The High Court of Madhya Pradesh Bench at Indore

Case Number	**WP No.10085/2021**
Parties Name	***Sarabjeet Singh Mokha*** ***Vs.*** ***The District Magistrate, Jabalpur & Ors.***
Date of Order	**24/08/2021**
Bench	**Division Bench:** Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	**YES**
Name of counsel for parties	Shri Sidharth Luthra, learned Sr.Counsel with Shri Pankaj Dubey, learned counsel for petitioner. Shri Vivek Dalal, learned Additional Advocate General assisted by Ms. Palak Joshi, learned counsel for the respondents/State. Shri Milind Phadke, learned counsel for respondent/Union of India.
Law laid down	**1. Detention order – based on stale incident** – the detention order dated 11.05.2021 refers an old case of 2004 from which petitioner has been admittedly acquitted. There is no live nexus between the incident of 2004 and action for which detention order is passed. To this extent, the detention order is bad in law. **2. Preventive detention laws – background** – law of preventive detention is recognized and authorized by Constitution because Constitution makers visualized that there may arise occasion in the life of the nation when the need to prevent citizen may arise from acting in ways which unlawfully subvert or disrupt the public order.

3. Blackmarketing of injection – whether National Security Act, 1980 is attracted – Section 3(2) – 'explanation' – a citizen can be detained under the NSA - (i) for preventing him from acting in any manner prejudicial to the security of the State ; (ii) for preventing him from acting in any manner prejudicial to the maintenance of public order ; (iii) for preventing him from acting in any manner prejudicial to the maintenance of supplies and services to the community. The 'explanation' to Section 3(2) deals with contingency (iii) only. Blackmarketing or using fake Remdesivir injection during pandemic era certainly threatens 'public order', and therefore, NSA can be invoked.

4. Ordinary Panel Law applicable – whether NSA can be invoked – the ordinary panel law and detention law operate for different purpose. The preventive detention is an anticipatory / preventive action and not punitive in nature. The preventive law can be invoked to prevent somebody from acting in a manner prejudicial to the security of State, public order or to maintain supplies and services essential to the communities.

5. Single Act – no past record – whether NSA can be invoked – the nature of Act and background circumstances in which such Act has taken place is material and merely because there is no past record, the detention order can not be interfered with.

6. Scope of judicial review of detention order – the law laid down by Supreme Court is summarized by the Court as under:-

[1] It is not necessary that authority passing the detention order must always be in possession of complete information at the time of passing the order.

[2] The information on the strength of which detention order is passed may fall far

	short of legal proof of any specific offence. If order indicates strong probability of impending commission of a prejudicial act, it is sufficient for passing a detention order. [3] The Court is not obliged to enquire into the correctness/truth of facts which are mentioned as grounds of detention. [4] Whether grounds of detention mentioned in the order are good or bad is within the domain of competent authority. [5] The satisfaction of competent authority in passing the detention order can be assailed on limited grounds including the ground of mala-fide and no evidence at all. [6] The jurisdiction under the NSA Act is different from that of judicial trial in courts for offence and of judicial orders for prevention of offence. Even unsuccessful judicial trial would not operate as a bar to a detention order or make it mala-fide. [7] An improperly recorded confession u/S.161 of Cr.P.C cannot be used as substantive evidence against the accused in criminal case but it cannot be completely brushed aside on that ground for the purpose of preventive detention. [8] The Court cannot examine the materials before it and give finding that detaining authority should not have been satisfied on the material before it. The sufficiency of ground of detention can not be subject matter of judicial review. [9] The justification for detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. Thus, it is called as **'suspicious jurisdiction'**. [10] In a habeas corpus petition, Court needs to examine whether detention is prima-facie legal or not and is not required to examine whether subjective satisfaction on a question of fact is rightly reached or not. [11] The statements/evidence gathered during investigation falls within the ambit of "some evidence" which can form basis for

	detaining a person. [12] The detention order is an administrative order. **7. NSA – Evidence Act – Degree of Proof** – whether statement under Section 161 of the Cr.P.C. can form basis of passing detention order. The detention order can be passed on the basis of material which may not be strictly admissible as evidence under the Evidence Act in a Court. The said material can form basis for forming subjective satisfaction of the Government. Even a confessional statement under Section 161 of the Cr.P.C. which may not be admissible in a criminal case can be a reason for passing an order of detention. Some evidence gathered during investigation, which includes statements recorded under Section 161 of the Cr.P.C. can become basis for passing the detention order. **8. Precedent** – previous judgments of Supreme Court delivered by Benches of six, five, three and two Judge Bench were not brought to the notice of the subsequent Bench which decided the case of *Pebam Ningol Mikoi Devi v/s The State of Manipur & Others*. In view of judgment of five judges Bench of this Court in *Jabalpur Bus Operator Association* it is held that if two different views are taken by different Benches of Supreme Court, view taken by a Bench of larger strength will prevail. If Bench strength is same and previous judgment is not taken into account by subsequent Bench, the previous judgment will prevail. **9. Detention order solely based on S.P's recommendation** – even if the language employed in both the orders is same, it cannot be a reason to interfere into detention order because necessary ingredients for invoking detention law were taken into account in the detention order.

	10. Section 5A of the NSA – The doctrine of severability is statutorily recognized by inserting this section in the Act. The grounds of detention are severable. Detention order cannot become invalid or inoperative because of availability of any of the grounds mentioned in Clause (a) of Section 5A. **11. The doctrine of severeability** – if some portion of detention order is bad in law and minus that portion, the detention order is not vulnerable, by applying doctrine of severeability, the order can be upheld.
Significant paragraph numbers	**15 to 47**

O R D E R
(Passed on 24th August, 2021)

Sujoy Paul, J:-

This petition filed under Article 226 of the Constitution assails the detention order dated 11/5/2021 (Annexure P/1) passed under National Security Act, 1980 (NSA), its extension by order dated 5/7/2021 (Annexure P/1A) and also the order dated 5/7/2021 passed by Central Government whereby the representation of petitioner was rejected. This matter was analogously heard with WP No.10177/2021 (Devesh Chourasia vs. State of MP). The petitioner was running a hospital whereas Devesh Chourasia was working in the pharmaceutical wing of the said hospital.

2. The stand of petitioner as canvassed by learned Senior Counsel is that he is running a hospital. As per the detention order, police received certain informations regarding blacklisting and misuse of Remdesivir injections on 8/5/2021. Consequently, an FIR was registered against the petitioner on 10/5/2021. The petitioner was detained pursuant to order dated 11/5/2021 on 12/5/2021. On 13/5/2021 (Annexure R/2), the State government approved the order

of detention and send necessary information to the Central Government. The petitioner preferred detailed representation under the NSA on 18/5/2021. The Advisory Board affirmed the order of detention on 29/6/2021. The present writ petition was filed on 3/7/2021. After getting the rejection order of Central Government dated 5/7/2021, the petition was duly amended by assailing the order of extension and the rejection order.

3. Shri Sidharth Luthra, learned Sr.Counsel assisted by Shri Pankaj Dubey contended that the detention order is passed without there being any cogent material. A stale incident of 2004 became reason for passing the order of detention. The petitioner stood acquitted on merits in the said case of 2004 mentioned in the detention order. For the reasons best known to the learned District Magistrate, he gave a strange and unacceptable finding that it is because of petitioner's financial influence that he got a judgment in his favour in the said case of 2004. By placing reliance on ***(2018) 9 SCC 562 [Hetchin Haokip Vs. State of Manipur & Ors.)***, ***(2018) 12 SCC 150 [Sama Aruna Vs. State of Telangana & another]*** and ***(2020) 13 SCC 632 [Khaja Bilai Ahmed Vs. State of Telangana & Ors.***], learned Sr. Counsel contended that the past record must have a live and proximate link with the reason of detention. Otherwise, such stale material/case cannot be a basis for passing the detention order. The reference is made to the judgment of ***Hetchin Haokip*** (supra) for yet another reason. It is submitted that there exists an unexplained delay in reporting the detention order to the State Government. The language of Sec.3(4) and 8 of NSA shows that the law makers have used the word "forthwith" with an intention that order of detention must be communicated to the State government with quite promptitude. For the same purpose, a division bench judgment of this Court in ***WP No.1118/2021 (Anshul Jain Vs. State)*** is relied upon. In the instant case, there is an unexplained delay in communicating the

detention order to the government which vitiates the order of detention.

4. The statement of certain witnesses recorded u/S.161 of Cr.P.C are relied upon to bolster the submission that as per those statements no case is made out against the petitioner for black marketing or selling fake/duplicate Remdesivir injections. Heavy reliance is placed on the statements of Shri Vijay Sehajvani, Devesh Chourasia, Kshitij Rai and Yash Meindiratta. ***(2010) 9 SCC 618 (Pebam Ningol Mikoi Devi Vs.State of Manipur & Ors.)*** is relied upon to show that the statement recorded u/S.161 of Cr.P.C are not sufficient for invoking power u/S.3 of the NSA. In the instant case, the whole action is founded upon the statements recorded u/S.161 Cr.P.C which makes the detention order as illegal.

5. The petitioner had no knowledge that injections were fake and there exists no material to show that any such fake injections were ever administered to the patients admitted in the hospital of the petitioner.

6. The petitioner's conduct by no stretch of imagination can create public outrage or agitation because at Jabalpur the administration had already imposed restrictions by invoking Sec.144 of Cr.P.C. The offences are not serious and, therefore, there was no need to detain the petitioner under the NSA. Furthermore, it is argued that in view of ***(2019) 20 SCC 740 (PP. Rukhiya Vs. Joint Secretary, Government and another)***, person who is already in jail should not be detained under the NSA unless it is shown that (i) Authority is aware about his arrest, (ii) there is likelihood of his getting bail by the court and (iii) indulging in same activity.

7. The next contention of Shri Luthra is based on explanation to Sec.3 of the NSA which excludes certain activities from the purview of Sec.3 and attracts Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Blackmarketing

Act). To elaborate, it is contended that if the allegation against the petitioner is that he was black marketing the Remdisivir injections, the act which can be invoked is the Black Marketing Act and not the NSA. There is a marked difference between 'public order' and 'law and order'. If ordinary penal law can take care of the alleged offences committed by the petitioner, there was no justification in using drastic power under the NSA against the petitioner. For this purpose, heavy reliance is placed on ***(2011) 5 SCC 244 (Rekha Vs. State of Tamil Nadu & another)*** followed in ***(2012) 2 SCC 386 (Munagala Yadamma Vs. State of Andhra Pradesh & Ors.)***

8. The validity of an order of a statutory authority needs to be judged on the grounds mentioned in the detention order and it cannot be supplemented by filing counter affidavit before this Court is the next submission of Shri Luthra, Sr.Counsel based on the Constitution bench judgment of Supreme Court in the case of ***(1978) 1 SCC 405 [Mohinder Singh Gill & another Vs. Chief E8lection Commissioner, New Delhi & Ors.]***.

9. In rejoinder submissions, Shri Siddharth Luthra, learned Senior Counsel contended that representation of petitioner was dispatched on 19/05/2021. The State Govt. received it on 24/05/2021. The decision on the representation was belatedly taken by State Govt. on 05/08/2021. In the rejection order, it is mentioned that detenu failed to show any new justifiable reason and hence, interference is declined. This cryptic reason is sufficient to jettison the rejection order. The rejection order was supplied to the petitioner along with return filed in the instant case.

By placing reliance on ***(1982) 3 SCC 10 (Raj Kishore Prasad vs. State of Bihar & Ors.), (1981) 2 SCC 710 (Harish Pahwa vs. State of U.P. & Ors.), (2013) 4 SCC 435 (Abdul Nasar Adam Ismail vs. State of Maharashtra & Ors.), (2010) 9 SCC 618 (Pebam Ningol Mikoi Devi vs. State of Manipur & Ors.)***, it is urged that in these

matters the time consumed in taking the decision on the representation was between 7 days to 28 days. In absence of explaining each day's delay, the orders impugned became vulnerable.

(2020) 13 SCC 632 (Khaja Bilal Ahmed vs. State of Telengana & Ors.) was relied upon to show that there is no finding in the detention order that in all probabilities, the petitioner upon his release may indulge in similar activity. For the same purpose ***(1981) 4 SCC 428 (Aidal Singh vs. State of M.P. & Anr.)*** and ***(1987) Cr.L.J. 893 (Allahabad High Court) (Santosh Kumar Mehotra vs. Superintendent, Central Jail, Allahabad & Ors.)*** were relied upon.

Stand of Govt.:

10. Shri Vivek Dalal, learned AAG assisted by Ms. Palak Joshi, learned counsel urged that in view of judgment of Supreme Court reported in ***AIR 1951 SC 157 (State of Bombay vs. Atma Ram Sridhar Vaidya), AIR 1964 SC 334 (Rameshwar Shaw vs. District Magistrate, Burdwan & Anr.)*** and constitution bench judgment in ***K.M. Abdulla Kunhi vs. Union of India (1991) 1 SCC 476***, the order of detention can be passed on the basis of information and materials which may not be strictly admissible under Evidence Act. It depends on the needs and exigencies of administration to take into account some evidence to proceed against the detenu. The judgment of ***Atma Ram (supra)*** was followed in ***Rameshwar Shaw (supra)*** and it was ruled that scope of interference by High Court on a detention order is limited. The detention order can be assailed if it is based on malafides and if there is nothing to rationally support the conclusion drawn by the District Magistrate. For the same purpose, the judgment of ***K.M. Abdulla Kunhi (supra)*** was pressed into service. It is for the government to consider the representation to ascertain whether the order is in-conformity with the power under the law. The Advisory Board considers the representation and the case of detenu to examine whether there is sufficient case for detention. Based on these

judgments, it is contended that detention order is not assailed by alleging malafide. It cannot be said that detention order is without there being any rational basis at all.

11. Countering the argument that representation was required to be decided immediately, the learned AAG relied on the expression used in Clause-5 of Article 22 of the Constitution i.e. "as soon as may be". Reference is made to the judgment of ***K.M. Abdulla Kunhi (supra)*** to contend that representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there is no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. No statutory period is prescribed either under the constitution or under the relevant detention law within which representation was required to be decided. Thus, it depends on the factual basis of each case whether representation is decided within reasonable time. As per para-16 of aforesaid judgment of Supreme Court, till the decision of Advisory Board, there was no occasion and question for the State Govt. to take a decision on the representation. There is no unreasonable delay in taking decision by the State Govt. after the decision of the Advisory Board.

12. Lastly, it is submitted that in view of judgment of this Court in ***Manikant Asati vs. State of MP (W.P. No.9846/2021)*** and ***Nitin Vishwakarma vs. State of MP (WP No.11571/2021)***, the interference on the ground of delay is not warranted. There is no flaw in decision making process. The singular incident can become a reason to invoke detention law. One singular incident of grave nature is sufficient to detain a person. In pandemic like situation, even if some delay is caused in deciding the representation, it is not fatal because the authorities were working day and night to combat the corona pandemic situation.

13. Parties confined their arguments to the extent indicated above.

14. We have heard the parties at length and perused the record.

Preventive Detention : Background :

15. Our constitutional scheme duly recognised the need and power of preventive detention. The constituent assembly composed of politicians, statesman, lawyers and social workers, who had attained a high status in their respective specialties and many of them had experienced the travails of incarceration owing solely to their political beliefs, resolved to put Article 22, Clause (3) to (7) in the Constitution, may be as a necessary evil. [See: ***(1976) 2 SCC 521 (Additional District Magistrate, Jabalpur vs. SS Shukla).*** Pertinently, this finding of Supreme Court has not been overruled in the subsequent judgment.

16. In ***Ram Bali Rajbhar vs. State of W.B. (1975) 4 SCC Page 47,*** the Apex Court opined as under:-

> "The law of preventive detention, (…..) is authorised by our Constitution presumably because it was foreseen by the Constitution-makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subvert or disrupt the bases of an established order may outweigh the claims of personal liberty."
>
> (***Emphasis supplied)***

17. The interesting and challenging quagmire before the Courts relating to liberty of citizen and aspects of misuse of liberty was wonderfully explained by ***Chief Justice Earl Warren*** as under:

> "Our judges are not monks or scientists, but participants in the living stream of our national life, steering the law between the dangers of rigidity on the one hand and of formlessness on the other. Our system faces no theoretical dilemma but a single continuous problem; how to apply to ever changing conditions on the never changing principles of freedom."
>
> ***(Emphasis Supplied)***

18. The same principle is also wonderfully explained by *Justice KK Mathew* in ***1975 (Supp.) SCC 1, Para-318 (Smt. Indira Nehru Gandhi vs. Raj Narain)*** as under:

> "318. The major problem of human society is to combine

> that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence; and the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these means in the ever shifting tangle of human affairs."
>
> (***Emphasis Supplied)***

19. Justice ***M.N. Venkatchaliah*** in ***(1989)1 SCC 374 (Ayya @ Ayub vs. State of UP)*** held as under:-

> "14.....the actual manner of administration of the law of preventive detention is of utmost importance. **The law has to be justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other....** The paradigms and value judgments of the maintenance of a right balance are not static **but vary according as the 'pressures of the day' and according as the intensity of the imperatives that justify both the need for and the extent of the curtailment of individual liberty.** Adjustments and readjustments are constantly to be made and reviewed. No law is an end in itself. The 'inn that shelters for the night is not journey's end and the law, like the traveller, must be ready for the morrow."
>
> (***Emphasis supplied)***

20. Justice ***Savyasachi Mukherjee*** in ***(1986) 4 SCC 407 (Raj Kumar Singh vs. State of Bihar)*** held as under:-

> "22. Preventive detention as reiterated as hard law and must be applied with circumspection rationally, reasonably and on relevant materials. **Hard and ugly facts make application of harsh laws imperative.**"
>
> (***Emphasis supplied)***

In the light of these guiding principles, it is to be seen whether the impugned detention order, its extension and rejection of representation deserves interference by this Court.

Detention based on past record:

21. The detention order is pregnant with a criminal incident of 2004 from which petitioner has been admittedly acquitted. There is no live

nexus between the incident of 2004 and the alleged incident of blackmarketing/using fake remedesivir injections. Thus, in view of principles laid down by Apex Court in ***Sama Aruna (supra)*** and ***Hetchin Haokip (supra),*** the said incident of 2004 could not have been a reason to detain the petitioner.

Delay in sending Detention Order to State:

22. The impugned detention order was passed on 11/05/2021. It was sent to the State Govt. by the District Magistrate and in turn, on 13/05/2021 the State Govt. approved it. There is no undue and unexplained delay in sending the detention order to the State Govt. Thus, the judgment of Supreme Court in the case of ***Hetchin Haokip (supra)*** and of this Court in ***Anshul Jain (supra)*** are of no assistance to the petitioner.

Blackmarketing of injections: NSA NOT ATTRACTED.

23. The another point raised by Shri Luthra, learned Senior Counsel that alleged action of blackmarketing of remedesivir injections does not fall within the ambit of Section 3 of NSA Act. Indeed, Blackmarketing Act takes care of such conduct was recently decided by this Court in ***WP No.9878/2021 (Sonu Bairwa vs. State of MP & Ors.).*** This Court opined as under:-

> **"20.** ***Section 3(2) of NSA Act*** and 'explanation' reads as under:-
>
> "The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.
>
> **Explanation**.—For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities

essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act."

(***Emphasis supplied***)

21. The use of "explanation" in a statute is an internal aid to construction. *Fazal Ali J* in ***(1985)1 SCC 591 (S. Sundaram Pillai & Ors. vs. V.R. Pattabiraman & Ors.)*** culled out from various judgments of Supreme Court the following as objects of an explanation to a statutory provision:-

(a) to explain the meaning and intendment of the Act itself;

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful;

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment; and

(e) it cannot, however, take away a statutory right with which any person, under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

This principle is consistently followed by Supreme Court in ***(2004) 2 SCC 249 (M.P. Cement Manufacturers Association vs. State of MP & Ors.)*** and ***(2004) 11 SCC 64 (Swedish Match AB vs. Securities & Exchange Board of India).***

22. These examples are illustrative in nature and not exhaustive. An "explanation" may be added to include something within or to exclude something from the ambit of the main enactment or the connotation of some word occurring in it **(See: *Controller of Estate Duty, Gujarat Vs. Shri Kantilal Trikamlal AIR 1976 SC 1935*)**.

Similarly a negative explanation which excludes certain types of category from the ambit of enactment may have the effect of showing that the category leaving aside the excepted types is included within it **(See *First Income Tax Officer, Salem Vs. Short Brothers (P) Ltd. AIR 1967 SC 81*)**. Thus, the explanation in the instant case, has a limited impact on main provision i.e. sub-section (2) of Section 3 of NSA Act. It does not dilute or take away the right of detaining authority under the NSA Act regarding eventualities relating to maintenance of 'public order' or security of the State.

23. A microscopic reading of Section 3(2) with 'Explanation' leaves no room for any doubt that Sub-Section (2) is wide enough and deals with three contingencies when a citizen can be detained:

i) for preventing him from acting in any manner prejudicial to the **security of State**.

ii) for preventing him from acting in any manner prejudicial to the maintenance of **public order**.

iii) for preventing him from acting in any manner prejudicial to the **maintenance of supplies and services essential to the community**.

24. The 'explanation' is limited to the contingency (iii) aforesaid only. The argument of Shri Maheshwari that since remedesivir is an essential drug/commodity, therefore, obstruction to its supply or blackmarketing can be a reason to invoke the blackmarketing act, but NSA Act cannot be invoked, is liable to be discarded for the simple reason that Sub-Section (2) of Section 3 is wide enough which contains and deals with three contingencies, whereas 'explanation' takes only one beyond the purview of the NSA Act if it is covered by Blackmarketing Act.

25. We find force in the argument of learned Additional Advocate General that blackmarketing of remedesivir creates a threat to “public order”. We have taken this view recently in the case of ***Yatindra Verma (supra)*** also. If 'public order' is breached or threatened, in order to maintain 'public order', NSA Act can very well be invoked. Thus, “explanation” appended to Sub-Section 2 of Section 3 of NSA Act will not exclude the operation of NSA Act in a case of this nature where 'public order' is breached, threatened and put to jeopardy.

26. Interpretation of a statute must depend on the text and the context. Neither can be ignored. Both are important. That interpretation is best which makes the

textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. (See: ***1987(1) SCC 424- RBI vs. Peerless General Finance and Investment Co. Ltd.***)

27. The Apex Court in ***(2013) 3 SCC 489 (Ajay Maken vs. Adesh Kumar Gupta & Anr.)*** held as under:-

"Adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In the words of V.R. Krishna Iyer, J., such an approach would be *"to see the skin and miss the soul"*. Whereas, *"The judicial key to construction is the composite perception of the deha and the dehi of the provision."* (***Board of Mining Examination v. Ramjee (1977) 2 SCC 256***, Para-9)"

28. Sub-Section 2 of Section 3 is very wide and as noticed above, deals with three eventualities (***See: Para-23***).

"Explanation" to Sub-Section 2 deals with a small part of it. The intention of law makers in inserting the 'explanation' is to take out cases of blackmarketing from NSA Act to some extent, to the extent it is covered by the Black Marketing Act. 'Explanation', by no stretch of imagination can eclipse the entire main provision namely, Sub-Section 2 of Section 3. The plain and unambiguous language of Sub-Section 2 of Section 3 makes it clear that the Competent Authority/Govt. can pass order of detention if one of the eventuality out of said three is satisfied. In the instant case, the District Magistrate has taken a plausible view that 'public order' is being threatened by petitioner. Thus, we are unable to hold that order of detention is beyond the purview of Sub-Section 2 of Section 3 of NSA Act."

(Emphasis Supplied)

In view of this finding in ***Sonu Bairwa (supra)***, this argument cannot cut any ice. Apart from this, allegation against petitioner is relating to blackmarketing and using fake injections in the hospital which certainly falls within the ambit and scope of 'public order'.

Ordinary penal law is sufficient : NSA can't be invoked and no past record

24. The judgment of ***Rekha (supra)*** was pressed into service to

contend that when ordinary penal law is sufficient to punish the petitioner, there was no justification in detaining the petitioner. The argument in the first blush appears to be attractive, but lost its complete shine on closure scrutiny. This argument was advanced coupled with another argument that single incident was not sufficient to invoke Section 3 of NSA Act. It is profitable to examine the legal journey on this aspect. In ***(1974) 4 SCC 135 (Debu Mahto vs. State of West Bengal)***, the Supreme Court opined thus:-

> "2. …...We must, of course, make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may, in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances."
>
> ***(Emphasis Supplied)***

25. The *ratio decidendi* of this case was consistently followed by Supreme Court in catena of judgments including ***(1975) 3 SCC 292 (Israil Sk. vs. Distt. Magistrate of West Dinajpur), (1986) 1 SCC 404 (Shiv Ratan Makim vs. Union of India, (1991) 1 SCC 144 (M. Mohd. Sulthan vs. Jt. Secy. to Govt. of India, (1992) 4 SCC 154 (David Patrick Ward vs. Union of India), (2009) 5 SCC 296 (Pooja Batra vs. Union of India)*** and ***(2010) 1 SCC 609 (Gimik Piotr vs. State of T.N.)***. A Full Bench of this Court recently considered this aspect by taking note of Supreme Court judgments in ***WP No.22290/2019 (Kamal Khare vs. State of MP) 2021(2) MPLJ 554*** and opined as under:-

> "44. What can therefore be culled out from all the afore-discussed judgments is that whether an act would

> constitute simple breach of law and order, or breach of public order, would solely depend on the degree and extent of its reach and effect upon the society. Public order is even tempo of the life of the community of an area or even a locality, as a whole. Degree of disturbance upon the life of the community would determine whether it affects public order. An act by itself may not be a determinative factor of its gravity, but it is potentiality of its effect on the even tempo of the life of community that makes it prejudicial to the maintenance of public order. If the effect of act is restricted to certain individuals or a group of individuals, it merely creates a law and order problem but if the effect, reach and potentiality of the act is so deep and pervasive that it affects the community at large and disturbs the even tempo of the community that it becomes a breach of the public order. It therefore cannot be said that a single act would in all and every circumstances not be sufficient to affect public order or even tempo of the society. What is material is the effect of the act and not the number of acts and therefore what has to be seen is the effect of the act on even tempo of life of the people and the extent of its reach upon society and its impact."
>
> ***(Emphasis Supplied)***

26. In view of these authoritative pronouncements, it cannot be said that a singular act cannot be a reason to attract Section 3 of NSA. Order of detention on a solitary act can be passed keeping in view the conduct of person concern in view of the facts and circumstances prevailing at the relevant time.

27. In ***Yatindar Verma (supra)***, this Court opined that the act of blackmarketing remedesivir injections in the era of extreme crisis of pandemic is sufficient to invoke the preventive law.

28. The judgment of ***Rekha (supra)*** was again considered by Supreme Court in ***(2012) 2 SCC 176 (Yumman Ongbi Lembi Leima vs. State of Manipur & Ors.)***. The Apex Court by taking note of factual position and activities of detenu violating the provisions of IPC, the A.P. Act and Rules opined that he was damaging the wealth of the nation. In the instant case, the reason mentioned in the detention

order has a relation with the health of the nation. The full bench of this Court in ***Kamal Khare (supra)*** considered the judgment of ***Rekha (supra)*** and dealt with the question of invoking detention law when ordinary penal law is also applicable. It was held:

> "18. Before embarking on the examination of the arguments advanced by learned counsel for both the sides on the referred questions, we must clarify that the invocation of the principle *generalia specialibus nonderogant* by one of the learned Judges (Mr. Justice Atul Sreedharan) in paragraph No.8 of the dissenting order that the general law shall not prevail over the provisions of the special law, on the basis of what was held in paragraph No.19 of the judgment of **Sudeep Jain Vs. State of Madhya Pradesh and others** (W. P. No.21768/2019) decided on 8.11.2019, does not stand on sound legal foundation and has no relevance to the question that we are dealing with. That principle, in our considered opinion, would not be attracted to the facts of the present case. The order of preventive detention under NSA does not overlap with the panel provisions under the FSSA as it is not in lieu of that but is rather in addition to that. The preventive detention law can operate side by side the law which makes the offences punishable under the substantive offences under the IPC or the FSSA. The preventive detention under the NSA is only anticipatory action and is not a punitive measure. The law that is generally applied to the cases of preventive detention is that if an offence committed by an offender, which merely effect the law and order situation, can be dealt with under ordinary penal laws, the extraordinary provisions of preventive detention ought not to be invoked, but it cannot deduced from this that the ordinary penal laws, would for that purpose, be considered general law and the relevant laws of the preventive detention, which in this case would be NSA, would be considered as a special law or vice versa. While FSSA only provides for penalty for the offence made out under the provisions of the said Act, the NSA provides for the preventive detention if parameter enumerated in sub-Section (2) of Section 3 are attracted. These two Acts have been enacted to achieve different object and for difference purpose. The provisions which makes the offence punishable under the FSSA is intended to punish the offender for the offence committed by him, but the object which the NSA

> seeks to achieve is to put the person concerned in detention so as to prevent him from doing an act but not to punish him for something which he has done. While the former is based on the act already done by him, the latter is based on the likelihood of his acting in a manner similar to his past acts and preventing him for repeating the same.
>
> ***(Emphasis Supplied)***

29. It is a matter of common knowledge that during second wave of pandemic, there was severe scarcity of essential medicines, hospital beds, oxygen etc. This kind of pandemic broke up almost after 100 years from the previous pandemic of 'Spanish flu' which threatened the humanity during 1918-1920. The Supreme Court in ***Ayya @ Ayub (supra)*** made it clear that there is no straight jacket formula for applying the NSA. It depends on the factual backdrop of each case. There cannot be any static formula for invoking NSA because it varies according to the *pressures of the day* and according to the *intensity of imperatives*. In a pandemic like situation, where people were dying for want of essential drugs, treatment and other facilities, singular act of blackmarketing of remedesivir injections is sufficient to maintain the detention order. Moreso, when allegation is that the remedesivir injections were fake/duplicate. The respondents by filing reply have rightly explained the basis for passing the detention order. The necessary ingredients on the strength of which a detention order can be passed are very much available in the impugned detention order and in the counter affidavit. Pertinently, in ***Yumman Ongbi Lembi Leima (supra),*** it was held that in a matter of detention, the law is clear that as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order. In this view of the matter, the judgment of Supreme Court in ***Mohinder Singh Gill (supra)*** cannot be pressed into service.

Scope of judicial review of detention order:

30. In the connected matter, in the case of employee of petitioner's

hospital namely, ***Devesh Chourasiya (WP No.10177/2021)***, this Court has dealt with this aspect in sufficient detail. It is apposite to reproduce the same.

> "24. The learned Senior Counsel for the petitioner placed reliance on certain judgments to submit that subjective satisfaction of detaining authority must be based on legally admissible cogent material. It is apposite to examine the legal journey in this regard. In ***1951 SCR 167, (State of Bombay v. Atma Ram Sridhar Vaidya)*** a six judges Bench of Supreme Court held thus:-
>
> "6.....By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. **The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence,** although it may be indicative of strong probability of the impending commission of a prejudicial act...."
>
> (***Emphasis supplied)***
>
> 25. *B.K. Mukherjea, J.* in ***1954 SCR 418 (Shibban Lal Saksena vs. State of U.P.)*** followed the said principle and opined as under:-
>
> "8.....It has been repeatedly held by this Court that the power to issue a detention order under Section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, **except on the ground of malafides** [Vide *The State of Bombay* v. *Atma Ram Sridhar Vaidya*, 1951 SCR 167]. **A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenue under Section 7 of the Act.**.....The detaining authority gave here two grounds for detaining the petitioner. **We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to**

the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute.....”

(***Emphasis supplied)***

26. A constitution Bench of Apex Court ***(1964)4 SCR 921 (Rameshwar Shaw vs. District Magistrate)*** ruled that:-

“8. It is, however, necessary to emphasise in this connection that though the satisfaction of the detaining authority contemplated by Section 3(1)(*a*) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention **on the ground of mala fides** and in support of the said plea urge that along with other facts which show mala fides the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. **It is only in this incidental manner** and in support of the plea of mala fides that this question can become justiciable; **otherwise the reasonableness or propriety of the said satisfaction contemplated by Section 3(1)(*a*) cannot be questioned before the Courts.**”

(***Emphasis supplied)***

27. A three judges Bench in ***(1973) 3 SCC 250 (Mohd. Subrati vs. State of West Bengal)*** held as under:-

“3.....**This jurisdiction is different from that of judicial trial in courts for offences and of judicial orders for prevention of offences.** Even unsuccessful judicial trial or proceeding would, therefore, not operate as a bar to a detention order, or render it mala fide. The matter is also not res integra.”

(***Emphasis supplied)***

28. Reference may be made to ***1988 (1) SCC 296 (K. Aruna Kumari vs. Govt. of A.P.)*** wherein the Court held that :-

“8.....**It is true that it may not be a legally recorded confession which can be used as substantive evidence** against the accused in the criminal case, but it cannot be completely brushed aside on that ground for the purpose of his preventive detention.....”

(***Emphasis supplied)***

29. In ***(1990) 1 SCC 35 (State of Punjab vs. Sukhpal Singh)***, it was again held that:-

"**9.** ….. The High Court under Article 226 and Supreme Court under Article 32 or 136 do not sit in appeal from the order of preventive detention. But the court is only to see whether the **formality as** enjoined by Article 22(5) had been complied with by the detaining authority, and if so done, **the court cannot examine the materials before it and find that the detaining authority should not have been satisfied on the materials before it and detain the detenu. In other words, the court cannot question the sufficiency of the grounds of detention for the subjective satisfaction of the authority as pointed out** in *Ashok Kumar* v. *Delhi Administration* [(1982) 2 SCC 437 : 1982 SCC (Cri) 466 : AIR 1982 SC 1143 : (1982) 3 SCR 707] . Those who are responsible for the national security or for the maintenance of public order must be the judges of what the national security or public order requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from so doing. The justification for such detention is **suspicion** or **reasonable probability** and **not criminal conviction which can only be warranted by legal evidence.** Thus, any preventive measures even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. There is no reason why executive cannot take recourse to its powers of preventive detention in those cases where the executive is genuinely satisfied that no prosecution can possibly succeed against the detenu because he has influence over witnesses and against him no one is prepared to depose...."

(***Emphasis supplied)***

30. In ***Ram Bali Rajbhar (supra)***, *M.H. Beg, J.* expressed the view on behalf of the bench :-

"13. We think that the High Court of Calcutta, while dismissing the writ petition, need not have expressed any opinion about the worth of the affidavit sworn by Lal Mohan Jadav, the tea shop owner. That, we think, is the function of authorities constituted under the Act for deciding questions of fact. On a habeas corpus petition, what has to be considered by the Court is whether the detention is prima facie legal or not, and not whether the detaining authorities have wrongly or rightly reached a

> satisfaction on every question of fact...."
>
> (***Emphasis supplied)***
>
> 31. Before dealing with aforesaid judgments of Supreme Court, it is apposite to mention that an order of detention was treated to be an administrative order by Supreme Court in ***1975(2) SCC 81 (Khudiram Das vs. State of West Bengal)***. This principle was followed by Full Bench of Allahabad High Court in ***1985 SCC Online 608 (Mannilal vs. Superintendent of Central Jail, Naini, Allahabad)***. This Court in ***1989 CRLJ 978 (Brajraj vs. District Magistrate, Gwalior & Anr.)*** followed the dicta aforesaid and opined that order of detaining authority is an administrative order."
>
> ***(Emphasis Supplied)***

31. In view of aforesaid judgments of Supreme Court, we may cull out the principles as under:-

[1] It is not necessary that authority passing the detention order must always be in possession of complete information at the time of passing the order.

[2] The information on the strength of which detention order is passed may fall far short of legal proof of any specific offence. If order indicates strong probability of impending commission of a prejudicial act, it is sufficient for passing a detention order.

[3] The Court is not obliged to enquire into the correctness/truth of facts which are mentioned as grounds of detention.

[4] Whether grounds of detention mentioned in the order are good or bad is within the domain of competent authority.

[5] The satisfaction of competent authority in passing the detention order can be assailed on limited grounds including the ground of mala-fide and no evidence at all.

[6] The jurisdiction under the NSA is different from that of judicial trial in courts for offence and of judicial orders for prevention of offence. Even unsuccessful judicial trial would not operate as a bar to a detention order or make it mala-fide.

[7] An improperly recorded confession u/S.161 of Cr.P.C

cannot be used as substantive evidence against the accused in criminal case but it cannot be completely brushed aside on that ground for the purpose of preventive detention.

[8] The Court cannot examine the materials before it and give finding that detaining authority should not have been satisfied on the material before it. The sufficiency of ground of detention can not be subject matter of judicial review.

[9] The justification for detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. Thus, it is called as **'suspicious jurisdiction'**.

[10] In a habeas corpus petition, Court needs to examine whether detention is prima-facie legal or not and is not required to examine whether subjective satisfaction on a question of fact is rightly reached or not.

[11] The statements/evidence gathered during investigation falls within the ambit of "some evidence" which can form basis for detaining a person.

[12] The detention order is an administrative order.

32. We have carefully examined the statements of the persons recorded by the administration. We are unable to hold that there is no probative value of the statements and on the strength of those statements the detention order could not have been passed. There definitely exists some probative material sufficient for passing the detention order. The correctness and sufficiency of evidence is beyond the scope of judicial review. Thus, the impugned detention order cannot be said to be irrational or illegal because statements of witnesses recorded during investigation were relied upon.

Basis for Detention Order – Whether Section 161 of Cr.P.C. statement can form basis.

33. This point raised in the present petition was also raised in the connected matter (***Devesh Chourasia's case***). This Court opined as

under:-

> "39. By placing heavy reliance on the judgment of ***Pebam Ningol Mikoi Devi (supra)***, it was contended that confessional statement of petitioner or any other statement of other persons recorded under Section 161 of Cr.P.C. cannot form basis for issuance of detention order. No doubt, in para-30 and 31 of said judgment, the Apex Court has taken note of certain documents including a confessional statement of petitioner therein recorded under Section 161 of Cr.P.C. and opined that such documents do not provide any reasonable basis for passing of detention order. It was further held that Section 161 statements are not considered substantive evidence, but can only be used to contradict the witness in the course of a trial. It is noteworthy that in the said case, after examining these documents, a finding was given by Apex Court on merits that the documents do not substantiate the involvement of detenu in any unlawful activity.
>
> 40. As noticed above, a six judge Bench of Supreme Court in ***Atma Ram Sridhar Vaidya (supra)***, poignantly held that the detaining authority while passing the detention order cannot always be in possession of complete information. The information so gathered may fall short of legal proof of any specific offence, although it may be indicative of strong probability of impending commission of a prejudicial act. It was further held in the said case that the material on the basis of which detention order was passed may not be strictly admissible as evidence under the Evidence Act in a Court, but said material can very well be considered sufficient for forming subjective decision of the government. Similarly, in ***K. Aruna Kumari (supra)***, a Division Bench made it clear that even a confessional statement under Section 161 of Cr.P.C. which may not be admissible in a criminal case can be a reason for passing an order of detention. In ***Pebam Ningol Mikoi Devi (supra),*** the previous judgment of Division Bench of Supreme Court in ***K. Aruna Kumari (supra)*** and judgment of six judge bench in case of ***Atma Ram Sridhar Vaidya (supra)*** were not brought to the notice of the Division Bench. A special bench (five judges) of this Court in ***(2003) 1 MPLJ 513 (Jabalpur Bus Operators Association & Ors. vs. State of MP & Ors.)*** opined that if two different views are taken by different Benches of Supreme Court, the view taken by a Bench of larger strength will prevail. If Bench strength is same and previous judgment is not taken into account by subsequent bench, the previous judgment will

prevail. In view whereof, we are unable to hold that statements recorded under Section 161 of Cr.P.C. cannot form basis for passing the detention order. The inevitable consequence of this finding is that the argument of Shri Dutt, learned Senior Counsel that detention order is passed without cogent material or there existed no objective material for recording subjective satisfaction cannot be accepted."

(Emphasis Supplied)

34. Apart from this, reference may be made to ***(1975) 3 SCC 845 (Tulshi Rabidas vs. State of West Bengal)*** (3 Judge bench) which makes it clear that some evidence gathered during investigation can very well become basis for passing the detention order. It needs no emphasis that statements recorded under Section 161 Cr.P.C. can certainly provide "some evidence/material" collected during investigation. Thus, we are unable to agree with the contention that Section 161 statement cannot become basis for passing the detention order.

Further Detention of Petitioner, already arrested

35. This point is also similar to what has been decided in ***Devesh Chourasia (supra)***. Para-39 reads thus:-

"39. Shri Dutt, learned Senior Counsel has rightly pointed out catena of judgments to contend that a person already arrested under any penal law can still be detained under NSA Act if certain parameters are satisfied which are rightly pointed out as i) the detaining authority must be aware that detenu is already in custody, ii) there is likelihood of his getting bail, iii) there is possibility of his indulging into similar activity. If on these parameters, the present matter is tested, it will be clear from plain reading of detention order that detaining authority was aware that petitioner is already under detention. He has duly recorded his apprehension which is not unfounded that there exists a likelihood of petitioner's getting bail. The District Magistrate recorded his satisfaction that if petitioner is not detained, there is every likelihood of misusing the liberty. Thus, we are of the opinion that necessary ingredients for detaining a person, who was already under arrest were satisfied. The detention order is not in the breach of principles laid down in the judgments cited by the petitioner."

(Emphasis Supplied)

36. During the course of hearing in this matter and in various similar matters, the learned counsel for the petitioners argued that the offence mentioned in the FIR are trivial in nature and such offences are triable by a Magistrate. For example, reference is made to Section 420 & 188 of IPC, Section 3 of Epidemic Disease Act, 1897 and Section 3 & 7 of Essential Commodities Act. Suffice it to say that if this argument is accepted, no fault can be found in the opinion formed by District Magistrate that there is a likelihood of petitioner's release on bail. Thus, necessary ingredients for detaining a person, who is already arrested are satisfied.

D.M.'s order solely based on SP's recommendation: Mechanical Action:

37. The contention that District Magistrate has mechanically and without application of mind relied upon SP's report is also dealt with in ***Devesh Chourasia (supra)***. This Court opined that:

> "37. By placing reliance on the language employed by Superintendent of Police in his recommendation and the order of detention and its extension etc., it was argued that there was no independent application of mind by District Magistrate and he has mechanically reproduced the language employed by S.P. We do not see much merit in this contention. It is not the form which is decisive for examining the validity of detention order. Indeed, whether contents of detention order are sufficient and satisfy the necessary ingredients for invoking detention law is material and important. *V.R. Krishna Iyer, J.* speaking for a 3 judges bench of Supreme Court in ***(1975) 3 SCC 845 (Tulshi Rabidas vs. State of West Bengal)*** opined as under:-
>
> "7.....Even so, we are unable to void the order on this score, especially **because the District Magistrate may well have acted on the police report. Whether the investigation was conducted properly or not, whether the District Magistrate should have pinned his faith on the result of the investigation and like questions, are not for the Court to consider.** But the minimum which must be placed before the Court is that there was *some* evidence **gathered during investigation** which, in

> *some* manner, roped in the petitioner. We are prepared to hold that there is some evidence for the District Magistrate to act and there we pause."
>
> (***Emphasis Supplied)***
>
> 38. The principle laid down in the said judgment is i) the defect in the investigation cannot be a reason to disturb a detention order. ii) It is subjective satisfaction and faith of District Magistrate on the investigation which matters and it is not for the Court to sit in an appeal and reweigh it. iii) If some evidence is gathered during investigation in some manner, it is sufficient to invoke detention law. Thus, merely because language of detention order matches with that of recommendation, detention order cannot be jettisoned."
>
> (***Emphasis Supplied)***

38. It is noteworthy that in the case of ***Tulshi Rabidas (supra)***, one of the main ground to assail the detention order was that it is "psycho styled" and mechanically passed on the recommendation of inferior authority. As noticed above, *V.R. Krishna Iyer, J.* speaking for the bench, did not agree with this contention because it is not the form which matters, indeed it is the substance and existence of necessary ingredients which will determine the validity of a detention order. Thus, we are unable to persuade ourselves with this line of argument of the petitioner.

Detention order deserves interference because stale matter is relied upon?

39. As noticed in para 17 of this order, this Court opined that criminal antecedent of 2004 has no live nexus with the reasons of detention and, therefore, said incident could not have been a reason to issue detention order. However, it is noteworthy that merely because said unjustifiable reason finds place in the detention order, the whole detention order will not become vulnerable. If minus the incident of 2004, the other portion of detention order is in-consonance with the requirement of NSA, by applying doctrine of severability, the detention order deserves to be upheld.

40. Section **5A of the NSA** reads as under:-

> "**5A. Grounds of detention severable.—**Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-
> (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are
> (i) vague,
> (ii) non-existent,
> (iii) not relevant,
> (iv) not connected or not proximately connected with such person, or
> (v) invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;
> (vi) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."
>
> ***(Emphasis Supplied)***

41. This provision was inserted by Act 60 of 1984 w.e.f. 21/06/1984. The law makers by inserting Section 5A aforesaid made it clear that the order of detention cannot be axed or declared void for the reasons/grounds mentioned in Clause (i) to (v). There is no cavil of doubt that on the ground of vagueness, irrelevancy, absence of proximity with person etc cannot be a ground to set aside the entire order of detention. Thus, in our view, the doctrine of severability is given statutory recognition and shape by inserting Section 5A.

42. The Apex Court laid down the Doctrine of Severability on the anvil of which the impugned order can be tested. In ***1960 2 SCR 146 (Y.Mahaboob Sheriff Vs. Mysore State Transport Authority),*** the

Apex Court held that it is open to sever the illegal part of the order from the part which is legal. This principle was followed in ***1966 2 SCR 204 (R. Jeevarantnam Vs. State of Madras)***. It was held that two parts of composite order are separable. The first part of the order operates as a dismissal of the appellants as from October 17, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service. The same principle was followed in ***(1976) 2 SCC 495 (State of Mysore Vs. K. Chandrasekhara Adiga)***. It was clearly held that where valid and invalid portion of the order are severable, the test is whether after excision of the invalid part, the rest remains viable and self-contained. The deletion cannot render rest of the order illegal or ineffective if it can survive independently and found to be valid. In ***2014 (12) SCC 106 (State Bank of Patiala Vs. Ram Niwas Bansal)***, it was again held that two parts of the order are clearly severable assuming that second part of the order is invalid. There is no reason that the first part of the order should not be given the fullest effect. Reliance can be placed on another judgment of Apex Court in the case of ***Gujarat Mineral Development Corporation Vs. P.H Brahmbhatt reported in 1974 (3) SCC 601***. Pertinently, Allahabad High Court in ***Gajendra Prasad Saxena, VS. State of UP reported in 2015 SCC OnLine ALL 8706*** applied the Doctrine of "Partial Quashing" and opined that the principle of unconstitution provision of a statue being severed and struck down leaving other parts untouched is well known. The said principle of severability has been extended to administrative orders also.

43. If the Doctrine of Severability duly recognised in S.5A above is applied on the impugned order, it will be clear that even if ground related to the incident of 2004 is deleted or treated as invalid, the

contents of rest of the order will be sufficient to uphold the action under the NSA. In other words, if order to the extent it refers to incident of 2004 is treated as invalid, after excision of this invalid part, the remaining part is found to be self-contained and can be a reason to uphold the invocation of power under section 3(2) of the NSA. Thus, two parts of the order are severable. The invalid part will not eclipse the entire order of detention dated 11.05.2021.

44. Another limb of argument of petitioner is that by the time period of detention order was extended, the crisis of corona related risk was substantively reduced and there was no justification in extending the period of detention. A three judges bench of Supreme Court in ***1975 (3) SCC 858 (Sheoraj Prasad Yadav vs. State of Bihar & Ors.)*** held as under:-

> "7. Coming to the third submission made on behalf of the petitioner we would like to observe that there seems to be justification in the petitioner's grievance that he is being unnecessarily detained **even after the agitation had been withdrawn** and there is no likelihood of his indulging in acts prejudicial to the maintenance of supplies and services essential to the Community. But this is a matter which is not within our domain to decide. It is for the State Government to consider the question as to whether the continuance of detention of the petitioner is necessary or not. In the facts and circumstances of the case, however, we think it desirable that the State Government should as soon as possible review the case of the petitioner to find out whether any further detention in his case is necessary or not."
>
> ***(Emphasis Supplied)***

45. In view of this judgment, this Court is not inclined to interfere on the detention or extension order. We are only inclined to observe that it will be open to the government to review the case of the petitioner in accordance with the law.

If the salt has lost its savour, wherewith shall it be salted.

46. A conjoint reading of statement of witnesses recorded under

Section 161 of Cr.P.C. and detention order shows that background story is that a drug/injection manufacturer at Surat indulged in manufacturing fake remedesivir injections in order to earn undue profit. In turn, said injections were sold to a person at Indore. The said drug dealer of Indore supplied it to the distributor, the petitioner (hospital owner) and petitioner of connected matter (Devesh Chourasia) who was an administrator of the hospital. Covid pandemic created a compete chaos which became a serious threat to normal life. At the cost of repetition it is apt to remember that the people were struggling for getting oxygen, hospital beds, necessary drugs etc. This kind of crisis is faced by humanity after almost 100 years from the *Spanish flu* which broke out in 1918-1920. The administration across the nation has worked tirelessly during this period. Multi tasking was a routine those days. The administration was required to take care of law and order situation, ensure supply of electricity, oxygen and other amenities to the people. There are other factors on which they were required to devote their time. If drug manufacturer, supplier, distributor, hospital owner and administrator indulge into such activity of blackmarketing remedesivir or using fake remedesivir, it was necessary to prevent them to maintain 'public order' because as per famous adage *"if salt has lost its savour, wherewith shall it be salted"*. We make it clear that this observation of ours should not be treated as finding against the petitioner on the merits of the case. The trial Court is best suited to decide the matter on merits.

47. We are unable to hold that there was no material at all to invoke detention law. The Court cannot interfere if there was some evidence before the detaining authority upon which a reasonable man could have formed the satisfaction which is the *sine qua non* for the detention. (See: ***Ram Bali Rajbhar vs. State of W.B. (1975) 4 SCC 47)*** There is no flaw in the decision making process. Delay in taking decision on representation cannot be measured by taking a stop watch

in the hand. The explanation of delay depends on the factual background in which delay occasioned. Pertinently, in ***Ayya Ayub (supra)***, the Apex Court considered this aspect and poignantly held that the Court should not be oblivious of the *"pressures of the day"* and according to the intensity of imperatives which may justify the need and extent of curtailment of individual liberty. Similarly, in ***Raj Kumar Singh (supra)***, the Court ruled that hard and ugly facts make application of harsh laws imperative. The blackmarketing and use of fake remedesivir injections in pandemic crisis, in our opinion is such hard and ugly fact which makes application of detention law imperative.

48. In view of foregoing analysis, we find no reason to interfere in the impugned orders. Petition fails and is hereby **dismissed**.

(SUJOY PAUL)
JUDGE

(ANIL VERMA)
JUDGE

soumya