



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 9th OF APRIL, 2025

WRIT PETITION No. 9022 of 2025

*ATUL S/O SHRI ASHOK PATEL THROUGH HIS MOTHER AND
REPRESENTATIVE SMT. LALU PATEL*

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Makbook Ahmad Mansoori, learned counsel for the petitioner.

None for the respondent / Union of India.

*Shri Sudeep Bhargava, learned Deputy Advocate General for respondents No.2
to 7 / State.*

O R D E R

Per : Justice Vivek Rusia

With the consent, heard finally.

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the validity of order of detention dated 24.10.2024 passed by the Commissioner, Indore Division under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 (in short 'the PIT NDPS Act') and order dated 03.03.2025, whereby the State Government has confirmed the order of detention for a period of six months.

02. Facts of the case are that vide letter dated 04.09.2024, the



Deputy Commissioner of Police, Zone – 1 submitted a report to the Additional Commissioner recommending detention of the petitioner. Vide letter dated 10.10.2024, the Additional Commissioner forwarded the said report to the Commissioner with its recommendation. As per the report, four criminal cases have been registered against the petitioner, details of the same are reproduced below:-

| Sr. No. | Police Station | Provisions & Act |
|---------|----------------|-----------------------------------|
| 1 | Bhawarkuan | Section 8/21,29 of the NDPS Act |
| 2 | Tilak Nagar | Section 8/22 of the NDPS Act |
| 3 | Aazad Nagar | Section 8/22 of the NDPS Act |
| 4 | Vijay Nagar | Section 34 of the M.P. Excise Act |

03. The petitioner is a habitual offender, especially offences under the NDPS Act, hence, the Commissioner, after considering the report, found that the petitioner is liable to be detained for a period of six months in order to control his criminal activities. He was formally arrested on 17.01.2025 at 09:45 pm as he was already in police custody in Crime No.827/2024 registered under Section 8/22,29 of the NDPS Act. The order of detention as well as the ground of the detention was served on the petitioner on 17.01.2024.

04. After completing the formalities, the matter was sent to the State Government for confirmation on 22.01.2025. The State Government forwarded the matter to the Central Government per Section 3(ii) of the PIT NDPS Act. The State Government vide letter dated 27.02.2025 informed the Commissioner that the matter has been sent to the Advisory Board. Vide letter dated 03.03.2025, the Advisory Board has approved the order of detention in the exercise of power conferred under Section 9(f) of the PIT NDPS Act. Now, the



State Government has affirmed the impugned order of detention. Hence, the present writ petition is before this Court.

05. Shri M.A. Mansoori, learned counsel for the petitioner submits that the petitioner is assailing the impugned order of detention only on the ground that the learned Commissioner in the order dated 24.10.2024 has wrongly mentioned the period of six months, which has prejudiced the Advisory Board as well as the State Government. The power lies with the State Government to prescribe the period of detention in the order of confirmation. In support of the aforesaid contention, learned counsel has placed reliance upon a judgment delivered in the case of *Pesala Nookaraju v/s The Government of Andhra Pradesh (Criminal Appeal No.2304 of 2023) reported in Live Law (SC) 678*.

06. Learned Deputy Advocate General for the respondents / State has argued in support of the impugned order of detention and prayed for dismissal of the writ petition. It is further submitted that no prejudice has been caused to the petitioner by mentioning the period of detention by the Commissioner, especially when the same has been approved by the learned Advisory Board after hearing the petitioner.

07. We have heard learned counsel for the parties and perused the record.

08. As per the scheme of 'the PIT NDPS Act', the Central Government or State Government, as the case may be, may pass an order under Section 3(2) directing that such person be detained. In this sub-section (3) the period of detention is not specified hence there is no requirement for the authority to mention the period of detention in an order. The State Government is required to send the order to the Central



Government within 10 days which is mandatory. Under Section 9(b), in every case where a detention order has been made under the 'PIT NDPS Act' the appropriate Government shall within five weeks from the date of detention of such person, place before the Advisory Board. Thereafter under Section 9(c) the Advisory Board shall, after considering the materials placed before it record its opinion about the confirmation of detention order in 11 weeks from the date of detention which is also mandatory in nature . In case the Advisory Board is of the opinion that sufficient cause for the detention of a person is there, under Section 9(f) the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit. Section 11 of the PIT NDPS Act provides for maximum period of detention i.e. 12 months from the date of detention. Therefore, the State Government has the power to fix the period of detention upto 12 months in its order of confirmation irrespective of the period proposed or fixed by the detaining authority depending upon the opinion given by the Advisory Board. Even if the authority has fixed the period of detention in the order of detention passed under 3(2) of the PIT NDPS Act, there is no question that the State Government will be influenced by it.

09. The Apex Court in the case of *Pesala Nookaraju (supra)* has held that when the State Government passes a confirmatory order under Section 12 of the Act after receipt of the report from the Advisory Board then, such a confirmatory order need not be restricted to a period of three months only. It can be beyond a period of three months from the date of the initial order of detention, but up to a maximum period of twelve months from the date of detention. It is also said that the period



of three months stipulated in Article 22(4)(a) of the Constitution is relatable to the initial period of detention up to the stage of receipt of the report of the Advisory Board and does not have any bearing on the period of detention, which is continued subsequent to the confirmatory order being passed by the State Government on receipt of the report of the Advisory Board. Hence, we do not find any substance in the submission of Shri Mansoori, learned counsel for the petitioner. The relevant paragraphs – 42, 43 & 44 of the judgment passed in the case of *Pesala Nookaraju (supra)* are reproduced below:-

"42. Hence, Article 22(4)(a) in substance deals with the order of detention and has nothing to do with the delegation of the power of detention by the State Government to an Officer as stipulated under Section 3(2) of the Act. In fact, under Section 9 of the Act, the State Government has to refer the matter to the Advisory Board within three weeks from the date of detention, irrespective of whether the detention order is passed under Section 3(1) or Section 3(2) of the Act and the Advisory Board has to give its opinion within seven weeks from the date of detention. That would totally make it ten weeks. As stipulated in Article 22(4)(a) of the Constitution, if in a given case, once the Advisory Board gives its opinion within the stipulated period of three months, then in our view, Article 22(4)(a) would no longer be applicable. Thus, Article 22(4)(a) applies at the initial stage of passing the order of detention by the State Government or by an officer who has been delegated by the State Government and whose order has been approved by the State Government within a period of twelve days from the date of detention and not at the stage subsequent to the report of the Advisory Board. Depending upon the opinion of the Advisory Board, under Section 12 of the Act, the State Government can revoke the order of detention and release the detenu forthwith or may confirm the detention order and continue the detention of the person concerned for any period not exceeding the maximum period of twelve months, which is stipulated in Section 13 of the Act. Therefore, when the State Government passes a confirmatory order under Section 12 of the Act after receipt of the report from the Advisory Board then, such a confirmatory order need not be restricted to a period of three months only. It can be beyond a period of three months from



the date of the initial order of detention, but up to a maximum period of twelve months from the date of detention.

43. We reiterate that the period of three months stipulated in Article 22(4)(a) of the Constitution is relatable to the initial period of detention up to the stage of receipt of report of the Advisory Board and does not have any bearing on the period of detention, which is continued after the confirmatory order being passed by the State Government on receipt of the report of the Advisory Board. The continuation of the detention pursuant to the confirmatory order passed by the State Government need not also specify the period of detention; neither is it restricted to a period of three months only. If any period is specified in the confirmatory order, then the period of detention would be up to such period, if no period is specified, then it would be for a maximum period of twelve months from the date of detention. The State Government, in our view, need not review the orders of detention every three months after it has passed the confirmatory order.

44. Thus, in our view, the period of three months specified in Article 22(4)(a) of the Constitution of India is relatable to the period of detention prior to the report of the Advisory Board and not to the period of detention subsequent thereto. Further, the period of detention in terms of Article 22(4)(a) cannot be in force for a period beyond three months, if by then, the Advisory Board has not given its opinion holding that there is sufficient cause for such detention. Therefore, under Article 22(4)(a), the Advisory Board would have to give its opinion within a period of three months from the date of detention and depending upon the opinion expressed by the Advisory Board, the State Government can under Section 12 of the Act, either confirm the order of detention or continue the detention of the person concerned for a maximum period of twelve months as specified in Section 13 of the Act or release the detenu forthwith, as the case may be. If the order of detention is confirmed, then the period of detention can be extended up to the maximum period of twelve months from the date of detention. With respect, we observe that it is not necessary that before the expiration of three months, it is necessary for the State Government to review the order of detention as has been expressed by this Court in *Cherukuri Mani (supra)*. The Act does not contemplate a review of the detention order once the Advisory Board has opined that there is sufficient cause for detention of the person concerned and on that basis, a confirmatory order is passed by the State Government to detain a person for the maximum period of twelve months from the date of detention. On the



other hand, when under Section 3(2) of the Act, the State Government delegates its power to the District Magistrate or a Commissioner of Police to exercise its power and pass an order of detention, the delegation in the first instance cannot exceed three months and the extension of the period of delegation cannot also be for a period exceeding three months at any one time. [See: Abdul Razak v. State of Karnataka, ILR 2017 Kar 4608 (FB)]."

10. The petitioner, who is aged about 21 years has been found involved in three cases under the provisions of the NDPS Act and one case under M.P. Excise Act. After being released on bail, he has been continuously committing the crime of illicit trafficking of narcotic drugs, therefore, the impugned order of detention is desirable and in the interest of the society. Hence, no case for interference is made out.

11. In view of the above, the Writ Petition stands dismissed.

(VIVEK RUSIA)
J U D G E

(GAJENDRA SINGH)
J U D G E