 dated 18.9.2017 is concerned, the petitioner is on bail, charge sheet has already been filed and the case is under trial in the Court of learned Additional Sessions Judge, Kandhamal in C.T. Case No.492 of 2017 and the complicity of the petitioner is yet to be established. It is further stated that while filing charge sheet, the name of the petitioner has been incorporated without any specific material;

(iv) It is stated that reference to the Advisory Board under section 9(b) of the 1988 Act should have been made within five weeks from the date of detention, but in the instant case, the date of detention being 23.07.2024, reference to the Advisory Board was made on 29.08.2024, which was beyond the period prescribed under the statute;

(v) It is further stated that as per section 9(c) of the 1988 Act, the Advisory Board is required to submit report within eleven weeks from the date of detention of the person concerned, but in the instant case, the Advisory Board should have filed its report by 08.10.2024, but the order of confirmation dated 18.10.2024 under Annexure-4 is silent regarding the date of filing of the final report by the PITNDPS State Advisory Board, Odisha and that apart, a copy of the report of the Advisory Board has not been supplied to the petitioner, thereby curtailing the personal liberty of the petitioner as guaranteed under Article 21 of the Constitution of India;

(vi) It is stated that there lies no prima facie and substantial materials in all the three cases, as has been cited in the grounds of detention under

Annexure-2 and cumulatively all the three cases cannot be said to have proved the propensity of the detenu to carry on illicit drug trafficking, posing a serious threat to the people as well as to the society. None of these cases have even got a proximate link with the order of detention.

5. The opposite party no.3, Zonal Director, Narcotic Control Bureau, Bhubanewar Zonal Unit, Bhubaneswar has filed counter affidavit to the writ petition, stating, inter alia, that the petitioner has a long-standing history of engaging himself in drug trafficking, with multiple cases under the N.D.P.S. Act and Excise Act and therefore, the Detaining Authority has reasonably believed warranting preventive detention under the 1988 Act to safeguard public health and welfare. It is further stated that the detention order was executed on 31.07.2024 as per section 4 of the 1988 Act, following which the petitioner was detained in the Circle Jail, Choudwar, Cuttack on 01.08.2024 at 12.35 a.m. It is further stated that grounds of detention, along with the relied-upon documents, were duly served upon the petitioner on 04.08.2024, at Circle Jail, Choudwar, Cuttack, in compliance with Section 3(3) of the 1988 Act and the representation dated 17.09.2024, as enclosed under Annexure-3 in the writ petition, has not been received by any of the concerned authorities, i.e.

the jail authorities, the Narcotics Control Bureau, the PITNDPS Unit, New Delhi or the State Advisory Board as of date. The representation under Annexure-3 neither bears the signature of the petitioner nor any acknowledgment from any receiving authority. It is further stated that the petitioner's allegation that the Detaining Authority has flagrantly violated or abused the powers vested under the 1988 Act is wholly misconceived and baseless. The detention order issued by the Detaining Authority is not only valid but also imperative to ensure that the petitioner is restrained from engaging in further acts of illicit drug trafficking. It is further stated that the petitioner’s repeated transgressions of law manifested through his involvement in the seizure of 438 kg. of ganja in Kantamal P.S. F.I.R. No. 108 of 2017, 30 kg. of ganja under Odisha Excise PR No.1022 of 2022-23 and supply of 21.1 kg. of ganja under NCB Bhubaneswar Crime No. 02 of 2024 highlights his persistent engagement in criminal activity, rendering him ineligible to invoke the protection under Article 21 of the Constitution of India in shielding his unlawful actions. It is further stated that the Detaining Authority carefully evaluating the totality of circumstances, including the detenu's criminal antecedents, prior engagements in similar offences and the unrelenting nature of his conduct, in exercise of

the powers conferred upon it, issued the order of preventive detention, which was both warranted and legally sound.

It is further stated in the counter affidavit that as per Section 9(b) of the 1988 Act, the mandatory period of five weeks is to be calculated from the date of detention and not from the date when the detention order was passed. In the present case, the reference to the State Advisory Board was made on 29.08.2024, which is well within the statutory period of five weeks from the date of detention i.e. 31.07.2024. It is further stated that the report containing the opinion of the State Advisory Board, Odisha, regarding the detention of the petitioner was submitted well within the statutory period of eleven weeks from the date of detention. After giving an opportunity of personal hearing on 03.10.2024 by the State Advisory Board and after thorough consideration of all the parameters, the State Advisory Board unanimously opined that there exists sufficient cause for the detention of the petitioner and accordingly, the order of detention was confirmed under section 9(f) of the 1988 Act.

It is further stated in the counter affidavit that the Detaining Authority has found sufficient reasons to believe in the propensity of the petitioner's criminal activities, which span a period of nearly two decades, i.e., from 2005 to 2024. During

this period, the petitioner has been behind the bar at least eight times for his involvement in various crimes. It is further stated that apart from the three N.D.P.S. cases cited in the grounds of detention, the petitioner is also involved in three cases under the Excise Act and two additional cases under the Indian Penal Code. It is further stated that the continued engagement of the petitioner in such activities, even while being enlarged on bail, establishes a clear pattern of persistent and organized criminal conduct. It is further stated that the conscious and repeated efforts of the petitioner to traffic and supply illicit drugs pose a serious and imminent threat to the health and welfare of society at large. His activities had a deleterious effect on the younger generation, particularly in the States of India, and such actions cannot be neglected or ignored. It is further stated that the subjective satisfaction of the Detaining Authority is based on the cumulative effect of the petitioner's repeated offences, the organized nature of his activities and the significant potential harm pose to society. It is further stated that the magnitude of his crimes cannot be judged in isolation but must be seen as a clear and continuous effort to disrupt public order and welfare. The detention of the petitioner under the 1988 Act, is not only reasonable but also imperative to prevent further engagement in such illicit and dangerous activities.

6. The opposite parties nos.1 and 2 have filed counter affidavit almost in the similar line of the counter affidavit filed by opposite party no.3. It is stated, inter alia, that the detaining authority found sufficient reasons with subjective satisfaction against the petitioner with regards to propensity of his crimes since the year 2005 until 2024 wherein the detenu has been behind the bars for at least eight times as he was involved in various crimes. Apart from three N.D.P.S. Act cases against his name as mentioned in the detention order, the detenu has also three cases under Excise Acts and two more cases under the Indian Penal Code.

7. The Opposite party No.5, Superintendent, Circle Jail, Choudwar, Cuttack has also filed counter affidavit on behalf of the State of Odisha (Opposite party nos.4 and 5) reiterating the stand taken by the opposite party no.3 in its counter affidavit.

8. In reply to the counter affidavits filed by the opposite parties, rejoinder affidavit has been filed on behalf of the petitioner, stating, inter alia, that the documents basing on which the Detaining Authority became satisfied to pass the order of detention have not been supplied to the petitioner and thereby the order of detention as well as the confirmation thereof is actuated with malafide. It is further stated that the representation of the petitioner under Annexure-3 has been filed

before the opposite party no.5, who denied to give any acknowledgment in receipt thereof and few days after, the opposite party no.5 called the petitioner and told that since the said document has been prepared by someone else, the same is not permissible and he has to write as per his (opposite party no.5) dictation and to the utter surprise, the prisoner's petition under Annexure-B/7 to the counter affidavit has been sent to the authorities without enclosing the original representation, which the petitioner came to know after going through the affidavit filed by the opposite parties nos. 4 and 5. It is further stated that taking advantage of the same, the opposite parties nos.4 and 5 have taken the stand that no such representation of the petitioner has been received at the PITNDPS Unit, New Delhi or by the Jail Authorities or by the State Advisory Board.

9. On the last date of hearing, i.e. on 31.01.2025, an additional affidavit dated 31.01.2025 has been filed by the opposite party no.3 in Court enclosing some documents wherein it is stated that the documents were placed before the Detaining Authority as well as served on the petitioner. It is further stated that the petitioner was given sufficient opportunity to be confronted with those cases and a panchanama was drawn mentioning the above proceedings in the jail premises, which was acknowledged by the petitioner after being explained to him

in Odia language by the Investigating Officer as per Annexure-C/3. It is further stated that the petitioner had submitted a prisoner's petition on 17.09.2024 addressed to the Secretary to the Govt. of India, Department of Revenue, Ministry of Finance, opposite party no.1 through the opposite party no.5 and the said representation was forwarded to the Detaining Authority on the same day.

10. Mr. Janmejaya Katikia, learned counsel appearing for the petitioner strenuously urged that though from the detention order, it appears that while passing the order of detention, the Detaining Authority took into account the involvement of the petitioner in three cases only which were from the year 2017 to 2024, but in the counter affidavit filed by opposite party no.3, it appears that apart from those three cases, the Detaining Authority has also taken into account the involvement of the petitioner in three other cases under the Excise Act and two additional cases under the Indian Penal Code which are from 2005 onwards, the details of which have neither been supplied to the petitioner nor the same has been stated in the grounds of detention under Annexure-2, thereby it violates the principles of natural justice. Learned counsel further submitted that the representation filed by the petitioner under Annexure-3 has neither been forwarded to the PITNDPS Unit, New Delhi nor to

the Advisory Board, rather on being dictated by the opposite party no.5 to the petitioner, the petition has been forwarded to the Advisory Board. Learned counsel for the petitioner referring to paragraph no.7 of the counter affidavit filed by opposite party nos.1 and 2 submitted that the counter affidavit has been prepared in consultation with the Sponsoring Authority, i.e. the Zonal Director, Narcotics Control, Bureau, Bhubaneswar, Odisha.

Mr. Katikia, further argued that the Detaining Authority, opposite party no.2, without applying his mind, has been biased with the report of the Sponsoring Authority so as to pass the order of detention in the garb of subjective satisfaction, which fact is revealed from paragraph no.7 of the counter affidavit filed by opposite parties nos.1 and 2. He further argued that without applying mind, the opposite party no.1 basing on the report of the Sponsoring Authority, i.e. opposite party no.3 has passed the impugned order of detention, which is liable to be quashed. He emphatically contended that the grounds on which the impugned order of detention has been passed have not been supplied to the petitioner and thus, the impugned order of detention is liable to be quashed.

Mr. Katikia, further argued that if as per the detention order, the petitioner after being released on bail in one N.D.P.S. Act case of the year 2017, indulged himself in another

case of the year 2023 and after being released in the second case, he indulged himself in third case of the year 2024 and thereby misutilised his liberty, application for cancellation of bail could have been moved by the State. When ordinary criminal law provided sufficient means to address the situation, the Authority should not have taken recourse to the provisions of the 1988 Act, which is an extraordinary statute, leading to the passing of impugned detention order.

In support of his contentions, Mr. Katikia has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of **Commr. of Police, Bombay -Vrs.- Gordhandas Bhanji reported in 1951 Supreme Court Cases 1088, Sasthi Keot -Vrs.- The State of West Bengal reported in (1974) 4 Supreme Court Cases 131, Khudiram Das -Vrs.- State of West Bengal reported in (1975) 2 Supreme Court Cases 81**, **Ameena Begum -Vrs.- State of Telengana reported in (2023) 9 Supreme Court Cases 587** and **Jaseela Shaji -Vrs.- Union of India reported in (2024) 9 Supreme Court Cases 53**.

11. Mr. P.K. Parhi, learned Deputy Solicitor General for the Union of India and Mr. S.S. Kashyap, learned Senior Panel Counsel for the Government of India, on the other hand, argued that apart from involvement of the petitioner in the three cases

as mentioned in the grounds of detention under Annexure-2, he is also involved in three cases under the Excise Act and two additional cases under the Indian Penal Code and the Detaining Authority taking into account all the aforesaid eight cases, has passed the impugned order of detention. Learned counsel further submitted that the detention of the detenu was required to prevent him from anti-social activities as he was indulging in drug trafficking in various districts of the State of Odisha including the districts of Boudh, Kandhamal and Cuttack and contraband ganja of commercial quantity had been recovered from his possession and he was remanded to judicial custody on several occasions and that the activities of the detenu were detrimental to the society. It is argued that the preventive detention can be ordered by the Detaining Authority against a person in case a satisfaction is drawn with regard to his activities prejudicial to the public order as well as to protect society from anti-social activities. It is further argued that the petitioner had been provided with entire records which were based to order his detention and further the petitioner was informed about his legal right of filing representation against his detention to the Detaining Authority as well as to the Central Government. It is further argued that while passing the detention order, the constitutional and statutory requirements were fulfilled by the

Detaining Authority and there is no case for breach of any of these provisions and therefore, there is no merit in the writ petition which is liable to be dismissed.

12. Mr. Partha Sarathi Nayak, learned Addl. Government Advocate for the State appearing for the opposite parties nos.4 and 5 submitted that in compliance of the detention order under Annexure-1, the petitioner was lodged in Circle Jail, Choudwar, Cuttack and as per the direction of the Detaining Authority, he was produced before the Advisory Board on the date fixed.

13. Adverting to the contentions raised by the learned counsel for the respective parties and on perusal of the material on record, the following points would emerge for our consideration:

(i) Whether the Court can look into the records to satisfy it as to whether the Detaining Authority had arrived at its subjective satisfaction only on the grounds communicated to the detenu, or there were some other relevant materials before the Authority?

(ii) What would happen where there be some materials before the Detaining Authority which could have influenced it in arriving at its subjective satisfaction, but the same were not mentioned in the grounds of detention?

(iii) Whether the Detaining Authority has taken into account the involvement of the detenu only in three criminal cases as has been mentioned in the grounds of detention?

(iv) Whether the Detaining Authority is justified in taking into account involvement of the petitioner in other five cases as spelt out in the counter filed by the opposite party no.3 as well as opposite parties nos.1 and 2 when the details of such cases have not been mentioned in the grounds of detention?

(v) Whether the Detaining Authority had given sufficient opportunity to the petitioner to make effective representation against the order of detention in compliance to the provisions of Article 22(5) of the Constitution of India read with section 6 of the 1988 Act?

(vi) Whether partial withdrawal of grounds of detention by not supplying all the basic facts and materials relied upon by the Detaining Authority to the petitioner shall entail the very detention a nullity for being violative of Article 22(5) of the Constitution?

(vii) Whether the petitioner is deprived of sufficient and reasonable opportunity to make an effective representation against the detention order in violation of his fundamental right enshrined under Article 22(5) of Constitution of India read with section 8 of 1988 Act?

14. Section 3 of 1988 Act states, inter alia, that a State Government or any officer of the State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person to be detained.

There is no dispute that validity of the satisfaction of the Detaining Authority will have to be considered on the facts of each case. Since an order of prevention detention has the effect of invading one's personal liberty, it would be just and proper to see that such drastic power is invoked in appropriate cases responsibly, rationally and reasonably. The detention of a person without a trial is a very serious encroachment on his personal freedom and therefore, at every stage, all questions in relation to the said detention must be carefully and solemnly considered.

Preventive detention is a precautionary measure which is taken to prevent a person from doing something which, if left free and unfettered, it is reasonably probable that he would do. In other words, the essential concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. If the subjective opinion is formed by the Detaining Authority as regards the necessity of detention for a specified purpose, the condition of exercise of power of detention would be fulfilled and it is not permissible for a Court, on a review of the grounds, substitute its own opinion for that of the Authority. Procedural safeguard provided under 1988 Act are sacrosanct and needs to be followed to the hilt, deviation of which has all potential to threaten the violation of constitutional right guaranteed to the detenu.

15. At this stage, it would be worthwhile to delve upon the citations placed by the learned counsel for the petitioner and other relevant citations which have great bearing in deciding the points raised herein.

In the case of **Khudiram Das** (supra), it is held that the Constitutional imperatives enacted in Article 22 of Constitution of India are two-fold; **(i)** the Detaining Authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the

order of detention has been made, and **(ii)** the Detaining Authority must afford the detenu the earliest opportunity of making a representation against the order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security. It is further held that the communication of the grounds of detention is intended to subserve the purpose of enabling the detenu to make an effective representation. The 'grounds' mean all the basic facts and materials which have been taken into account by the Detaining Authority in making the order of detention and on which, therefore, the order of detention is based. It is the factual constituent of the 'grounds' on which the subjective satisfaction of the authority is based. Therefore, nothing less than all the basic facts and materials which influenced the Detaining Authority in making the order of detention must be communicated to the detenu. That is the plain requirement of the first safeguard in Article 22(5). It is further held that it is not only the right of the Court, but also its duty as well, to examine what are the basic facts and materials which actually and 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. Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable probability be likely to influence the decision of any reasonable human being, the Court would be most reluctant to accept the ipse dixit of the District Magistrate that he was not so influenced and a fortiori, if such material is not disclosed to the detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an

opportunity of making an effective representation against the order of detention.

Relying on **Khudi Ram** (supra), it is stated in the case of **Ganga Ramchand Bharvani -Vrs.- Under Secretary to The Government of Maharashtra and Ors. reported in A.I.R. 1980 Supreme Court 1744** that the mere fact that the grounds of detention served on the detenu are elaborate, does not absolve the Detaining Authority from its constitutional responsibility to supply all the basic facts and materials relied upon the grounds to the detenu.

In the case of **Mehrunissa -Vrs.- State of Maharashtra reported in (1981) 2 Supreme Court Cases 709**, it was held that the fact that the detenu was aware of the contents of the documents not furnished is immaterial. The detenu is entitled to be supplied with the copies of all material documents instead of having to rely upon his memory in regard to the contents of documents. The failure of the Detaining Authority to supply copies of such documents was held to have vitiated the detention.

In the case of **Mohd. Zakir -Vrs.- Delhi Administration reported in (1982) 3 Supreme Court Cases 216**, it was reiterated that it being a constitutional imperative

for the Detaining Authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may 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).

The Hon'ble Supureme Court in the case of **Daktar Mudi -Vrs.- State of West Bengal reported in (1975) 3 Supreme Court Cases 301** held as follows:

> "6....This Court has further held that where there are several grounds, even if one ground is vague, then it is difficult to say whether the ground which is vague and in respect of which the detenu could not make an effective representation did not influence the mind of the Detaining Authority in arriving at his subjective satisfaction that the detenu would in future be likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community. If the detention order is held invalid on this count, it would be equally so in a case where there are other materials on which the Detaining Authority could have been influenced in arriving at his subjective satisfaction but which he has not mentioned in the grounds of detention, nor communicated

them to the detenu. In such circumstances, whether the other materials on record had any effect on the mind of the Detaining Authority cannot be accepted solely on his statement, because to admit that he alone has such a right would be to accept that the mere ipse dixit of the Detaining Authority would be sufficient and cannot be looked into. There is a possibility that certain materials on record would disclose that the activities of the detenu are of a serious nature having a nexus with the object of the Act, namely, the prevention of prejudicial acts affecting the maintenance of supplies and services essential to the community, and having proximity with the time when the subjective satisfaction forming the basis of the detention order had been arrived at. If these elements exist, then the Court would be justified in taking the view that these must have influenced the subjective satisfaction of the Detaining Authority and the omission to indicate those materials to the detenu would prejudice him in making an effective representation. If so, the detention order on that account would be illegal."

The view expressed in **Golam -Vrs.- State of West Bengal reported in A.I.R. 1976 Supreme Court 754**, is that the word "grounds" does not merely mean a recital or reproduction of a ground of satisfaction of the authority permitting it to detain a person, nor is its connotation restricted

to a bare statement of conclusion of facts. All the basis facts and materials particulars, which influenced the Detaining Authority in making the order of detention, will be covered by "grounds" within contemplation of Article 22(5) of Constitution of India and are required to be communicated to the detenu unless its disclosure is considered by the authority to be against public interest. The question whether this requirement is complied with or not is justiciable. Indeed, it is the duty of the Court as sentinel of the fundamental freedoms guaranteed by the Constitution, to see that the liberty of none is taken away except in accordance with procedure prescribed by law.

In the case of **Mohinder Singh Gill** (supra), it has been held as follows:

> "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in ***Gordhandas Bhanji*** (supra)
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> > "Public orders, publicly made, in exercise of a statutory authority cannot be

> construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older."

In the case of **Bhut Nath Mete -Vrs.- The State of West Bengal reported in (1974) 1 Supreme Court Cases 645**, the Hon'ble Supreme Court held that Article 22(5) of the Constitution of India vests a real, not illusory right, that communication of facts is the cornerstone of the right of representation and orders based on uncommunicated materials are unfair and illegal.

In the case of **Sasthi Keot** (supra), it is held as follows:

> "This has been relied upon by the State as additional ground in support of the detention, apart from the theft of cables, recited in the detention order and repeated in the counter

> affidavit. Counsel candidly admitted that this additional circumstance had been placed before the State Government and the Advisory board, and certainly was before the District Magistrate when he passed the detention order. It is perfectly plain that the authorities have been influenced by the report of the police that the petitioner was "a man of desperate habits and dangerous character and also prone to committing theft of underground cables." We do not regard 'desperate habits' and 'dangerous character' as anything but vague. Apart from the vice of vagueness which perhaps may not matter so far as the satisfaction of the authorities is concerned, every desperate or dangerous man cannot be run down, under Section 3 of the MISA. Moreover, this vital yet injurious dossier about the petitioner has not been communicated to him and opportunity afforded for making a proper representation contra. Therefore, there is violation both of Article 22(5) of the Constitution and of Section 3(3) of the Act. In this view, we are constrained to quash the detention order on the petitioner and direct his release."

In the case of **Ameena Begum** (supra), it is held that in the three criminal proceedings where the detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the

provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned detention order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention. Reliance was placed in the case of **Vijay Narain Singh -Vrs.- State of Bihar reported in (1984) 3 Supreme Court Cases 14**, wherein it was observed that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal Court, great caution should be exercised in scrutinising the

validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal Court.

In the case of **Jaseela Shaji** (supra), it is held that the right to personal liberty and individual freedom is not to be arbitrarily taken away even temporarily without following the procedure prescribed by law. When a detention order is passed, all the material relied upon by the Detaining Authority in making such an order must be supplied to the detenu to enable him to make an effective representation. This is required in order to comply with the mandate of Article 22(5) of the Constitution, irrespective of whether the detenu had knowledge of such material or not. It is imperative that every such document which has been relied on by the Detaining Authority and which affects the right of the detenu to make an effective representation under Article 22(5) of the Constitution has to be supplied to the detenu.

Law is well settled as held in the case of **Sama Aruna -Vrs.- State of Telangana and another reported in (2018) 12 Supreme Court Cases 150** that the detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need

to detain him must be there. A detention order which is found on stale incidents, must be regarded an order of punishment for a crime, passed without a trial though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him doing it. It was further held that the four old cases, incidents of which are stated to have taken place nine to fourteen years earlier, ought to have been excluded from consideration on the ground that they are stale and could not have been used to detain the detenu or could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. 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.

16. The Opposite Party No.1 in the detention order has made pointed reference to the detenu being a habitual offender by listing only three criminal cases under N.D.P.S. Act in which the petitioner was involved during the years 2017 to 2024, one of which was instituted on 18.09.2017, the second case was instituted on 12.03.2023 and the third case was instituted on 25.01.2024. It appears from the detention order that the Sponsoring Authority has drawn the attention of these three

cases to the Opposite Party No.1 and accordingly, the Opposite Party No.1 has been pleased to hold the petitioner as a habitual offender and that his presence in the society is a threat to innocent persons of the locality/State/Nation. It was further held that the petitioner was indulged in organizing the illicit trafficking of narcotic drugs and psychotic substances as well as he has a high propensity to engage himself in illicit activities.

However, in the counter affidavit filed by Opposite Party No.3 i.e. Zonal Director, Narcotic Control Bureau, Bhubaneswar Zonal Division, Bhubaneswar, it is stated that the petitioner has a long standing criminal history, extending to excise-related cases under both the Bihar and Odisha Excise Act. It is further stated that Detaining Authority has found sufficient reasons to believe in the propensity of the petitioner's criminal activities, which span a period of nearly two decades i.e. from 2005 to 2024 and during this period, the petitioner was behind bars at least eight times for his involvement in various crimes. It is further stated that apart from the N.D.P.S. cases cited in the grounds of detention, the petitioner is also implicated in three cases under the Excise Act and two additional cases under the Indian Penal Code.

In the counter affidavit filed by the Opposite Parties Nos.1 and 2 also, it is mentioned that the Detaining Authority has found sufficient reasons with subjective satisfaction against the petitioner with regard to propensity of his crimes since the year 2005 till 2024, wherein the petitioner was behind bar at least eight times as he was involved in various crimes. Apart from three N.D.P.S. cases against his name, the petitioner has also three cases under Excise Acts and two more cases under Indian Penal Code.

Thus, not only the Sponsoring Authority has taken into account five other cases apart from the three N.D.P.S. Act cases mentioned in the detention order, but also the Detaining Authority has reached its subjective satisfaction basing on eight cases, which were from the year 2005 to 2024 in passing the detention order. The five cases which were from 2005 onwards till 2017 were not reflected in the detention order nor its details, its status and documents of those cases were supplied to the petitioner to file an effective representation against the order of detention. Thus, it can be said that the petitioner was not afforded reasonable opportunity of making effective representation against the order of detention. It is not known when those three Excise Act cases and two more cases under Indian Penal Code were instituted and what was the nature of

accusation against the petitioner in those cases, the status of those cases and if the petitioner was released on bail in those cases or not and if so when. The possibility of those five old cases being called stale cases cannot be ruled out. In view of the principle laid down in the case of **Khudiram Das** (supra), it can be said that all the basic facts and materials which influenced the Detaining Authority in making the order of detention (in this case, total number of eight cases from 2005 to 2024) have not been communicated to the petitioner. It is very difficult to accept that those five cases had not influenced the subjective satisfaction of the Detaining Authority. Therefore, the omission to indicate those five cases to the detenu has caused prejudice to him in making an effective representation. Non-communication of the details of those five cases to the detenu which appears to have influenced the Detaining Authority in arriving at its subjective satisfaction, has vitiated the order of detention. In our humble view, even though the petitioner might have been aware about those five cases, but since the same has not been reflected in the detention order and no documents in connection with those five cases were supplied to him, it has vitiated the detention order. The petitioner was kept in darkness that the Detaining Authority has arrived at its subjective satisfaction also basing on those five cases and therefore, he

could not have asked for the documents of such cases to file the representation. The conduct of the Authority in debarring the petitioner to make an effective representation violates the constitutional safeguards enshrined under Article 22 (5) of the Constitution of India. In view of the ratio laid down in the case of **Daktar Mudi** (supra), the detention order can be held to be invalid as those five cases which could have influenced the Detaining Authority in arriving at its subjective satisfaction has not been mentioned in the grounds of detention nor communicated to the detenu.

17. After hearing the arguments from the learned counsel for the petitioner on the previous date, an additional affidavit dated 31.01.2025 was filed by the opposite party no.3 in Court on 31.01.2025, wherein it is stated that the other cases which were not mentioned in the order of detention but referred to in the counter affidavit filed by the opposite party were well before the Detaining Authority as well as the petitioner and the petitioner has also been given opportunity to be confronted with those cases. However, the Detaining Authority has confined its order of detention to only those cases which are the subject matter of concern by the Detaining Authority and that the other criminal cases and the background of the petitioner with respect

to the criminal activities has nothing to impact so far as the criminal activity under the N.D.P.S. Act is concerned.

Such a stand taken at the belated stage by the opposite party No.3 in the additional affidavit dated 31.01.2025 is completely contrary to the affidavit filed by the opposite parties nos.1 and 2 wherein it is stated that the subjective satisfaction has been based taking into account all the eight cases. Thus affidavit dated 31.01.2025 seems to be an afterthought story and it is very difficult on our part to place any reliance on it.

If apart from the three cases under N.D.P.S. Act, the Sponsoring Authority as well as the Detaining Authority has also taken into account three cases under the Excise Act and two additional cases under the Indian Penal Code which were from the year 2005 onwards and the Detaining Authority has arrived its subjective satisfaction basing on all the eight cases while passing the detention order as stated in the counter affidavit filed by opposite parties nos.1 and 2, it should have been brought to the notice of the petitioner and he should not have been kept in darkness about the same. Withholding such information, while passing the detention order, does not conform

to Article 21 of the Constitution of India in the matter of fairness, justness and reasonableness.

The stand taken by the opposite parties that the petitioner has not taken the grounds of non-supply of documents of all the eight cases in the writ petition is illogical and ridiculous. The petitioner obviously came to know about it when counter affidavits were filed by the opposite parties. The details of only three N.D.P.S. Act cases from 2017 to 2024 have been mentioned in the grounds of detention and documents of only those three cases were supplied to the petitioner, whereas counter affidavits indicate that the subjective satisfaction of the Detaining Authority was not based only on three N.D.P.S. Act cases from 2017 to 2024, but on eight cases from 2005 to 2024 and thereby the petitioner was not afforded reasonable opportunity of making effective representation against the order of detention.

We are not entering into the disputed questions of fact whether the petitioner has submitted representation as annexed to the writ petition as Annexure-3 which is dated 17.09.2024 or the representation which is dated 17.09.2024 as annexed to the counter affidavit filed by opposite parties nos.4 and 5 as Annexure-B/7.

In the case on hand, as reflected in the detention order, the petitioner was detained as he was indulged in three N.D.P.S. Act cases. The first case was registered as Kantamal P.S. F.I.R. No.108 of 2017, in which he was on bail and the trial is pending in the Court of learned Addl. Sessions Judge, Kandhamal in C.T. Case No.492 of 2017, the second case was registered on 11.03.2023 vide Odisha Excise P.R. No.1022 of 2022-23 in which the petitioner has been enlarged on bail by this Court even more than one year prior to the order of detention and the third case was registered on 25.01.2024 vide NCB Bhubaneswar Crime No.02 of 2024 in which the petitioner has been enlarged on bail by this Court. The other five cases are stale cases which were from 2005 onwards. If those stale cases are taken out of consideration and if after being released in 2017 N.D.P.S. Act case, the petitioner involved himself in 2023 N.D.P.S. Act case and again after being released in bail, he involved himself in 2024 N.D.P.S. Act case, since in the N.D.P.S. Act cases, stringent punishment is prescribed and there is also bar under section 37 of the N.D.P.S. Act in the matter of grant of bail, for misutilising the liberty by the petitioner, application for cancellation of bail could have been moved by the State and in that event, ordinary criminal law has provided sufficient means to address the situation. The Authority having not taken recourse

to such remedy, has taken recourse to the provisions of the 1988 Act, which is an extraordinary statute, leading to the passing of the impugned detention order.

18. Law is well settled that a Court cannot go into correctness or otherwise of the facts stated or allegations leveled in the grounds in support of detention. A Court of Law is the last appropriate forum to investigate into circumstances of suspicion on which such anticipatory action must be largely based. That, however, does not mean that the subjective satisfaction of Detaining Authority is wholly immune from judicial reviewability. By judicial decisions, Courts have carved out areas, though limited, within which the validity of subjective satisfaction can be tested judicially. The Court must apply its mind as to whether the Detaining Authority has scrupulously followed the procedures and any infraction or procedural lapses which ultimately result in violation of the fundamental right guaranteed under Article 21 of the Constitution of India, will lead to setting aside the said order.

Subjective satisfaction being a condition precedent for the exercise of the power of preventive detention conferred on the executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad.

In view of the foregoing discussions, we are of the humble view that the Detaining Authority has recorded its subjective satisfaction not only on the grounds communicated to the petitioner, but there were some other facts and relevant materials before the Authority to arrive at its satisfaction. The involvement of the petitioner in eight cases were before the Detaining Authority which are likely to have influenced it in arriving at its subjective satisfaction, but the same were not mentioned in the grounds of detention. Though the Detaining Authority mentioned in the grounds of detention to have taken into account the involvement of the petitioner only in three criminal cases from 2017 to 2024, but we find that the subjective satisfaction is reached on the basis of eight criminal cases against the petitioner instituted from 2005 to 2024. The Detaining Authority is not justified in taking into account involvement of the petitioner in other five stale cases as spelt out in the counter affidavit when the details of such cases have not been mentioned in the grounds of detention. Therefore, the Detaining Authority cannot be said to have given sufficient opportunity to the petitioner to make an effective representation, in other words, the petitioner is deprived of making an effective representation against the order of detention in compliance to the provisions of Article 22(5) of the Constitution of India read

with section 6 of the 1988 Act. The partial withdrawal of grounds of detention by not supplying all the basic facts and materials relied upon by the Detaining Authority to the petitioner shall entail the very detention a nullity for being violative of Article 22(5) of the Constitution of India.

19. Accordingly, the detention order dated 23.07.2024 under Annexure-1 and the consequential confirmation order dated 18.10.2024 under Annexure-4 are liable to be set aside.

Resultantly, the WPCRL is allowed. The impugned detention order dated 23.07.2024 under Annexure-1 and the consequential confirmation order dated 18.10.2024 under Annexure-4 are hereby set aside. The opposite parties are hereby directed to set the petitioner at liberty forthwith, if he is not required to be detained in any other case.

There shall be no order as to cost.

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S.K. Sahoo, J.

S.S. Mishra, J. I agree.

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S.S. Mishra, J.

Orissa High Court, Cuttack
The 19th February 2024/PKSahoo