High Court of Madhya Pradesh; Bench At Indore

Case No.	**W.P. No.12203/2021**
Parties Name	*Dilip Sisodia* *vs.* *State of M.P. and others*
Date of Judgment	**22/09/21**
Bench Constituted	**Division Bench:** **Justice Sujoy Paul** **Justice Anil Verma**
Judgment delivered by	**Justice Sujoy Paul**
Whether approved for reporting	YES
Name of counsels for parties	Shri.Vinod Prasad and Shri Sumit Mittal, learned counsel for petitioner. Shri Pushyamitra Bhargav, Additional Advocate General for the respondent/State.
Law laid down	1. **Section 3 of National Security Act, 1980 (NSA Act) – Petition under article 226 of the Constitution of India** – Challenge to the order of detention at pre-execution stage – Scope is limited and can be called in question if **(i)** that the impugned order is not passed under the Act under which it is purported to have been passed, **(ii)** that it is sought to be executed against the wrong person, **(iii)** that it is passed for a wrong purpose, **(iv)**that it is passed on vague, extraneous and irrelevant grounds or **(v)** that the authority which passed it had not authority to do so. 2. **The detention order** – Time lapse – Merely because sufficient time is passed after passing of detention order, interference cannot be made. The lapsation of time alone cannot be a reason to interfere with the detention order.

	3. **The detention order** – Competence – 'Tweets' of competent authority is relied upon wherein he mentioned his designation as "Collector/District Magistrate". Held - even if description is mentioned in the tweet as aforesaid and not only as "District Magistrate" it cannot be a reason to interfere with the detention order. 4. **The detention law** – Land grabbing – The scale and magnitude on which allegations of land grabbing are made by treating the detenu as land mafia, the detention law can be invoked taking into account its overall impact on the society and tempo of the society. 5. Section 3 of National Security Act can be invoked to achieve the following purposes :- 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**." 6. **In the present factual backdrop** - the detenu cannot be permitted to seek writ from this Court without surrendering and without obtaining order of detention and grounds thereof.
Significant paragraph numbers	20 to 33

O R D E R
22.09.2021

Sujoy Paul, J.

In this petition filed under Article 226 of the Constitution, the petitioner has prayed for following reliefs for his relative

(detenu):-

> "a) Pass the appropriate order restraining the respondent no.1 not to act in malafide, illegal and arbitraty manner and for respondent no.2 for not acting on false and frivolous report submitted by respondent no.1 under section 3(3) of the National Security Act, 1980: and
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> b) Pass appropriate order to set aside the detention order dated 19.02.2021 passed by Respondent no.1 and the order passed by respondent no.2 under section 3(4) of the National Security Act, 1980 acting on false report submitted by respondent no.1 and
>
> c) Pass appropriate order(s) to respondent no.3 not to act in malafide manner and curtail the liberty of the petitioner in relation to the 6 FIRs (being FIR no.0160/2021 dt 17.02.2021 and FIR No.0162/2021 dated 10.08.2021 filed in the Khajrana Police station, Indore (b) FIR No.0159/2021 dated 17.02.2021 and FIR No.0161/2021 dated 18.02.2021 filed in Khajrana Police Station, Indore (c) FIR No.0131/2021 dated 18.02.2021 and FIR No.0132/2021 dated 18.02.2021 filed in MIG Colony Police Station, Indore) registered on the basis of false allegation with respect to these FIRs registered in contrary to the law laid down by the Hon'ble Apex Court in T.T Antony Case and Amit Anil Chandra Bhai Shah case wherein it was held that 2 FIRs cannot be registered arising out of the same subject manner held to be illegal.
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> d) This Hon'ble Court be pleased to pass any such other order or orders as may be deemed fit by this Hon'ble Court in the facts and circumstances of the case in favour of the petitioner; and/or;
>
> e) That, this Hon'ble Court be pleased to award costs to the petitioner"

2. Indisputably, in this petition, petitioner has assailed the detention order before its communication and execution. During the course of hearing, learned counsel for petitioner and learned counsel for State fairly submitted that the scope of interference at this stage is very limited and the *litmus test* for exercise of such jurisdiction is laid down in extenso in

Additional Secretary to the Government of India & Ors. Vs. Smt. Alka Subhash Gadia & another (1992) Supp 1 SCC 496. The test laid down is mentioned in para no.30.

3. Shri Vinod Prasad, learned counsel for petitioner submits that the test No.(iii) to (v) aforesaid are squarely applicable in the instant case. Thus, at pre execution stage also, this court can exercise jurisdiction and it is a fit case where necessary ingredients for exercise of such jurisdiction are available.

4. To elaborate, Shri Prasad placed reliance on two tweets of District Magistrate/Collector dated 18/2/2021 and 19/2/2021. The petitioner came to know about the passing of detention order regarding his father detenu from the aforesaid tweets of District Magistrate/Collector. Shri Prasad submits that the National Security Act, 1980 (for short "NSA Act") empowers the State Government to detain a person and it can delegate such power of detention to the District Magistrate. However, this power is given to a specific authority namely "District Magistrate" and not to a "Collector" who is an authority under the revenue laws. The competent authority exercising power of detention must know in which capacity he is exercising the drastic power of detention. The casual use of designation 'Collector/District Magistrate' by the said authority itself shows that he is aware of source of his power and with the same casualness he must have passed the detention order.

5. The next contention is that this Court in WP No.7248/2014 (PIL) considered the question of correctness of decision of regularisation of a colony namely "Hina Palace Colony". This Court affirmed the regularisation process and, therefore, the said colony cannot be subject matter of FIR or invocation of detention law.

6. It is pointed out that as many as six FIRs were lodged in

the intervening night between 17/2/2021 and 18/2/2021 by various government authorities. The FIRs are confined to the said colony and lodged in Police Stations Khajrana and MIG. By taking this Court to one such FIR (Annexure P/5) lodged on 17/2/2021 at 7.32, PM Shri Prasad argued that it relates to Pushpvihar colony and alleged offence was committed in the year 2006. After about 15 years, FIR was lodged which is silent as to what happened between 2006 to 2021. In the manner FIRs were lodged, shows the manner in which the authorities have abused their power and such exercise amounts to colourable exercise of power.

7. Furthermore, it is contended that although detention order or its grounds are not served on the petitioner or on the detenu, it is learnt that the same is founded upon the said FIRs. There is no live link between the incidents of 2006/2007 and the invocation of detention law in the year 2021. In absence of any suh live link, the detention law could not have been invoked.

8. Shri Prasad further submits that a similar question cropped up before the Allahabad High Court in the matter of ***Samai Din Vs. District Magistrate, Ghaziabad (1983 Cri LJ 22)***. In the said case, the allegation against the detenu was that he grabbed the land and the Allahabad High Court opined that this action, at best can fall within the ambit of "law and order" and there is no invasion of "public order". The detenu is already facing criminal case. The anticipatory bail in two cases is granted to him by the Courts. The ordinary penal law is sufficient to take care of the petitioner's offending activity (if any) and there exists no material to invoke the NSA Act.

9. The next contention is that the Lokayukta Organisation of Madhya Pradesh also filed a closure report before the Special Judge and learned Special Judge by a detailed order accepted

the final report of Lokayukta relating to the same colony namely Hina Palace Colony. The said question or factual backdrop cannot again be subject matter or reason for detaining the detenu. This act of respondents in banking upon the said fact relating to Hina Palace Colony is contemptuous and mala-fide in nature.

10. The averments of petition are not denied in the return which shows that the same are actually admitted in the return. For this reason also, various factual aspects raised by the petitioner in the writ petition went unrebutted.

11. Lastly, learned counsel for petitioner placed reliance on Sec.3(5) of the NSA Act and contended that it is obligatory/mandatory on the part of the respondents to seek and obtain approval of the Central government within stipulated time. It appears that there exists no such document to show that the said exercise has been undertaken by the respondents.

12. Sounding a *contra* note, Shri Pushyamitra Bhargava, learned Additional Advocate General submits that the test laid down by Apex Court in ***1992 Supp (1) SCC 496 (Addl. Secy. to the Govt. of India vs. Alka Subhash Gadia),*** is certainly still applicable, but said test is further clarified in subsequent judgments of Supreme Court reported in ***(2008) 3 SCC 613 (State of Maharashtra & Ors. vs. Bhaurao Punjabrao Gawande)*** and ***(2014) 1 SCC 280 (Subhash Popatlal Dave vs. Union of India & Anr.)***. The test (iii), (iv) and (v) above on which petitioner has placed heavy reliance are not applicable in the factual backdrop of this matter is the next contention of learned AAG. He submits that neither correctness of allegations nor sufficiency of material before the Detaining Authority can be gone into at this stage. If detenu surrenders, gets the copy of detention order and grounds of detention, he can certainly

challenge the detention order on relevant grounds including the ground relating to the decision making process.

13. The detenu is absconding and avoiding detention. His belated approach to this Court itself shows his conduct and, therefore, in this discretionary and equity jurisdiction, no interference may be made. It is further urged that a singular incident is sufficient to invoke the detention law. The detention order is passed to prevent the detenu to indulge into actively prejudicial to public interest.

14. Shri P.Bhargav, learned AAG further informed that a proclamation has already been issued declaring the detenu as an absconder.

15. In rejoinder submissions, Shri Prasad, learned counsel for the petitioner urged that the detenu, by no stretch of imagination can be said to be “absconding”. He is enjoying anticipatory bail granted to him by a Court of competent jurisdiction. If he was collecting the material to assail the impugned action/order and sometime is consumed in that exercise, he cannot be said to be “absconding”. At the cost of repetition, it is argued that the impugned action of lodging half a dozen FIRs in one night followed by detention order is example of colourable exercise of power, which certainly hits the fundamental right flowing from Article 14 & 21 of the Constitution. The constitutional Court being repository to the citizens must protect such a citizen from invocation of detention law in an unlawful manner.

16. The parties confined their arguments to the extent indicated above.

17. Shri Bhargava provided the original file relating to detention order for the perusal of this Court.

18. No other point is pressed by the learned counsel for the parties.

19. We have heard the learned counsel for the parties at length and perused the record.

20. Before dealing with the rival submissions, it is profitable to quote relevant tests from para 30 of the Judgment of the Apex Court in ***Alka Subhash Gadia*** (supra), wherein "*Acid Test*" is laid down by the Apex Court in order to decide whether at pre-execution stage, the writ petition can be entertained. It reads as under :-

> "The courts have the necessary power to entertain grievances against any detention order prior to its execution, and they have used it in proper cases, although such cases have been few and the grounds on which the courts have interfered with them are necessarily very limit- ed in scope and number, viz., where the courts are prima facie satisfied **(i) that the order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so.** The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law."
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> (emphasis supplied)

21. As noticed above, learned counsel for the petitioner contended that test no.(iii), (iv), and (v) are attracted in the instant case.

<u>As to Test (iii):-</u>

22. If the present factual backdrop is examined on the anvil of enabling provision ie. Section 3 of NSA Act, it will not be possible for us to hold that the detention order is passed for a 'wrong purpose'. The power of detention order as per sub

section 2 of section 3 can be used against a person to achieve the following purpose:-

> 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**."
>
> (emphasis supplied)

23. The file produced before us shows that the District Magistrate decided to detain the petitioner for preventing him from acting in a manner which is prejudice to the maintenance of 'public order'. Thus, we are unable to persuade ourselves with the line of argument of learned counsel for the petitioner that the detention order is passed for a wrong purpose. The Allahabad High Court in ***Samai Din*** (supra) opined as under :-

> (5) "We find sufficient force in the other submission also made on behalf of the petitioner, namely, that the above mentioned ground was irrelevant and could not be construed as a fact amounting to breach of or threat to public order. It is on the face of it an individual crime, which can be dealt with precisely as a challenge to law and order, and there is nothing either in the nature or gravity of the act 'perse' which may impart to it the character of an invasion of public order. It is not touched with the faintest sprinkle of public disorder, A person may commit an isolated act of cheating or forgery or land-grabbing with regard to a property, but that will be an individual act and has to be dealt with merely as a matter relating to law and order 'simpliciter'. **If similar acts are repeated by the same person and his associates with frequency, some vestiges of jeopardy to public order may be discerned;** but in the instant case we find that the incidents, covered by the other grounds of detention served on the petitioner, are of an entirely different category, being cases of violence and assault. Thus, even in conjunction with the other grounds of detention, ground No. 1

> could not be regarded as relevant for detention in connection with the maintenance of public order. The factual allegations recited in this ground pose a typically law and order problem and do not come within the contours of of public order."
>
> (emphasis supplied)

24. A microscopic reading of this para makes it clear that nature, scale/magnitude and gravity of an act and its impact on public order is relevant factor to determine whether the detention law is to be invoked. An isolated act or cheating or land grabbing may not be sufficient to invoke such detention law but when such act takes place with frequency and is of severe magnitude, detention law can very well be invoked.

As to Test (iv):-

25. That the detention order and grounds of detention shows that the detaining authority has taken note of several incidents of land grabbing by detenu. The authority has taken note of activity of detenu/land mafia which is not confined to only one colony namely Hina Palace Colony. The allegation of land grabbing is of wide and serious magnitude. A careful reading of averments of detention order does not lead us to the conclusion that this order is based on vague, extraneous or irrelevant grounds.

Apart from this, the detention order is not solely vested on the six FIRs on which heavy reliance is placed by learned counsel for the petitioner. Apart from FIR, overall conduct of the *detenu* and impact on public tempo is taken note of by the District Magistrate. This Court after considering the catena of the Apex Court's judgments in ***Sarabjeet Singh Mokha Vs. District Magistrate, Jabalpur*** passed in ***WP No.10085/2021*** opined as under :-

> **"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:-
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> > "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)***
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> 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:-
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> > "8.....<u>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</u>

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)***
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> 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."

(emphasis supplied)

26. It was made clear that scope of NSA is different than that of judicial trial in Courts for offences and all judicial orders for prevention of offences. Even unsuccessful judicial trial would not operate as bar for the detaining authority to detain a person. Even order of acquittal in judicial trial will not put an embargo on the power of detention nor any such detention order can be termed as malafide. Thus, the final report of Lokayukt, accepted by Special Judge or two anticipatory bail orders do not mean that the detaining authority has passed the order of detention on

any extraneous or irrelevant grounds.

27. During the course of hearing, learned counsel for the petitioner pointed out that a proclamation under section 82 of the Cr.P.C is issued and the detenu is declared as absconder on 09.09.2021. In the case of ***Bhaurao Punjabrao Gawande*** (supra), the Apex Court opined as under :-

> "63. From the foregoing discussion, in our judgment, the law appears to be fairly well- settled and it is this. As a general rule, an order of detention passed by a Detaining Authority under the relevant 'preventive detention' law cannot be set aside by a Writ Court at the pre-execution or pre-arrest stage unless the Court is satisfied that there are exceptional circumstances specified in Alka Subhash Gadia. The Court must be conscious and mindful of the fact that this is a 'suspicious jurisdiction' i.e. jurisdiction based on suspicion and an action is taken 'with a view to preventing' a person from acting in any manner prejudicial to certain activities enumerated in the relevant detention law. Interference by a Court of Law at that stage must be an exception rather than a rule and such an exercise can be undertaken by a Writ Court with extreme care, caution and circumspection. A detenu cannot ordinarily seek a writ of mandamus if he does not surrender and is not served with an order of detention and the grounds in support of such order."
>
> (emphasis supplied)

28. In ***Subhash Popatlal Dave*** (supra), the Apex Court held as under :-

> "....It is no doubt true that the materials relied upon at the relevant time would be on the basis of which the order of detention was passed so as to hold whether the materials were sufficient and justified or not but when the correctness of the order of detention is challenged in a court of law at the pre-execution stage, then setting aside the order of detention merely on the ground of long lapse of time might lead to grave consequences which would clearly clash with the object and purpose of the preventive detention laws.

> ..... But when the order of detention of a specific date relating to the relevant period is under adjudication, then the materials relied upon by the authorities at the relevant time alone should weigh with the courts as to whether the order of detention was justified or was fit to be quashed. In any view, subsequent events are not on record in present case. Nor would it be relevant to adjudicate the correctness of the detention orders at this stage, when the Supreme Court has no occasion to peruse the materials which prompted them to pass the order of preventive detention. Nevertheless, it is held that the orders of detention are not fit to be queshed merely because there is no live link between the existing period and situation and the date on which the order of detention was passed. The long lapse of time will not be a valid consideration to set aside the order of detention for present case."
>
> (emphasis supplied)

29. It is settled that the detenu cannot *ordinarily* seek a writ from this Court without surrendering and without obtaining the order of detention and grounds thereof. The exception to this ordinarily procedure is laid down in the case of ***Smt. Alka Subhash Gadia*** (supra) but in our opinion, the necessary ingredients to satisfy the said test are not available in the instant case.

As to Test (v):-

30. This test was although relied upon, no amount of arguments were advanced to show that the District Magistrate did not have authority to pass the detention order. The only argument vaguely raised is that the "Collector/District Magistrate" is loosely used by the authority which shows his non-application of mind.

31. In our view, non-application of mind and competence are two different facets and on the basis of this argument, we are unable to hold that test (v) above is satisfied and the District

Magistrate was not competent.

32. The record shows that the Central Government has passed necessary order and approved the detention order. Thus, last contention of the learned counsel for the petitioner will not pales into insignificance.

33. In view of foregoing analysis, we are unable to hold that the necessary ingredients on the strength of which interference can be made at pre-execution stage are available in the instant case. Thus, interference at this stage is declined.

34. It is made clear that it will be open to the detenu to surrender, obtain the detention order and grounds of detention and assail it in appropriate fresh proceedings.

35. With the aforesaid observations, the petition stands **dismissed**.

(Sujoy Paul)
Judge

(Anil Verma)
Judge

vm/soumya/sourabh