

**Neutral Citation No. - 2024:AHC:87173-DB**

**A.F.R**

**Court No. - 47**

**Case :-** HABEAS CORPUS WRIT PETITION No. - 271 of 2024

**Petitioner :-** Faizan Khan Alias Raja Babu

**Respondent :-** Addhikshak Janpadkendriya Karagar Bareilly And 3 Others

**Counsel for Petitioner :-** Chandrakesh Mishra

**Counsel for Respondent :-** A.S.G.I.,Alok Ranjan Mishra,G.A.

**Hon'ble Arvind Singh Sangwan,J.**

**Hon'ble Ram Manohar Narayan Mishra,J.**

**(Oral Judgment per Hon'ble Arvind Singh Sangwan,J.)**

1. Heard Shri Daya Shankar Mishra, learned Senior Counsel assisted by Shri Chandrakesh Mishra, learned counsel for the petitioner, Sri Alok Ranjan Mishra, learned counsel for the Union of India, learned A.G.A. for the State and perused the record.

2. In this petition is to issue a writ in the nature of Habeas Corpus for quashing the order dated 22.07.2022 under Provision 3 (1) of PIT NDPS Act and to release the petitioner from judicial custody.

3. Brief facts of this case are that the petitioner Faizan Khan @ Raja Babu was arrested in F.I.R. No. 65 of 2021 registered under Section 8/ 21 of NDPS Act, Police Station- Qila, District- Bareilly on 01.03.2021. The petitioner was granted bail on 04.06.2021 and was released from custody.

4. As per the first additional affidavit filed on behalf of the petitioner, vide judgement dated 09.06.2023 passed by the Special Judge, NDPS Act/ Additional Sessions, Court No.8, Bareilly after a full length trial, the petitioner was acquitted of the charge.

5. It is further stated that later on the petitioner was nominated as an accused in F.I.R. No. 1091 of 2021 registered on 27.11.2021, on the disclosure of a co-accused. The petitioner was neither named in the F.I.R.

nor arrested at the spot and, therefore, no recovery of either Narcotic Drugs and Psychotropic Substances was affected from him. It is stated that the petitioner later on surrendered before the Court on 18.01.2022 and, thereafter, he was granted bail on 04.03.2022. It is further stated that the charge sheet has been submitted and case is pending trial and no adverse order has been passed against the petitioner.

6. It is further stated that the impugned order dated 22.07.2022 is passed invoking the provisions of PIT NDPS Act is based upon the aforesaid two FIRs Nos. 65 of 2021 and 1091 of 2021. It is submitted that copy of the order was never served upon the petitioner, who was released from the custody on 4.3.2022 in the second F.I.R., till 12.01.2024. It is submitted that intervening period against the petitioner neither any proceedings under Sections 82/ 83 of the Cr.P.C. was pending nor any such proceeding is pending before the trial court where the second F.I.R. is pending. It is also submitted that the petitioner, who was on bail in the first F.I.R. No. 65 of 2021, where he has already been acquitted vide judgement dated 09.06.2023, was regularly appearing and his statement under Section 313 Cr.P.C. was recorded, well within the knowledge of the prosecuting agency as per dates described in paragraph no.11 of the petition. The learned counsel for the petitioner submitted that it has been wrongly noticed in the impugned order that the petitioner was absconding though he was facing the trial and appearing before the court in the first F.I.R. It is submitted that while passing impugned order on 06.03.2024. It is stated that the order dated 22.07.2022 is served upon the petitioner on 12.01.2024 when he was arrested and lodged in the District Jail Bareilly on 12.01.2024 and, therefore, he will remain in preventive detention for one year w.e.f. 12.01.2024 till 11.01.2025. Learned counsel for the petitioner has assailed that both these orders by way of filing this writ petition.

7. Learned counsel for the petitioner submits that one of the ground taken is that the opinion formed by the counseling authority for sending

the proposal to the screening committee; the report prepared by the screening committee and the material relied upon both the counseling authority and screening committee were never supplied to the petitioner and, therefore, he was denied his right for making an effective representation against the impugned orders.

8. Learned counsel for the petitioner submits that after a gap of two months vide order dated 12.03.2024, the representation filed by the petitioner stands rejected by the Deputy Secretary to Government of India, Department of Revenue PIT NDPS Division by passing a totally non speaking order and without assigning any reasons and the grounds taken by the petitioner in his representation.

9. Two separate replies by the learned counsel for the State-respondent nos. 1 & 4 as well as learned counsel for the Union of India-respondent nos. 2 & 3 are filed by way of affidavit. In the reply filed by State, it is stated that the petitioner is lodged in Central Jail Bareilly in compliance of the order passed by the Competent Authority under Provision of PIT NDPS Act. It is submitted that representation of the petitioner stands rejected by the Competent Authority.

10. In reply filed by the Union of India, the details of F.I.R. No. 65 of 2021 is given. Wherein, it was admitted that the petitioner was granted bail by the trial court. Learned counsel for the respondent nos. 2 & 3 could not dispute that the petitioner stands acquitted in this F.I.R. after facing full length trial. With regard to the second F.I.R. No. 1091 of 2021, it is stated that persons, namely, Parvez Alam, Moinuddin, Avinash and Babu Gora @ Ansaar along with Shaan Khan were arrested and they nominated the petitioner as their associate. However, it is admitted that the petitioner was not arrested at the spot and he surrendered before the Special Judge, NDPS Act, Bareilly on 18.01.2022 and was later on released on bail. However, it is submitted that subsequently the petitioner was nominated in one more F.I.R., the details of which are placed on

record vide second supplementary affidavit filed by the petitioner i.e. F.I.R. No.0028 of 2021 dated 26.01.2021 under Section 8/ 21/ 29 of NDPS Act, 1985, Police Station Qila, District Bareilly. In this F.I.R., three persons, namely, Parvez Alam, Moinuddin and Avinash were arrested and they informed that they have purchased ten small packets of 10 gms/ 20 gms of smack from Sahib Raza, Kadir and Faizan (present petitioner) for the purpose of selling to general public.

11. However, it is submitted that the petitioner was not arrested in this F.I.R. and he is on bail. It is further submitted that report dated 20.06.2022 of counseling authority and NCB Zonal Unit, Lucknow was received by Ministry on 04.07.2022, which was sent to Screening Committee on 04.07.2022. Screening Committee recommended the proposal for preventive detention under PIT NDPS Act and accordingly the detention order dated 22.07.2022 was passed under Section 3 (1) of PIT NDPS Act by the Detaining Authority that the Joint Secretary to Government of India. It is also submitted that the petitioner was concealing himself from the process of law and surrendered on 12.01.2024 and the order became operative from the date of said order for one year. It is submitted that all the grounds of detention was duly served upon the petitioner as he was found involved under the NDPS Act. It is also submitted that the representation of the petitioner after due consideration stands rejected by the Competent Authority on 12.03.2024 by following due process of law and the same stands communicated to the petitioner.

12. In reply, counsel for the petitioner submits that mere mentioning of ground in the order of detention do not comply with the mandate of providing the material on the basis of which, the Sponsoring Authority has prepared the proposal and Screening Authority has submitted a report to the competent authority. In the absence of supplying the same, the representation filed by the petitioner in which this ground is specifically taken, is rejected by passing a non speaking order as mere formalities and do not protect the legal right of the petitioner.

13. Counsel for the petitioner has referred to the decision in **Smt. Icchu Devi Choraria Vs. Union of India and others, 1980 0 AIR (SC) 1983**, to submit that it is held by the Supreme Court of India that right provided under Article 22 (5) of the Constitution of India is a substantive right and, if there is violation of the same, the detention order is liable to be quashed. Similar view is taken by the Supreme Court in **Mohinuddin Vs. District Magistrate, Beed and others, 1987 0 AIR (SC) 1977**, **Smt. Shalini Soni vs. Union of India and others, 1981 0 AIR (SC) 431** and in **S. Gurdip Singh vs. Union of India and others, 1981 0 AIR (SC) 362**.

14. Counsel has then relied upon another decision in **Sushanta Kumar Banik Vs. State of Tripura and Ors., 2022 0 AIR (SC) 4715**, whereby the Supreme Court has held that when vital material or vital facts are withheld and not placed by the Sponsoring Authority before the Detaining Authority, it vitiates the procedure. Counsel submits that admittedly in the instant case, till date the vital material relied upon by the Sponsoring Authority or by the Screening Authority had not been disclosed to the petitioner and, therefore, detention of the petitioner under PIT NDPS Act is illegal.

15. Learned counsel has relied upon another judgment of Supreme Court in **Kamleshkumar Ishwardas Patel vs. Union of India and others, 1995 0 Supreme (SC) 538** wherein it has been held that the competent authority under COFEPOSA and PIT NDPS Act is required to consider the representation submitted by the detenu which is an additional right to his right to make representation to the State Government and Central Government.

16. Counsel has also relied upon the judgment of this Court in **Kamalveer Singh Vs. Adhikshak Janpad Karagar and Others, 2024 0 Supreme (All) 466**, wherein it has been held that where the ground of detention were vague or based on stale event or there is delay in decision on the representation, the detention order can be set aside.

17. After hearing the counsels for the parties, we find merit in the present writ petition for the following reasons :

A. The detention of the petitioner is based on two F.I.Rs. i.e. Case Crime No. 65 of 2021 and 1091 of 2021. Admittedly, the petitioner after facing full length trial stand acquitted in first F.I.R. i.e. Case Crime No. 65 of 2021 vide judgment dated 09.06.2023 passed by Special Judge (NDPS Act)/Additional Sessions Judge, Court No.8 Bareilly and, therefore, this very base of this F.I.R. in both impugned orders stand vitiated.

In the impugned rejection order dated 12.3.2024, no reasons has been assigned for dealing with the judgment of acquittal of petitioner. On the face of it, this order is totally non speaking order as in one line it has been stated that the representation of the petitioner stand rejected. Even nothing has been stated in this order that any opportunity of hearing was granted to the petitioner before passing of this order.

With regard to second F.I.R. i.e. Case Crime No. 1091 of 2021, it is admitted case of the prosecution that the petitioner was not named in the F.I.R. and his name surfaced on the disclosure of an accused who was arrested at the spot. Therefore, the petitioner was neither arrested at the spot by the police nor any recovery of narcotic drugs and psychotropic substances was effected from him. In the absence of the Court verdict holding him guilty of offence, impugned order of detention is very harsh.

Though no reliance can be placed on the third F.I.R. which is brought to the notice of this Court by way of reply on behalf of respondent Nos.2 & 3, Union of India. However, perusal of the F.I.R. No. 28 of 2021 dated 26.01.2021 also reflects that police arrested three persons from a car and recovered 10/20 grams of smack in small packets and again recorded their confession in which, it has come that they received the same from three persons namely Sahab Raja, Nazim and petitioner-Faizan Khan Alias Raja Babu. It is admitted by respondent No.2 & 3 that petitioner is on bail in the said case as well and nothing was

recovered from him. In both these F.I.Rs. i.e. Case Crime No. 1091 of 2021 dated 27.11.2021 and Case Crime No. 28 of 2021 dated 26.01.2021, it will be matter of trial whether confession recorded by the police of a co-accused while in police custody will be admissible against the co-accused i.e. petitioner when after his arrest, no recovery of narcotic drugs and psychotropic substances is effected in view of the decision of Supreme Court in **Tofan Singh vs. State of Tamil Nadu, (2013) 16 SCC 31**.

B. Another fact which needs consideration is that Case Crime No. 65/2021 where the petitioner stands acquitted relates to 2021 and second and third F.I.R. also pertains to same year within short span of time. The petitioner surrendered on 12.1.2022 in F.I.R. No. 1091 of 2021 and in the intervening period he has not committed any new offence under the NDPS Act. Even the third F.I.R. i.e. Case Crime No. 28 of 2021 26.01.2021 which though not relied upon in the impugned orders is also of same District i.e. Bareilly. Therefore, from 2021 till 12<sup>th</sup> January 2024 when the detention period of the petitioner started, despite gap of three years, there was no fresh F.I.R. registered against the petitioners and this fact was not recorded in the rejection order though a detailed representation was given by the petitioner.

C. Another fact which is highlighted by the petitioner is that the petitioner was facing trial of Case Crime No. 65 of 2021 and on various dates, he regularly appeared before the Special Judge, NDPS Act, Bareilly where the prosecution evidence was recorded and then his statement under Section 313 Cr.P.C. was recorded and in between at least 13-14 dates were given. Therefore, grounds taken in the impugned orders that petitioner was hiding himself is apparently incorrect and this aspect is not at all considered while passing both the impugned orders as it is apparent that when his name surfaced in second F.I.R. i.e. Case Crime No. 1091 of 2021, the petitioner surrendered before the Special Judge, NDPS Act on 12.01.2022 and was again granted bail.

18. Thus, from the above, it is apparent that the material forming basis of the opinion of the competent authority i.e. proposal of the Sponsoring Authority and recommendation of the Screening Authority, to pass impugned orders were never supplied to the petitioners in terms of the decisions in **Smt. Icchu Devi Choraria's Case (Supra)**, **Mohinuddin's Case (Supra)**, **Smt. Shalini Soni's Case (Supra)** and **S. Gurdip Singh's Case (Supra)** and he has not been afforded proper opportunity of hearing and the impugned order of rejection is totally non speaking order with regard to the pleas raised by the petitioner.

19. Accordingly, this petition is allowed. The impugned orders are set aside. The petitioner be released forthwith if he is not required in any other case on furnishing surety bond and personal bond.

20. However, it is made clear if petitioner is found involved in any subsequent F.I.R., it will be open for the authorities to initiate fresh proceedings against the petitioner.

**Order Date :- 14.5.2024**

DKS/Anurag