REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA**
**CONSTITUTIONAL WRIT JURISDICTION**
**APPELLATE SIDE**

RESERVED ON: 21.08.2025

DELIVERED ON: 25.08.2025

**PRESENT:**

**THE HON'BLE MR. JUSTICE TAPABRATA CHAKRABORTY**

**AND**

**THE HON'BLE MR. JUSTICE REETOBROTO KUMAR MITRA**

**W. P. A. (H) NO. 22 OF 2025**

**JAHANARA BIBI @ JAHANARA BEGAM @ JAHANARA MONDAL @ JANU**

**- VERSUS –**

**UNION OF INDIA & OTHERS.**

Appearance:

Mr. Uday Sankar Chattopadhyay, Adv.

Mr. Pronay Basak, Adv.

Ms. Rajashree Tah, Adv.

Ms. Trisha Rakshit, Adv.

Ms. Aishwarya Datta, Adv.

Ms. Sadia Parveen, Adv. ... For the Petitioner

Mr. Arun Kumar Maiti (Mohanty) Adv.

Mr. R. R. Mohanty, Adv. ... For the UoI/Respondents

Reetobroto Kumar Mitra, J.:

1. This Writ Petition has been filed seeking a Writ of Habeas Corpus upon setting aside, cancelling, withdrawing and/or quashing the detention order dated 5th September, 2024 passed by the Detaining Authority, Joint Secretary under the Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act of 1988 (hereinafter referred to as PIT-NDPS) directing that the petitioner be detained and kept in Loknayak Jayaprakash Narayan Central Jail, Hazaribagh, Jharkhand (hereinafter referred to as the said Jail) to prevent the petitioner's participation in any further illicit activity and in public interest. The petitioner has been found to be a habitual offender and threat to innocent persons such that her activities are prejudicial and detrimental to the society.

2. The facts leading to the order of 5th September, 2024 are clear and unequivocal. The petitioner had been arrested on account of three cases as under:-

   i. FIR No. 3 of 2020 pending before City Sessions Court, Calcutta, in which the petitioner was granted bail on 11th December, 2020. (1.01 Kg of heroin)

   ii. NCB Case No. 19 of 2023 whereby petitioner was granted bail on 9th May, 2024. ( seizure of 30 Kg of ganja)

iii. NDPS Case No. 4 of 2024 corresponding to NCB Case No. 2 of 2024 pending before the learned Additional Sessions Judge 12th Court, Alipore in which the petitioner was granted bail on 5th March, 2024.( seizure of 7 Kg of ganja)

3. In all three cases the petitioner was (allegedly in possession) of heroin and ganja. In the second case, petitioner was found to be in possession of ganja exceeding 20 kg ceiling, making it of commercial value. The petitioner had been granted bail in all three matters by the Courts of competent jurisdiction, including an order by the Hon'ble High Court at Calcutta.

4. The order of detention dated 5th September, 2024 was communicated to the petitioner sometime in December, 2024. On 16th December, 2024, the petitioner was taken to the prison in Jharkhand but refused admission on the first instance. Thereafter, on 18th January, 2025, the petitioner was lodged in the prison in Jharkhand.

5. The petitioner's son made a representation on 22nd January, 2025 seeking cancellation of the order of detention. A second representation, this time by the petitioner herself, was made on 10th February, 2025.

6. The representation dated 22nd January, 2025 was rejected by an order dated 19th February, 2025, while the representation of 10th February, 2025 was rejected twice, once on 29th April, 2025 and again on 14th May, 2025. The

rejection on 14th May, 2025, while the present Writ Petition was filed and pending.

7. The petitioner thereafter made a representation to the Advisory Board, Jharkhand against the order of detention, dated 5th September, 2024.

8. In the meanwhile, the Union of India through Narcotics Control Bureau, KZU, Kolkata, had applied for cancellation of the petitioner's bail, which was rejected by the High Court at Calcutta on 6th March 2025.

9. The Writ Petition was filed sometime in February, 2025 and obviously does not, as it could not have, challenged the order/opinion of the advisory board, made subsequently on 26th March, 2025. A supplementary affidavit has been filed by the petitioner bringing on record the order dated 19th February, 2025 rejecting the representation dated 22nd January, 2025 as well as the advisory board's opinion dated 6th March, 2025 as well as the order passed by the Hon'ble High Court at Calcutta dated 6th March 2025 refusing to cancel the bail subsisting in favour of the petitioner herein.

10. It is in this factual conspectus that the Writ Petition has been filed before us challenging inter alia the order dated 5th September, 2024. A reference was made at the behest of the petitioner of the detention order to the Advisory Board. The Advisory Board rendered its opinion on 6th March, 2025, that the detention order had been made validly.

11. We have heard counsel appearing for the parties at great length and also noted the judgments relied upon by both parties. The petitioner's grievance may be summarised as under:-

I. For a period of four and a half months from September, 2024 to December 2024 the petitioner had not been informed of the order of detention.

II. The detaining authority has gone beyond its jurisdiction in determining and coming to the finding that the petitioner is indeed involved in the crimes complained of. Thus, the detaining authority has committed a jurisdictional error in passing the order dated 5th September, 2024.

III. The detaining authority has not recorded any subjective satisfaction, which is the sine qua non as stipulated, before coming to a finding that the detention of the accused person is essential to stop and prevent any further act which may be prejudicial to the society at large.

IV. The petitioner, having obtained bail in all three matters as well as complied with the conditions of bail, could not be construed as a threat to the public at large and no reason has been shown by the

detaining authority to take such a drastic step as detaining her in a Jail, far away from her place of residence.

V. There is no finding that the petitioner's presence will result in breach of public order.

VI. The petitioner has relied upon the following decisions 2022 SCC Online SC 1333, (2021) 9 SCC 415, 1970 Cri.L.J. 852, AIR Online 2024 SC 915., AIR 2025 SC 1685, AIR Online 2021 Cal 867, 2024 Cri.L.J. 173 and 2024 SCC Online Del 5471 as well as the decision of the Hon'ble Supreme Court of India in Criminal Appeal No. 2897 of 2025 Dhanya M vs. State of Kerala &Ors.

12. Counsel for the respondents has sought to justify the detention on following the conspectus of facts:-

i. The Writ Petition is not maintainable, in as much as the efficacy of the order dated 5th September, 2024 has expired with the passing of the opinion of the advisory board on 6th March, 2025.

ii. This order/opinion of the advisory board has not been assailed in the Writ Petition and therefore a fresh Writ Petition ought to be filed on the basis of such new cause of action (being the order/opinion of the advisory board dated 6th March, 2025).

iii. The scope of the Writ Petition could not have been enlarged by way of a supplementary affidavit and the case has to be within the four corners of the pleadings in the petition.

iv. All documents at all material times had been made over to the petitioner and explained to her in a language that she understands.

v. The petitioner is neither a rustic lady nor a person remotely concerned with the crimes as sought to be made out in the petition. In fact, the petitioner is a kingpin of the narcotic supply business in the locality.

vi. The petitioner has in the statement made by her voluntarily admitted that she engages other persons from other states to acquire narcotic substances for her, which she would deal with over a phone call and through her aides and assistants.

vii. The petitioner's case has been considered and rejected by the detaining authority, upon considering several documents on at least three occasions, upon furnishing adequate reasons.

viii. The detaining authority has considered all documents, past records and the conduct of the petitioner, who has on earlier occasions been untraceable once released on bail.

ix. The petitioner being the kingpin of the narcotic trade, it is imperative that she be removed to a Jail in a place, away from her locale, as on earlier occasions and prior experience reveal that the petitioner is equipped to run the syndicate remaining inside the jail of her locale.

x. The respondent has also argued that in judicial review, this Hon'ble Court would not get into the intricacies of the crime nor would it intervene and interject in the subjective opinion rendered by the detaining authority or the advisory board, unless it is shown that such opinion was opaque, contrary to the established procedure or that there was mala fide in reaching the conclusion as reached. None of such issues have been raised by the petitioner and hence the Writ Petition should be dismissed.

xi. The respondent has relied upon the following decisions: 1974 AIR 2154, (2003) 4 COMPLJ 333 (CAL) and a judgment of Delhi High Court in Monu @ Sandeepvs Union of India through its Secretary and Ors. in the case of W.P. (CRL) 2743 of 2024.

13. We have heard both parties at length and considered the arguments and the decisions relied upon by them.

14. The petitioner was arrested on three separate occasions for three separate cases. The first of such cases was regarding 1.01kg of heroin, the second for being in constructive possession of 30 kg of ganja along with her associates. The third was in respect of 7 kg of ganja seized from her residence. We say "constructive possession" since a co-ordinate bench of this Hon'ble Court has held that ganja was recovered from her co-accused and she was arrested on the basis of the statement of the co-accused before the IO. The money recovered also could not be traced to the alleged transaction. These findings in the order dated 9th May, 2024, leading to the grant of bail have not been challenged.

15. Thus, the petitioner on all three occasions was granted bail by the Courts of competent jurisdiction, including the Hon'ble High Court at Calcutta.

16. The petitioner has challenged the order of the detaining authority of 5th September, 2024. This order was referred to the Advisory Board. Mr. Maity appearing for the respondent produced the original order of the Advisory Board, which we perused and returned to Mr. Maity, keeping a copy on record. The opinion rendered by the advisory board of the state of Jharkhand is a bare confirmation of the order of the detaining authority.

17. The findings of detaining authority which led to the order of 5th September, 2024 are enumerated hereunder:-

I. That the petitioner is a habitual offender.

II. The petitioner has been involved in trafficking of narcotic drugs and psychotropic substances.

III. The petitioner has a propensity to be involved in prejudicial activity in future.

IV. The petitioner is a threat to innocent persons of the locality and her activities are prejudicial to the society.

18. The detaining authority came to the conclusion that the petitioner, being a habitual offender, could probably indulge in such activities of trafficking if not kept in preventive detention. Subjective satisfaction relates not so much to why the petitioner should be kept in preventive detention but more on the factum that the petitioner has been involved in trafficking over a period of time. The detaining authority has come to this finding even after the petitioner was granted bail in the three criminal cases. The finding of the detaining authority is more on the petitioner's alleged crime than on its satisfaction that the petitioner needs to be detained, which is a bare observation regarding her propensity to be involved in such trafficking. The conclusion of the detaining authority that the petitioner is a "habitual offender", tends to put the cart before the horse, as the petitioner has not been held guilty in any of the crimes that she has been charged. The Hon'ble Supreme Court in the judgment reported in (2021) 9 SCC 415 has clearly held that the apprehension of a repetition of the crime cannot be a ground for preventive detention. A close reading of the detaining

order makes it clear that the reasons for the said order are not any apprehension of any public harm, danger, or alarm but merely because the detenu was successful in obtaining bail from the courts of competent jurisdiction in each of the three FIRs

19. The order of the detaining authority of 5th September, 2024 has been passed on the basis of allegation of offences committed by the detenu prior to the said order being passed in respect whereof the Hon'ble Jurisdictional Courts had granted her bail. The order was executed only on 18th January, 2025, almost 5 months after the order was passed. There is a clear break in the live and proximate link, warranting an order of preventive detention. The respondent was unable to provide the date when the sponsoring authority had proposed preventive detention of the detenu to the detaining authority, inspite of our repeated query.

20. It will also not be out of place here to mention that since preventive detention, is an anathema to personal liberty, one has to give equal credence and weightage to the personal liberties of a person which are proposed to be suspended by way of the order of preventive detention.

21. The ordinary remedies available to the enforcement authorities are adequate as stipulated under the NDPS Act which clearly do not warrant invocation of Section 3 of PIT-NDPS as an evasion of the personal liberties of an individual.

22. It is also of great concern that once the appropriate Courts had already enlarged the concerned person, the petitioner herein, on bail on three separate occasions, the detaining authority proceeded to pass the order of 5th September, 2024 without considering the factum of bail being granted to her.

23. It will not be out of context to mention that the detaining authority's subjective satisfaction is geared towards the findings of the guilt of the detenu. The only apprehension of the detaining authority and hence his subjective satisfaction in respect thereof, is that the detenu might once again indulge in her illegal activities if she is not detained. The mere apprehension of repetition of a crime is not a ground for preventive detention.

24. To apply the test of legality of the detention order, it is absolutely imperative that we test such order on the basis of the parameters set forth by the Hon'ble Apex Court in Ameena Begum v. State of Telangana and Ors. reported in 2023 SCCOnLine SC 1106. Clearly the detention order fails to meet the mark as set forth in Ameena Begum (supra).

25. The petitioner went through the rigours of Section 37 of the NDPS Act, 1985 and even thereafter was granted bail on three separate occasions. In fact, for the third alleged crime, possession of 7 kg of ganja, the application for cancellation of bail was also rejected by a bench of this Hon'ble Court. Thus, there is no reason to construe that the rigours of Section 37 of the NDPS Act, 1985 had not been taken into consideration while the petitioner was granted bail. The

authorities presently cannot override the grant of bail, and make the present order detaining her on the self-same grounds on which the petitioner had been granted bail.

26. It is also of relevance to note here that in the decision of Sushanta Kumar Banik v. State of Tripura reported in 2022 SCCOnLine SC 1333 the Hon'ble Apex Court had refused to keep a person in preventive detention, who had earlier been charged with two cases of possession of narcotics and was also involved in running the illegal business of narcotic drugs throughout the state of Tripura and was caught red-handed while dealing with such substance near a railway station. Facts of the case are very similar to the facts of the instant case. A period of four months lapsed before the order of preventive detention was executed. The delay in effecting the order of detention was unexplained, in spite of repeated queries from the Court. Such delay breaks the live and proximate link between the grounds of detention and the avowed purpose of detention.

27. In the decision of the Hon'ble Apex Court in Ameena Begum vs. State of Telangana and Ors. reported in 2023 SCCOnLine SC 1106, the facts were surprisingly similar, in as much as in the said case there were three criminal proceedings, in all of which the detenu had been released on bail. The Hon'ble Apex Court held that in view of the enlargement on bail in three criminal cases, the provision of the Act, which is an extraordinary statute, could not have been resorted to when ordinary criminal law (NDPS Act 1985) provides sufficient means to address the apprehension leading to the impugned detention order. In

fact, in the present case, the application seeking cancellation of bail was also dismissed by a Division Bench of this Hon'ble Court.

28. The law of preventive detention as espoused through various decisions of the Hon'ble Supreme Court of India and several High Courts of this country are all ad idem on one fundamental issue, that is, preventive detention is an aberration of the right to freedom of an individual's personal liberties. Thus, to give credence to such an aberration, the probative value of the materials on record must be of a very high order to justify suspending an individual's right to freedom and liberties.

29. It is a well settled proposition, through years of judicial pronouncements as late as in 2025 by the Hon'ble Supreme Court of India that preventive detention is an extraordinary power in the hands of the State which must be used sparingly as it curtails the liberty of an individual in order to prevent an anticipated commission of an offence which could disrupt public order. Needless to say that preventive detention is an exception to Article 21 and therefore must be applied only in rare cases.

30. Any order of detention, on the basis of allegation, prior to a conviction is nothing but an invasion of personal liberty of an individual and should therefore adhere strictly to the statutory requirement and even stricter procedural and substantive safeguards as envisaged under Article 22 of the Constitution of India. The Hon'ble Apex Court in several of its decisions has reiterated that the

power of preventive detention is a "necessary evil and must be exercised only within strict statutory and constitutional confines". The detaining authority must have contemporaneous and relevant material to which an application of mind without relying on conjecture and assumption must be shown. Keeping in mind the limited scope of interference in judicial review, we cannot turn a blind eye to the detaining authority's mechanical adoption of the recommendations given by the police authority. A mere line that the petitioner's enlargement into civil society may give rise to threat and harm to the society at large is wholly insufficient and inadequate to suspend her personal liberties.

31. There is no change in circumstance since 2020 (being the date of arrest for the commission of the first alleged offence) till 2024 (being the date of commission of the last alleged offence) and till 18th January, 2025 (date of arrest of the petitioner). Thus, preventive detention cannot be exercised as a punitive step, which the detaining authority has sought to do in this matter.

32. The legal distinction between preventive and punitive detention is well established. The former aims to forestall future prejudicial acts, the latter to punish past ones. Yet from the point of the detenu, the practical reality is the same: loss of liberty, separation from family, and confinement behind prison walls. Indeed, preventive detention, imposed without trial, can be more intrusive to personal liberty than punitive detention. This is why the Constitution and the statute subjects such orders to strict safeguards, and why the Supreme Court has cautioned that preventive detention must not be used as a convenient substitute

for punishment under the ordinary criminal process. Where the real object is to incarcerate for past offences, or to continue custody despite a court granting bail, the order loses its preventive character and becomes unconstitutional.

33. In view of the aforesaid facts and circumstances, we are unable to uphold the detaining order and respectfully disagree with the opinion of the Advisory Board.

34. For the reasons aforestated, we allow the Writ Petition setting aside the order of preventive detention of 5th September, 2024. The detenue shall be set at liberty forthwith.

35. With this observation and direction, we allow the writ petition.

36. The appeal and the connected applications are disposed of without any order as to costs.

37. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

**(Reetobroto Kumar Mitra, J.)** **(Tapabrata Chakraborty, J.)**

**Later:**

After pronouncement of the judgment, Mr. Maiti learned advocate appearing for the respondents prays for stay of operation of the judgement.

Such prayer is considered and refused.

**(Reetobroto Kumar Mitra, J.)** **(Tapabrata Chakraborty, J.)**