

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 17052 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?                                                                        |  |
| 2 | To be referred to the Reporter or not ?                                                                                                       |  |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?                                                                           |  |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? |  |

**RAJESHBHAI KANUBHAI PAREKH THROUGH PAREKH DHAVAL****RAJESHBHAI****Versus****STATE OF GUJARAT****Appearance:****MR. JAY M THAKKAR(6677) for the Petitioner(s) No. 1****MR. PRAVAN DHAGAT, AGP, for the Respondent(s) No. 1****NOTICE SERVED BY DS for the Respondent(s) No. 2,4****SERVED BY RPAD (N) for the Respondent(s) No. 3****CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 18/01/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

[1] By way of this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the legality and validity of the order of detention dated 22.08.2023 at passed by the District Magistrate, Surat under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short, the 'PBM Act') being illegal, invalid, null and void, mala fide, misuse of powers and violative of Articles 14, 19 and 21 of the Constitution of India. The detention proceedings are based on an FIR which came to be registered with with Kadodara G.I.D.C Police Station being CR-II No.B-11214023230161 under part-25(1) of the Fertiliser (Inorganic, Organic or Mixed) (Control) Order 1985 and under section 3, 7(1)(A)(2) of the Essential Commodities Act-1955 on 04/02/2023 at 17:30 hours. During the investigation of the said offence, sections 465, 468, 171, 120 (B) of the I.P.C. has been added. The complainant of the said offence is Vivekbhai Rajeshbhai Metaliya, serving in office of Deputy Agriculture Director, Athwalines, Surat city.

[2] The facts of the offence is that on the basis of information received by the team of Hareshbhai Ranjitsinh Chandela, State Tax Inspector, Surat on 19.01.2023, on stopping the Eicher vehicle No.DD-01-E-9328 under custody of Govind Ramprasad Yadav (co detenue) at the south end of the over bridge at Kadodara Char Rasta and on checking it, there where white coloured plastic bags without any mark and it looked that it was chemical fertilizer and therefore, the agriculture officer Shri Vivekbhai Rajeshbhai Metaliya

(Deputy Agriculture Director, Palsana) arrived at the spot with his team and on checking the Eicher vehicle No.DD-01-E-9328, total 250 white coloured bags each containing 50 k.g. without any brand name were found and in the invoice bills and e-weigh bills, MINERAL OR CHEMICAL FERTILISERS CARBMIDE was written on each of them. Hence, samples from that quantity were obtained and the same were sent to Fertiliser Testing Laboratory, Bardoli, District Surat for analysis. As per the analysis report No.F.T.L/TECH/ A.R./625-28/2023 dated 24.01.2023 of the Chemical Manure Testing Laboratory, Bardoli, it was declared positive in neem coated urea test and all the quantity was transpired to be neem coated urea for Government subsidy based agriculture use. Therefore, as verification certificate to the effect that the white coloured bags contained neem coated urea in Eicher vehicle No.DD-01-E-9328 had been issued and as the team of Assistant State Tax Commissioner had inquired regarding muddmal loaded in Eicher vehicle No.DD-01-E-9328 and bill produced the tempo carried neem coated urea worth Rs.74,000/- in 250 white coloured bags with fake and bogus invoice and e-weigh bills , he got the said seized muddmal of neem coated urea registered in the name of Apex enterprize and its responsible person Prashant Bhatt, Address: Shop No.20, Narayan Complex, R.D. Swastik Society, Navrangpura, Ahmedabad, the quantity of manure was called for at the address of Ram Traders in the name of responsible person Kalaniya Tarunbhai Babubhai resi. At Shop No.41, F/S Plus Avenue Building, Royal Mensus, Bazar Road, Vapi, Valsad, Godown was hired at Bedva village in the name of Rajesbhai

Kanubhai Parekh, resident of 310, Vakil House, Karamsad, Ta., District Anand, conserved the said quantity of neem coated urea there, changed bags of neem coated urea and emptied the same in white coloured bags, Rajubhai Vohra - Mobile No.77000 09877 Sahil alias Montu Farukbhai Vohra, resident of Jenab Township, near Parivar Party Plot, Anand having native at Parabadi, Bhadarva, District Vadodara purchased subsidy based neem coated urea at cheap rates and sent to the industrial units for use in the said Eicher Tempo, Karimbhai- Mobile No.9909147528, Kiritbhai resident of Petlad, Dahyabhai resident of Petlad, Lilibhai resident of Petlad and Pintubhai Dumad Chowkdi- Mobile No.9924168006, 9978668006, for financial benefits, accumulated Government subsidy based neem coated urea meant for use of agriculture, in the godowns for using the same for industrial purpose instead of agriculture, emptied the muddamal in separate vehicles, supplied to the industrial units and thereby abetted one another.

[3] Learned advocate for the petitioner has challenged the order of detention on the ground that the detention order does not serve the purpose for which the detention order is passed as there is no issue with regard to the disturbance of public order. It is submitted that the petitioner has already been arrested as an accused in the offense and has been enlarged on bail by the Court of competent jurisdiction and therefore, there is no reason for detaining the petitioner. It is submitted that the role attributed to the petitioner even during the course of investigation indicates that the petitioner

was not found in possession of the Neem coated Urea, but on the basis of statement of certain witnesses, the petitioner has been attributed with some role. The detaining authority has relied upon the statement of the present petitioner himself to carve out a role to the petitioner which is not sufficient evidence to conclusively establish the offense against the petitioner. This fact, the detaining authority ought to have taken into consideration before passing the order of detention. It is lastly submitted that the order of detention is delayed by approximately five months and this is the ground which is sufficient to quash the order of detention. Learned advocate has relied upon the decision of this Court in group of matters being Special Civil Application No.8963 of 2023 and allied matters, which came to be disposed of by common oral judgment dated 14.06.2023 setting aside the order of detention.

[4] Learned Assistant Government Pleader has objected to the grant of petition by submitting that the involvement of the petitioner has been established by the Investigating Agency. Not only that, but the offense in itself is attracting the provisions of Prevention of PBM Act and therefore, the issue of delay or public order is of no consequence.

[5] In rejoinder, learned advocate for the petitioner submitted that pursuant to his detention, the son of the petitioner has made representation to the jail authority, which has been forwarded to the State Government, but till date no decision is communicated to the petitioner on such representation and therefore also continuing detention of the

petitioner is required to be quashed.

[6] Heard learned advocates for the parties and perused the documents placed on record. At the outset, it would be pertinent to observe that the order of detention is based on an FIR which came to be registered on 04.02.2023 in connection with which the petitioner was arrested on 14.03.2023 and on 17.03.2023, the petitioner was enlarged on regular bail. Thereafter, on 22.08.2023, the petitioner has been detained under the impugned order of detention by the detaining authority-District Magistrate, Surat.

[7] The aforesaid chronology indicates that there is a delay in passing the order of detention and therefore, as is held by the Apex Court in case of ***Sushanta Kumar Banik Vs. State of Tripura***, reported in **AIR 2022 S.C. 4715** has observed as under;

“11. We are persuaded to allow this appeal on the following two grounds:

(i) Delay in passing the order of detention from the date of proposal thereby snapping the "live and proximate link" between the prejudicial activities and the purpose of detention & failure on the part of the detaining authority in explaining such delay in any manner.

(ii) The detaining authority remained oblivious of the fact that in both the criminal cases relied upon by the detaining authority for the purpose of passing the order of detention, the appellant detenu was ordered to be released on bail by the special court. The detaining authority remained oblivious as this material and vital fact of the appellant detenu being released on bail in both the cases was suppressed or rather not brought to the notice of the detaining authority by the sponsoring authority at the time of forwarding the proposal to pass the appropriate order of preventive detention.

#### **DELAY IN PASSING THE ORDER OF DETENTION**

12. We may recapitulate the necessary facts which have a bearing so far as the issue of delay is concerned. The proposal to take steps to preventively detain the appellant at the end of the Superintendent of Police addressed to the Superintendent of Police (C/S) West Tripura, Agartala is dated 28th of June 2021. The proposal in turn forwarded by the Assistant Inspector General of Police (Crime) on behalf of the Director General to the Secretary, Home Department is dated 14.07.2021. The order of detention is dated 12th of November, 2021. There is no explanation worth the name why it took almost five months for the detaining authority to pass the order of preventive detention.

13. There is indeed a plethora of authorities explaining the purpose and the avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would suffice to refer to the decision of this Court in **Ashok Kumar v. Delhi Administration and Ors., (1982) 2 SCC 403** , wherein the following observation is made:

"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 doing."

14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a

delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the "live & proximate link" between the grounds of detention & the avowed purpose of detention.

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20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same."

[8] The Court also finds that despite the petitioner being enlarged on regular bail by an order dated 17.03.2023, it was open for the State authority to resort to cancellation of bail or challenge the order of bail to the higher forum, but the same



has not been resorted to. Not only that the order of detention also does not reflect application of mind to this aspect as the very essential factor for the detaining authority to pass an order of detention is preventive in nature so as to prevent any individual from continuously indulged in activity of black marketing. In the present case, there is no expressed opinion that the cancellation of bail was considered to be ineffective alternate to resort to detention process.

[9] The Court has found that the order of detention is based on amongst several other factors also upon the statement of the detenu himself. From the pleadings the role of the petitioner is that About six months ago, the petitioner was going to Chokdi for labor work, at that time the petitioner got acquainted with Sahil alias Montu. Therefore, the petitioner used to meet this Sahil alias Montu often. In which, in the month of November last year 2022, Sahil alias Montu told the petitioner that he is going to start the business of urea fertilizer and therefore he has rented a godown to stock the fertilizer and the rent agreement has to be signed in his name and for which the petitioner will receive Rs.5000/- and a certain amount every month. Therefore, as the petitioner was in need of money, the petitioner gave in to the temptation and agreed. This Sahil alias Montu Vahora had rented a godown of a person namely Ashokbhai at Moje Bedwagam behind the Dairy in Odiavari area in assessment no-1252. As, he has rented the godown in his name, rent agreement regarding the same was executed. Thereafter, this godown was used by Sahilbhai and he used to bring and store quantity of fertilizer from different places in the godown and from there he used to

supply to different places.

[10] This, in the opinion of the Court, is also a violation of effective right of the petitioner to represent against the violation of his fundamental rights to liberty.

[11] Lastly, the Court has taken into consideration common oral judgment dated 14.06.2023 by the Co-ordinate Bench in a group of petitions, where the detention proceedings had arisen out of the same FIR pertaining to detection of offense in connection with sale of "Neem coated Urea" being a subsidized item meant for agricultural purpose being sold at commercial value for commercial purpose, wherein this Court has quashed the order of detention.

[12] For the foregoing discussion, the present petition is required to be accepted and accordingly, the petition is **allowed**. Detention order dated 22.08.2023 passed by the respondent authority against the petitioner is hereby quashed and set aside. Rule is made absolute accordingly.

(A.Y. KOGJE, J)

(SAMIR J. DAVE, J)

SIDDHARTH