Tripura High Court
Sri Sushanta Kumar Banik vs The State Of Tripura Represented ... on 1 June, 2022
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HIGH COURT OF TRIPURA
AGARTALA
WP(C)(HC) 06/2021

Sri Sushanta Kumar Banik, son of Late Shanti Chanda Banik, resident of Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway Station, PS- Amtalai, District- West Tripura, who is presently lodged in Kendriya Samsodhanagar Tripura, Bishalgarh.

-----Petitioner(s)

Versus

1.The State of Tripura represented by the Principal Secretary, Home Department, Government of Tripura, having his office at Secretariat Complex, PO Kunjaban, PS New Capital Complex, Sub-Division - Agartala, District- West Tripura.

2.The Principal Secretary, Home Department, Government of Tripura, having his office at Secretariat Complex, PO Kunjaban, PS New Capital Complex, Sub-Division - Agartala, District- West Tripura.

3.The Director General of Police, Tripura, having his office at Police Headquarters, Fire-Brigade Chowmohani, PS- West Agartala, PO and Sub-Division-Agartala, District- West Tripura.

4.The Advisory Board, Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, Tripura, represented by its Secretary.

5.The Union of India represented by the Secretary to the Ministry of Home Affairs, Government of India, South Block, New Delhi- 110001.

-----Respondent(s)

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BEFORE

HON'BLE THE CHIEF JUSTICE MR.INDRAJIT MAHANTY

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

For the Petitioner(s): Mr. Somik Deb, Sr. Adv.
Mr. Abir Baran, Adv.
Mrs. Riya Chakraborty, Adv.
Mr. Asis Bhadra,Adv.
Mr. Krishnendu Debnath, Adv.
For the Respondent(s): Adv. General
Sr. GA
Mr Ratan Datta, PP
Mr Bidyut Majumder, A.S.G
Mr S Debnath, Addl. PP,
Mr D Bhattacharya, Adv.
Ms. A. Chakraborty, Adv

Date of Hearing : 26.04.2022
Date of Judgment : 01.06.2022
Whether fit for reporting: Yes/No

JUDGMENT

(S.G.Chattopadhyay), J [1] Petitioner Sushanta Kumar Banik was detained under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act, herein after) by an order dated 12.11.2021 [Annexure-5] issued by the Secretary to the Government of Tripura in the Home WP(C)(HC)06 / 2021 Department. Grounds of his detention are stated to be as under:

"(i) Shri Sushanta Kumar Banik S/O Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, Near Agartala Railway Station, P.S.-Amtali, West Tripura has association with the smugglers of NDPS articles and illicit drug traffickers in connection with Amtali P.S. Case No.2019/AMT/208 dated 05.11.2019 U/A 22(b)/22(c)/29 of NDPS Act, 1985 and East Agartala PS Case No.2021 EAG 052 dated 25.04.2021 U/S 21(B)/29 of NDPS Act.

(ii) He was charge sheeted in Amtali PS Case No.2019/AMT/208 dated 05.11.2019 U/S 22(b)/22(c)/29 of NDPS Act, 1985 which was registered following seizure of 92 gm brown sugar (Heroin) and 7600 nos yaba tablets. Investigation of the case has revealed that he is involved in running in illegal business of narcotic drugs throughout the State and outside the State.

(iii) He again got involved in East Agartala PS Case No.2021EAG052 dated 25.04.2021 U/S 21(B)/29 of NDPS wherein on 25.04.2021 the said Sushanta Kumar Banik was again caught red handed while dealing NDPS substances near Badharghat Railway Station. One pouch filled with suspected heroin was recovered from the possession along with cash 20,400/- and android mobile phone. It is very much clear that the said Sushanta Kumar Banik is a habitual drug dealer and sells drug to youths hence running the lives of young fellows as well as the entire society as a whole.

(iv) He is a kingpin in illegal trafficking of narcotic drugs inside the State as well as outside the State. He did not stop his illegal activities of narcotic drugs and psychotropic substances even after his arrest in previous case vide Amtali PS Case No.208/19 and East Agartala PS Case No.52/2021. It

shows his determination to continue his illegal NDPS business. It is further mentioned that illicit trafficking in narcotic drugs and psychotropic substances caused a serious threat to the health and welfare of the people and to protect the society from this menace it is required to take stern action against the person." [2] The order of detention was made pursuant to the proposal dated 14.07.2021 [Annexure-D] of the WP(C)(HC)06 / 2021 Director General of Police. In his proposal, DGP proposed for petitioner's preventive detention on the following grounds:

"2. The above mentioned person is habitual in smuggling banned NDPS articles. By selling such NDPS articles he is spoiling the future of youths in our society and making them drug addicts. It is a social crime. Therefore, his detention under PIT NDPS Act is required for eradication of the menace of drugs."

[3] The petitioner was, on 19.11.2021, served with the order of detention along with the grounds of detention. Pursuant to the order, he was detained in Kendriya Samsodhanagar at Bishalgarh on the same day i.e. on 19.11.2021. He was apprised of his right to make representation to the Central/State Government, detaining authority as well as to the Advisory Board. [4] In terms of Clause (b) of Section 9 of the PIT NDPS Act, the State Government referred the matter to the State Advisory Board constituted under Section 9(a) of the Act within the statutory period. Pursuant to the order of the Advisory Board, detenue WP(C)(HC)06 / 2021 was produced before the Board on 16.12.2021. The Board examined the detenue and recorded his statement. The Advisory Board was of the view that detention order and the documents containing the grounds of detention were duly served on the detenue on 19.11.2021 along with all required documents. Detenue also acknowledged the receipt of the same. The detenue did not submit any representation against the detention order. On appreciation of the materials placed before it, the Advisory Board in its report dated 20.01.2022 viewed as under:

"19.In view of the discussions made here-in-above, we are fully convinced that the detenue should not be equated with other criminal offenders in particular criminal case, but is involved in consistent and continuous criminal activities and thereby he has kept the society around him under threat. Therefore, we are of the considered opinion that the detention order is sustainable and as such we are inclined to hold that the detention order was made consciously in all fitness of mind in consideration of the materials placed before the appropriate authority of the Government."

WP(C)(HC)06 / 2021 [5] Pursuant to the report received from the advisory board, the State Government by order dated 28.01.2022 confirmed the detention order in terms of clause (f) of Section 9 of the PIT NDPS Act for a period of 01 year from the date of his detention i.e from 19.11.2021. The said confirmation order was also served on the detenue at Kendriya Samsodhanagar, Bishalgarh on 01.02.2022 in presence of witnesses. [6] Aggrieved by his detention, the petitioner has challenged the detention order by making this application under Article 226 of the Constitution seeking issuance of a writ of habeas corpus, commanding the respondents to release him from detention.

[7] We have heard Mr.Somik Deb, learned Sr. Advocate appearing along with Mr.Krishnendu Debnath and Mr. Abir Baran, advocates for the petitioner. WP(C)(HC)06 / 2021 [8] Mr. S.S.Dey,

learned Advocate General has appeared for the state respondents along with Mr.Ratan Datta, learned PP, Mr.S.Debnath, Addl. PP and Ms. Ayanika Chakraborty, advocate. The Union of India is represented by Mr.Bidyut Majumder, learned ASG.

[9] The petitioner has challenged the detention order mainly on the following grounds:

> (i)The order of detention is vitiated by non application of mind of the detaining authority.
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> (ii)In the detention order, the detaining authority has referred to 02 criminal cases pending against the detenue under NDPS Act. But the detaining authority has not indicated the status of those cases in the detention order.

(iii) Right to make representation against the detention order is an indefeasible right of the detenue. But the detaining authority WP(C)(HC)06 / 2021 did not apprise the detenue by specifying the name of the authorities to whom the detenue could submit such representation.

(iv) In the detention order dated 12.11.2021 [Annexure-5], the detaining authority did not specify the period of detention which resulted in violation of the constitutional right of the detenue.

(v) The copy of the documents which were supplied to the detenue along with the detention order were absolutely illegible. As a result of which he could not submit any representation.

(vi)In the detention order, it was stated that the order was issued pursuant to the proposal of the Director General of Police.

But the copy of such proposal was not supplied to the detenue which caused prejudice to the detenue because he could not file any representation for want of this material document.

(vii) Non consideration of various orders passed by the Special Judge in the criminal WP(C)(HC)06 / 2021 cases pending against the detenue particularly the bail orders vitiated the detention order for non application of mind by the detaining authority.

(viii) Detenue was not made aware as to whether the detention order was communicated to the Central Government in terms of the mandatory provision of law.

(ix) Under Section 3 of the PIT NDPS Act, in case of State Government only an officer not below the rank of Secretary who is specially empowered by the government for the purpose of Section 3 of the Act can pass the detention order. The State respondent could not produce any material to show that the officer who issued the detention order was specially empowered by the State Government in terms of the provision of Section 3 of the PIT NDPS Act.

(x) Till the date of filing of the writ petition petitioner was not made aware as to whether the advisory board approved the detention order.

WP(C)(HC)06 / 2021 [10] Mr. Somik Deb, learned counsel appearing for the petitioner has relied on the following decisions to nourish his contentions against the impugned detention order:

> [i] HARIKISAN Versus STATE OF MAHARASHTRA AND OTHERS reported in AIR 1962 SC 911 [ii] STATE OF U.P Versus KAMAL KISHORE SAINI reported in (1988) 1 SCC 287 [iii] ASHOK KUMAR Versus UNION OF INDIA AND OTEHRS reported in (1988) 1 SCC 541 [iv] M.AHAMEDKUTTY Versus UNION OF INDIA AND ANOTHER reported in (1990) 2 SCC 1 [v] KAMALESHKUMAR ISHWARDAS PATEL Versus UNION OF INDIA AND OTHERS reported in (1995) 4 SCC 51 [vi] UNION OF INDIA Versus RANU BHANDARI reported in (2008) 17 SCC 348 [vii] REKHA Versus STATE OF TAMIL NADU THROUGH SECRETARY TO GOVERNMENT AND ANOTHER reported in (2011) 5 SCC 244 [viii] RUSHIKESH TANAJI BHOITE Versus STATE OF MAHARASHTRA AND OTHERS reported in (2012) 2 SCC 72 [ix] ANKIT ASHOK JALAN Versus UNION OF INDIA AND OTHERS reported in (2020) 16 SCC 127 [x] SHYAMAL DAS @SIMUL Versus STATE OF TRIPURA AND ORS. reported in (2007) 3 GLR 41 WP(C)(HC)06 / 2021 [11] Relying on the decision of the apex court in the case of Harikisan(supra), counsel of the petitioner has argued that the petitioner could not file any representation against the detention order since the order was in English language and the petitioner was not conversant with English. Counsel contends that on this ground alone the apex court quashed the detention order and released the accused who was detained under Section 3 of the Preventive Detention Act in the case of Harikisan(supra). Counsel contends that similarly in the present case, the grounds of detention were not explained to the accused in a language known to him. As a result, accused could not file a representation against the order which infringed the constitutional safeguard provided under clause (5) of Article 22 of the Constitution.

[12] Learned counsel of the petitioner also relied on the decision of the apex court in the case of State WP(C)(HC)06 / 2021 of U.P. Vs. Kamal Kishore Saini(supra) to support his contention that non supply of material documents to the detenue prevented him from filing effective representation against the detention order. Learned counsel contends that petitioner of the present case was never served with a copy of the proposal of the Director General of Police on the basis of which said detention order was issued against him. Counsel therefore, contends that non supply of this essential document to the detenue has rendered the order of detention invalid and illegal.

[13] To establish the contention that failure on the part of the detaining authority to supply material documents prevented the petitioner from making effective representation against the grounds of detention and caused infraction of article 22(5) of the Constitution, learned counsel also relied on the WP(C)(HC)06 / 2021 decision of the apex court in the case of Ashok Kumar (supra).

[14] Learned counsel argued that 02 criminal cases were instituted against the petitioner under NDPS Act. One is Amtali PS Case No.2019/AMT/208 which has culminated into charge sheet for offence punishable under Sections 22(b), 22(c) and 29 NDPS Act. The other case in which accused has been implicated for similar offence is East Agartala P.S. Case No.2021 EAG 052 which is

pending at the investigation stage. Learned counsel contends that in both the cases accused was released on bail. But the detention order would demonstrate that the bail orders were never considered by the detaining authority to apprise himself about the need of preventive detention. Counsel contends that such non consideration of bail orders by the detaining authority amounted to non application of mind. Due to non WP(C)(HC)06 / 2021 consideration of these bail orders, the detaining authority, according to learned counsel of the petitioner, could not reach a subjective satisfaction about the necessity of the detention order. Counsel has argued that had the bail orders been considered by the detaining authority, the same could have persuaded the detaining authority to desist from passing the order of detention. In support of his contention, counsel has relied on the judgment of the Hon'ble apex court in the case of M.AHAMEDKUTTY (supra) paragraph 25 of which reads as under:

> "25 Non-consideration of the bail order would have, therefore, in this case amounted to non-application of mind. In Union of India v. Manoharlal Narang, [1987] 2 SCC 241, the Supreme Court's interim order in pending appeal against High Court's quashing of a previous order of detention against the same detenu was not considered by the detaining authority while making the impugned subsequent order against him. By the interim order Supreme Court had permitted the detenu to be at large on condition of his reporting to the police station daily. It was held that non-consideration of the interim order which constituted a relevant and important material was fatal to the subsequent detention order on ground of non-

application of mind. If the detaining authority considered that order one could not state with WP(C)(HC)06 / 2021 definiteness which way his subjective satisfaction would have reacted and it could have persuaded the detaining authority to desist from passing the order of detention. If in the instant case the bail order on condition of the detenu's reporting to the customs authorities was not considered the detention order itself would have been affected. Therefore, it cannot be held that while passing the detention order the bail order was not relied on by the detaining authority. In S. Gurdip Singh v. Union of India, [1981] 1 SCC 419, following Ichhu Devi Choraria v. Union of India, and Shalini Soni v. Union of India, [1981] 1 SCR 962, it was reiterated that if the documents which formed the basis of the order of detention were not served on the detenu along with the grounds of detention, in the eye of law there would be no service of the grounds of detention and that circumstances would vitiate his detention and make it void ab initio."

[15] Having relied on the decision of the apex court in the case of Kamaleshkumar Ishwardas Patel (supra), learned counsel of the petitioner has contended that in the present case petitioner was never made aware about his right to file a representation before the detaining authority which amounted to denial of the constitutional safeguard provided to the petitioner under article 22(5) of the Constitution. Learned counsel contends that the detenue should have been apprised of his right to WP(C)(HC)06 / 2021 make a representation to the detaining authority and the detaining authority was under a constitutional obligation to independently consider such representation and take a decision thereon. Learned counsel contends that in the case of Kamaleshkumar Ishwardas Patel(supra), the apex court upheld the order of the high court quashing the detention order mainly on the ground that the officer who was specially empowered to make an order of detention did not

consider the representation of the detenue which amounted to denial of the constitutional safeguard provided under article 22(5) of the Constitution. Learned counsel argues that the same violation has taken place in this case which has rendered the detention order of the petitioner completely illegal.

[16] Relying on the decision of the Supreme Court in the case of Union of India vs. Ranu Bhandari WP(C)(HC)06 / 2021 (supra), learned counsel of the petitioner has argued that in the said case the apex court, while examining the order of preventive detention of the petitioner issued under Section 3(1) of the Conservation of Foreign exchange and Prevention of smuggling Activities Act,1974, held that vital documents which have a direct bearing on the detention order having not been placed before the detaining authority and copies of such vital documents having not been supplied to the detenue, detenue was prevented from making an effective representation against his detention. The apex court, therefore, set aside the appeal against the order of the high court whereunder the high court quashed the detention order and released the detenue. Learned counsel of the petitioner contends that in the present case also the detaining authority did not examine the vital documents like the bail orders granted to the accused, WP(C)(HC)06 / 2021 the prosecution papers of the criminal cases pending against him to arrive at a subjective satisfaction before passing the detention order and most importantly those documents as well as the report of the Director General of Police which persuaded the detaining authority to issue the detention order were not supplied to the detenue as a result of which the detenue could not exercise his right to file a representation against his detention order. [17] Learned counsel contends that already two criminal cases under various provisions of NDPS Act have been instituted against the petitioner which are sufficient to deal with the situation. Relying on the decision of the apex court in the case of Rekha Vs. State of Tamil Nadu(supra), learned counsel has argued that where ordinary law of the land can sufficiently deal with the charge against the detenue, recourse to the preventive detention law is illegal. WP(C)(HC)06 / 2021 Counsel refers to paragraph 23 of the apex court's judgment in the case of Rekha(supra) in support of his detention which reads as under:

> "23.In this connection, criminal cases are already going on against the detenue under various provisions of the Penal Code,1860 as well as under the Drugs and Cosmetics Act,1940 and if he is found guilty, he will be convicted and given appropriate sentence. In our opinion, the ordinary law of the land was sufficient to deal with this situation, and hence, recourse to the preventive detention law was illegal."

[18] Learned counsel has also relied on the decision of the apex court in Rushikesh Tanaji Bhoite(supra) to contend that the preventive detention order of the petitioner in the said case of Rushikesh Tanaji Bhoite, was set aside by the apex court on the ground that the bail order of the petitioner was neither placed before the detaining authority at the time of passing of order of detention nor the detaining authority was aware of the order of bail which vitiated the subjective satisfaction of the detaining authority. According to Mr.Deb, learned WP(C)(HC)06 / 2021 senior counsel, the detention order in the present case stands vitiated for the same reason. Learned counsel has relied on paragraph 10 of the judgment which reads as under:

> "10. In the present case, since the order of bail dated 15-8-2010 was neither placed before the detaining authority at the time of passing the order of detention nor the

> detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority."

[19] Having relied on the judgment of the apex court in the case of Ankit Ashok Jalan(supra), learned counsel argued that article 22(5) must be construed to mean that the detenue has a right to make representation not only to the advisory board but also to the detaining authority who made the order of detention and the detaining authority shall retain power to revoke the detention order till the continuance of such detention comes to end. Learned WP(C)(HC)06 / 2021 counsel submits that in the given case the detenue was not even informed that he has a right to make representation to the detaining authority. At no stage he was afforded with an opportunity to make a representation against the detention order. Learned counsel, therefore, argued that the safeguards provided under Article 22(5) of the Constitution have not been followed in this case for which the detention order is liable to be quashed. Counsel has also contended that even if the advisory board makes a report supporting the order of detention, such report is not binding on the state or the detaining authority. Learned counsel has relied on paragraph 40 of the judgment in which the apex court has held as under:

> "40. This Court in Vimalchand Jawantraj Jain after quoting from Khairul Haque's case, held as under:
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> "4. There are thus two distinct safeguards provided to a detenu; one is that his case must be referred to an Advisory Board for its opinion if it is sought to detain him for a longer period than three months and the other is he should be afforded the earliest opportunity of making a representation against WP(C)(HC)06 / 2021 the order of detention and such representation should be considered by the Detaining Authority as early as possible before any order is made confirming the detention. Neither safeguard is dependent on the other and both have to be observed by the Detaining Authority. It is no answer for the Detaining Authority to say that the representation of the detenu was sent by it to the Advisory Board and the Advisory Board has considered the representation and then made a report expressing itself in favour of detention. Even if the Advisory Board has glade a report stating that in its opinion there is sufficient cause for the detention, the State Government is not bound by such opinion and it may still on considering the representation of the detenu or otherwise, decline to confirm the order of detention and release the detenu. The Detaining Authority is, therefore, bound to consider the representation of the detenu on its own and keeping in view all the facts and circumstances relating to the case, come to its own decision whether to confirm the order of detention or to release the detenu."

[20] In the case of Shyamal Das@ Simul(supra) which has been relied on by the counsel of the petitioner, detention order was issued under Section 3(3) of the National Security Act. Gauhati High

Court set aside and quashed the detention order on the ground that there was no iota of material to show that alleged activities of the detenue genuinely gave rise to WP(C)(HC)06 / 2021 the apprehension of threat to the security of the state. The High Court, therefore, held that the detention order was suffering from non application of mind which could not be upheld in the eye of law. Learned counsel relied on the observation of the High Court where the high court held that application of mind is in fact sine qua non for passing of an order of detention. In the said case the High Court had also observed that the detenue was never informed by the detaining authority that he had a right to make representation to the State and/or Central Government and also to the advisory board. Learned counsel contends that on similar ground the impugned detention order of the petitioner is liable to be quashed.

[21] At the end of his submissions, Mr. Somik Deb learned Sr. Advocate has argued that there can be no freedom higher than personal freedom and WP(C)(HC)06 / 2021 court's writ is the ultimate insurance against illegal detention. Learned counsel has contended that the detention order should be decided on the touch stone of the safeguards provided under Article 22(4) and (5) of the Constitution. In the present case, since the detaining authority at no stage followed those constitutional safeguards, the order of detention is liable to be set aside and quashed.

[22] Appearing for the state, learned Advocate General has argued that the detention order was issued against the petitioner owing to his past conduct and criminal antecedents and continued smuggling of narcotic drugs and psychotropic substances within the state and across the border. Learned counsel contends that the detention order was issued setting forth the grounds of detention in detail and same was duly served on the detenue. The detenue also acknowledged the receipt of the detention order. WP(C)(HC)06 / 2021 According to learned Advocate General, the detention order itself would demonstrate that detenue was informed about his right to make representation against the detention order to the appropriate authority provided under the law. Learned counsel has contended that matter was referred to the state advisory board within the time frame provided under the law. State Advisory Board examined the detenue and recorded his statement and after examination of all materials came to the conclusion that the detention order was absolutely justified. Learned counsel argued that all the safeguards provided under Article 22(5) of the Constitution have been flawlessly followed in this case and, therefore, the detention order cannot be said to be illegal from any point of view. [23] Relying on the decision of the apex court in Rameshwar Shaw Vs. District Magistrate, Burdwan and Another reported in AIR 1964 SC 334, learned WP(C)(HC)06 / 2021 Advocate General has contended that even though the detention order in the case of Rameshwar Shaw (supra) under Section 3(1) of the Preventive Detention Act, 1950 was set aside by the apex court, the court made an observation in the case to the effect that the antecedents history and the past conduct on which the order of detention would be passed would, in such a case, be proximate in point of time and would have rational connection with the conclusion drawn by the authority that the detention of the person after his release is necessary. Learned counsel contends that in the present context 02 cases are pending against the petitioner under the NDPS Act and in both the cases he has been released on bail by the trial court and in 01 case he has been charge sheeted. Learned counsel argues that even thereafter, the petitioner was carrying out smuggling in narcotic drugs and psychotropic substances and his past conduct was so WP(C)(HC)06 / 2021 proximate in point of time to the detention order that there is no scope to question the rational

connection between his past conduct and the detention order. [24] In the case of RAJAN WORLIKAR VERSUS STATE OF KARNATAKA AND OTHERS reported in (2001) 5 SCC 295 relied upon by the learned Advocate General the appellant challenged his detention order under PIT NDPS Act mainly on the ground of non communication to the detune his right of making representation to the State Government. The apex court discarded the contention of the petitioner on the ground that the detention order was issued by an officer specially empowered under Section 3(1) of the PIT NDPS Act and from the detention order itself it was clear that the appellant was communicated by the detaining authority his right of making representation to the appropriate authority including the Advisory Board, the Central/State Government. Learned WP(C)(HC)06 / 2021 Advocate General has contended that in the given case it is apparent on the face of the record that the detention order contained recitals in clear and unambiguous term that accused was entitled to submit representation against the detention order to the Central Government / State Government as well as to the detaining authority and he had a right to be heard before the Advisory Board. Learned Advocate General had taken us through the relevant paragraph of the detention order which reads as under:

"It is mentioned that the accused Shri Sushanta Kumar Banik S/O Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Shangha, Near Agartala Railway Station, PS -Amtali, West Tripura may submit his representation to the Central/ State Government against this order of detention. Such representation may be submitted to the undersigned for onward transmission to the Central / State Government. The accused is to be informed that he will get all reasonable opportunity for making representation against this order to the Central / State Government, he may therefore, state to the undersigned what opportunity he needs for this purpose. The accused is to be apprised of his right to make representation before the undersigned against this detention order. The accused is to be informed that he also has a right to be heard before the Advisory Board".

WP(C)(HC)06 / 2021 [25] It is, therefore, contended by learned Advocate General that contention of the counsel of the petitioner about the infraction of the procedural safeguards provided under Article 22(5) of the Constitution does not gain ground.

[26] Relying on the decision of the apex court in the case of SAYED ABUL ALA Versus UNION OF INDIA AND OTHERS reported in (2007) 15 SCC 208, learned Advocate General has contended that the detaining authority made specific reference to the cases pending against the detenue under various provisions of NDPS Act and opined that he was still active in illicit trafficking of NDPS articles and the detention order of the accused was necessary to prevent him from carrying out such activities and such order would also help police in initiating financial investigation against the detenue in terms of the NDPS Act. Learned counsel contends that huge quantity of WP(C)(HC)06 / 2021 narcotic drugs and psychotropic substances were recovered from the physical possession of the detenue which were also mentioned in the detention order. [27] Learned counsel contended that in the case of Sayed Abul Ala(supra), the apex court had succinctly held that the antecedents of the detenue would be relevant factor for issuing preventive detention order under PIT NDPS Act. Learned Advocate General contended that detention order in the given case was issued under compulsion of the primordial need to maintain order in the society. Counsel urged the court to uphold the detention order of the petitioner.

Our Views:

[28] The law of preventive detention has been examined by the apex court in a catena of decisions. Apart from the decision, relied upon by the counsel of the parties, we may profitably refer to the following WP(C)(HC)06 / 2021 decisions of the apex court in order to adjudicate the issue from the right perspective.

[29] In the case of Shalini Soni versus Union of India, reported in (1980) 4 SCC 544, the apex court while dwelling on Article 22(5) of the Constitution observed that the said Article has two facets; i) communication of the grounds on which the order of detention has been made ii) opportunity of making a representation against the order of detention. The observation of the apex court is as under:

"7.....

Communication of the grounds pre-supposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). 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. Where there is further an express statutory obligation to WP(C)(HC)06 / 2021 communicate not merely the decision but the grounds on which the decision is founded, it is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu. From what we have said above, it follows that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The matter may also be looked at from the point of view of the second fact of Art. 22(5). 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, as we said, 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 Art. 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 selfexplanatory. 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'." [Emphasis added] [30] In A.C.RAZIA Versus GOVERNMENT OF

KERALA reported in (2004) 2 SCC 621, the apex court WP(C)(HC)06 / 2021 further dwelt on the constitutional safeguards provided under Article 22(5) of the Constitution and enunciated the law as under:

> "10. We are concerned here with clause (5) of Article
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> 22. The dual rights under clause (5) are : (i) the right to be informed as soon as may be of the grounds on which the order has been made, that is to say, the grounds on which the subjective satisfaction has been formed by the detaining authority and (ii) the right to be afforded the earliest opportunity of making a representation against the order of detention. By judicial craftsmanship certain ancillary and concomitant rights have been read into this Article so as to effectuate the guarantees/safeguards envisaged by the Constitution under Clause (5) of Article 22. For instance, it has been laid down by this Court that the grounds of detention together with the supporting documents should be made available to the detenu in a language known to the detenu. The duty to apprise the detenu of the right to make representation to one or more authorities who have power to reconsider or revoke the detention has been cast on the detaining authority. So also the duty to consider the representation filed by or on behalf of the detenu with reasonable expedition has been emphasized in more than one case and where there was inordinate delay in the disposal of representation, the detention was set aside on that very ground. [Emphasis added] [31] The law was reiterated by the apex court in Adiswar Jain Versus Union of India reported in (2006) 11 SCC 339 in the manner as follows:

WP(C)(HC)06 / 2021 "29. What is, therefore, relevant was as to whether the documents were material. If the documents were material so as to enable the detenue to make an effective representation which is his constitutional as also statutory right, non-supply thereof would vitiate the order of detention.

30. It is a trite law that all documents which are not material are not necessary to be supplied. What is necessary to be supplied is the relevant and the material documents, but, thus, all relevant documents must be supplied so as to enable the detenue to make an effective representation which is his fundamental right under Article 22(5) of the Constitution of India. Right to make an effective representation is also a statutory right."

[See Sunila Jain v. Union of India and Another [(2006) 3 SCC 321]"

[Emphasis added]

[32] Further in the case of Radhakrishnan

Prabhakaran Versus State of T.N, (2000) 9 SCC 170, the apex court, with regard to the need of supply of documents to the detenue in a preventive detention matter, observed as under:

"8. We may make it clear that there is no legal requirement that a copy of every document mentioned in the or- der shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. ....."

[33] The law laid down in the case of Radhakrishnan Prabhakaran(supra) was reiterated by WP(C)(HC)06 / 2021 the apex court in latter decision in J.ABDUL HAKEEM VERSUS STATE OF TAMILNADU reported in (2005) 7 SCC 70 and it was held as under:

"7. In the latter decision of this Court , in the matter of Kamarunnissa Vs. Union of India and Others (1991) 1 S.C.C. 128, this Court reaffirmed the right of the detenu to receive the document which was taken into consideration by the detaining authority while formulating the grounds of detention. The Court further said that a duty and obligation is cast on the detaining authority to supply copies of those documents in the language known to the detenu; having said, the Court put a rider; but it is not that non-supply of each and every document provides a ground for setting aside the detention order. It is for the detenu to establish that the non-supply of copies of the documents has impaired the detenu's right to make an effective and purposeful representation. The demand made by the detenu for the document merely on the ground that there is a reference in the grounds of detention, cannot vitiate the otherwise legal detention order. No hard-and-fast rule can be laid down in this behalf. What is essential is that the detenu must show that the failure to supply the documents had impaired his right, however slight or insignificant it may be.

8.The principle of supply of the material documents to the detenu was considered by this Court in the matter of Radhakrishnan Prabhakaran Vs. State of T. N. (2000) 9 S.C.C.

170. In Para 8, this Court has said:

"8.We make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents WP(C)(HC)06 / 2021 as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him"

[34] From the law enunciated by the apex court in the judgments cited to supra, particularly in the case of Rdhakrishnan Prabhakaran(supra) followed in the latter decision in Abdul Hakeem (supra), it would be clear that there is no legal requirement that every document mentioned in the detention order shall have to be invariably supplied to the detenue. Court is required to examine as to whether copies of the documents which formed the foundation of the detention order were supplied to the detenue so as to enable him to make an effective representation against the order of his detention.

Unless the detenue can show as to how he was prejudiced by non-supply of a particular document, the detenue cannot gain any benefit merely by agitating that a document mentioned in the detention order was not supplied to him. It is not necessary to supply each and every WP(C)(HC)06 / 2021 document which have been referred to in the detention order merely for the purpose of narration of facts.

[35] The contextual facts of the given case depict that the detenue, who used to run his hotel business allegedly stored huge quantity of NDPS in his dwelling house near the railway station at Agartala. On 05.11.2019 police conducted raid in his dwelling house and recovered 7600 yaba tablets in 38 packets and 92 gms of brown sugar from his possession. Pursuant to the recovery and seizure of the said contraband, Amtali P.S case No.2019 AMT 208 dated 05.11.2019 was registered against him and he was arrested. On completion of the investigation the investigating agency laid charge sheet against him under Sections 22(b), 22(c) and 29, NDPS Act. Within few months, he also got involved in East Agartala P.S case No.2021 EAG 052 which was registered under Sections 21(b) WP(C)(HC)06 / 2021 and 29, NDPS Act pursuant to recovery and seizure of 121.69 gms Heroin from his possession. In both the cases detenue was granted bail by the trial court. [36] In order to justify the detention order the state respondents in paragraph 17 of their counter affidavit have asserted as under:

"17.....it can be stated that Sri Sushanta kumar Banik S/o Lt. Shanti Ch. Banik of Siddhi Ashram, Badharghat, Kalimata Sangha Near Agartala Railway Station, PS Amtali, West Tripura District is a kingpin in illegal trafficking of narcotic drugs inside the state as well as outside the state. He did not stop his illegal activities of narcotic drugs and psychotropic substances even after his arrest in 01 (one) previous case. And after being allowed bail in the previous case he was again found involved in East Agartala PS case No.2021EAG052, dated 25/04/2021, U/s 21(B)/29 of NDPS Act which shows his determination to continue his illegal NDPS business. It is further mentioned that, as illicit trafficking in narcotic drugs and psychotropic substances is causing a serious threat to the health and welfare of the people and to protect the society from this menace it was required to take stern action against the petitioner and therefore proposal for issuing of detention order against the petitioner U/s- 3 of PIT NDPS Act, 1988 was initiated to prevent him from engaging in illicit trafficking of narcotic drugs and psychotropic substances in future." [37] Learned Advocate General has also taken us through the official record. It goes to show that the detention order dated 12.11.2021 was duly served on WP(C)(HC)06 / 2021 the detenue on 19.11.2021 along with a separate document signed by the detaining authority which contains the detailed grounds of detention. The detenue acknowledged receipt of those documents by putting his signature thereon.

[38] One of the main grounds on which the detenue attacked his preventive detention order is that in the detention order, the detaining authority referred to the records submitted by the Director General of Police. But copies of those records were not furnished to the detenue. Learned counsel of the petitioner contended that for non supply of those essential documents which formed the foundation of the detention order, detenue could not submit a representation against the detention order and thus, he was seriously prejudiced. Before making further observation on such contention, it would be WP(C)(HC)06 / 2021 appropriate to reproduce the relevant extract of the detention order which reads as under:

"Whereas, on perusal of records as submitted by the Director General of Police, Tripura, it appears that Shri Sushanta Kumar Banik S/O Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, Near Agartala Railway Station, PS. - Amtali, West Tripura under PITNDPS Act, 1988 was involved in the following casesd:

(i) Amtali PS Case No.2019/AMT/208 dated 05.11.2019 U/S 22(b)/22(c)/29 of NDPS Act,1985.

(ii)East Agartala PS Case No.2021 EAG 052 dated 25.04.2001 U/S 21(B)/29 of NDPS Act."

[39] As stated, we have been taken through the official records. The communication dated 14.07.2021, whereby a proposal on behalf of the Director General of Police, Tripura was sent to the Secretary, Home Department, Government of Tripura, was actually signed by the Assistant Inspector General of Police (crime) on behalf of the Director General of Police. The said communication contains the proposal of the Director General of Police for issuing preventive detention order against the detenue under PIT NDPS Act. It emerges from the record that the detenue put his signature on the said document in acknowledgment WP(C)(HC)06 / 2021 of the receipt of the letter. Communication dated 28.06.2021 of SDPO, Amtali which was forwarded by the SP, West to the Director General of Police has also been referred to in the said communication dated 14.07.2021. Apparently the said communication dated 28.06.2021 was also received by the detenue. In acknowledgement of the receipt of the documents he also put his signature on the said document. The record also goes to show that all papers in connection with the pending criminal cases were also served on the detenue. Therefore, the contention of the learned counsel of the petitioner that the proposal received from the DGP was not served on the detenue does not gain ground.

[40] Learned counsel of the petitioner also assailed the impugned preventive detention order on the ground that neither the detention order nor any copy of the documents furnished to the detenue were WP(C)(HC)06 / 2021 intelligible to him because those were in English and the detenue was not conversant with the English language. Therefore, he could not understand the meaning of those documents for writing an effective representation against the detention order. As a result of which he was prejudiced. We have examined such contention. We have also gone through the decision of the apex court in Harikisan(supra) relied on by the counsel of the petitioner. One executive Magistrate of Bishalgarh, Sepahijala district has certified that while serving the detention order, the petitioner was informed in his mother tongue that he was entitled to make representation against the detention order to the Central/State Government as well as to the detaining authority and the Advisory Board. In the case of Harikisan(supra), the context was entirely different. Soon after the detention order was served, appellant Harikisan demanded a Hindi version of the WP(C)(HC)06 / 2021 document from the District Magistrate and Collector of Nagpur so that he might be able to write a reply to the charges from inside jail. The DM declined to accede to his request on the ground that detention order was in English which was an official language of the state and moreover, the DSP of Nagpur city orally explained the order to him. In the present context, at no point of time, not even before the Advisory Board, the detenue raised his difficulties in understanding the grounds of his detention. Rather, he stated before the Advisory Board that soon after the detention order and

the documents accompanying the order were served on him, he handed over those documents to his family members to contact his lawyer for legal representation.

[41] As stated, the detention order was made on 12.11.2021 and reference was made to the State Advisory Board by the detaining authority by its WP(C)(HC)06 / 2021 communication dated 24.11.2021 in terms of clause

(b) of Section 9 of the PIT NDPS Act. In terms of sub- section (2) of Section 3 of the PIT NDPS Act, report was also sent to the Central Government by the detaining authority within the statutory period of 10 days by communication dated 15.11.2021. In the affidavit dated 25.03.2022 sworn by the Under Secretary, Ministry of Finance (Department of Revenue), Government of India, it has been asserted that the detention order was also received by the Central Government.

[42] The State Advisory Board on the reference made to it under Section 9 of the PIT NDPS Act passed an order on 08.12.2021 indicating that the detention order along with the grounds of detention were duly served on the detenue. But the detenue did not submit any representation. The advisory board observed that since the detenue had a right to be heard in person, if WP(C)(HC)06 / 2021 he so desires, the appropriate government should produce the detenue before the board on 16.12.2021 at 11.00 AM. Pursuant to the order of the advisory board detenue was produced before the advisory board on 16.12.2021.

[43] The State Advisory Board in paragraph 11 of its report dated 20.01.2022 has reproduced the statement of the detenue recorded before the advisory board. The detenue stated before the advisory board that after the detention order was served on him he was put to Kendriya Samsodhanagar at Bishalgarh where he was made aware about the grounds of his detention. Copy of the detention order and other documents were also given to him and he was made aware that he could file representation against the detention order. A list of lawyers was also provided to the detenue. Detenue handed over the detention order and the documents supplied to him to his family WP(C)(HC)06 / 2021 members to contact his lawyer. The Advisory Board opined that the detention order was founded on adequate materials and the said order was justified. [44] Having received the report from the State Advisory Board, the detaining authority confirmed the detention order for a period of 01 year from the date of the detention of the petitioner.

[45] From the facts stated above it would emerge that petitioner was charge sheeted in Amtali P.S case No.2019 AMT 208 on the charge of having stored NDPS in his dwelling house. Within a short span of time he was arrested in East Agartala P.S case No.2021 EAG 052 almost on similar charge. From such antecedents of the petitioner and in view of the report received from the concerned superintendent of police forwarded through Director General of Police, the detaining authority arrived at its satisfaction that preventive detention of the petitioner was necessary WP(C)(HC)06 / 2021 to prevent him from committing similar offences. Impugned detention order contains the grounds of detention in detail. Therefore, submission of the counsel of the petitioner that the detention order suffers from non application of mind is devoid of merit. [46] It has also surfaced from the record that the petitioner was given all opportunities to make real and effective representation against the detention order. Detention order and the grounds of detention were

explained to him in his mother tongue which has been certified by an Executive Magistrate and during his detention jail authority also supplied a list of lawyers to him. In his statement made before the State Advisory Board, the detenue stated that he was given opportunity to contact his wife and other family members. He also handed over the detention order and other documents to his family members for the purpose of legal representation. As stated, we have WP(C)(HC)06 / 2021 been taken through the records of the Advisory Board. The Advisory Board has also recorded the statement of the petitioner which has been reproduced in full in the report of the Advisory Board. The report does not mention any request having been made to the board by the petitioner for filing a representation against the detention order. In absence of any such request, it is quite difficult to attach any importance to the grievance of the petitioner that he was not provided with adequate opportunity for filing representation against the detention order.

[47] Having heard learned counsel representing the parties and gone through the materials placed before us, we are convinced that the order reflects the anxiety of the detaining authority to prevent the petitioner from getting any further opportunity in smuggling narcotic drugs and psychotropic substances and such anxiety was generated from the past conduct WP(C)(HC)06 / 2021 and antecedents of the petitioner. As discussed in the preceding paragraphs, the constitutional safeguards provided under Article 22(5) of the Constitution has been observed by the detaining authority by indicating to the detenue the grounds of his detention and providing him full opportunities of making an effective representation against the order of detention. [48] In the result, the petition stands dismissed.

Pending application(s), if any, shall also stand disposed of.

Department's file shall be returned through the PP forthwith.

(S.G.CHATTOPADHYAY), J (INDRAJIT MAHANTY),CJ Saikat Sarma, PS-II WP(C)(HC)06 / 2021