

**IN THE HIGH COURT OF JHARKHAND AT RANCHI  
(Criminal Writ Jurisdiction)**

**W.P.(Cr.) No. 598 of 2022**

Ashok Yadav, aged about 52 years, son of Late Yamuna Yadav, resident of Sakrigali, Samda Nala, P.O. and P.S. - Sahibganj (M), District - Sahibganj.

..... **Petitioner**

***Versus***

1. The State of Jharkhand through Principal Secretary, Department of Home, Prison and Disaster Management, Project Building, Dhurwa, Ranchi, P.O. and P.S. Dhurwa, District – Ranchi;
2. The Deputy Secretary, Department of Home, Prison and Disaster Management, Project Building, Dhurwa, Ranchi, P.O. and P.S. Dhurwa, District – Ranchi;
3. The District Magistrate -cum- Deputy Commissioner, Sahibganj, P.O. and P.S. Sahibganj, District – Sahibganj;
4. The Superintendent of Police, Sahibganj, P.O. and P.S. Sahibganj, District-Sahibganj;
5. The Sub-Divisional Police Officer, Sahibganj, P.O. and P.S. Sahibganj, District-Sahibganj.

..... **Respondents**

**CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR  
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

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| For the Petitioner | : Mr. Vimal Kirti Singh, Advocate<br>Ms. Manjusha Priya, Advocate<br>Mr. Ujjal Choudhary, Advocate<br>Mr. Siddhartha Gautma, Advocate<br>Mr. Raunak Sahay, Advocate |
| For the State      | : Mr. Mrinal Kanti Roy, GA-I<br>Mr. Chandan Tiwari, AC to GA-I  |

**J U D G M E N T**

C.A.V on 13/07/2023

Pronounced on 14/07/2023

Per Shree Chandrashekhar, J.

This writ petition (Criminal) has been filed by Ashok Yadav aged about 52 years to challenge the order of preventive detention dated 16<sup>th</sup> September 2022 passed by the District Magistrate-cum-Deputy Commissioner, Sahibganj under section 12(2) of the Jharkhand Control of Crimes Act, 2002 (in short, “Crimes Control Act”). The confirmation order dated 22<sup>nd</sup> November 2022 issued under the signature of Under Secretary, Department of Home, Prison and Disaster Management, Government of

Jharkhand by which the preventive detention of the petitioner for a period of 3 months from 16<sup>th</sup> September 2022 to 15<sup>th</sup> December 2022 was approved has also been put under challenge in the present proceeding.

2. Upon the matter mentioned by the learned counsel for the petitioner this writ petition was first listed before this Bench on 11<sup>th</sup> May 2023. On that day, the learned counsel for the petitioner produced a copy of the order dated 28<sup>th</sup> April 2023 passed in WP(Cr.) No.182 of 2023 in which the Hon'ble Supreme Court has made an observation that this writ petition may be heard preferably within a period of 2 weeks and, accordingly, the respondents were granted one week's time for filing their response to this writ petition and the matter was directed to be posted on 19<sup>th</sup> May 2023.

3. Order dated 11<sup>th</sup> May 2023 reads as under:

I.A No. 1883 of 2023

*This interlocutory application has been filed for amendment/addition in para no. 1 and the prayer portion of the instant writ petition.*

*The learned counsel for the petitioner seeks permission to withdraw this interlocutory application.*

*Permission is accorded.*

*Accordingly, I.A No. 1883 of 2023 is dismissed as withdrawn with liberty to challenge the order dated 15<sup>th</sup> December 2022 by filing writ petition.*

I.A No. 4489 of 2023

*This interlocutory application has been filed for amendment/addition in para-1 and the prayer portion of the instant writ petition.*

*The learned counsel for the petitioner seeks permission to withdraw this interlocutory application.*

*Permission is accorded.*

*Accordingly, I.A No. 4489 of 2023 is dismissed as withdrawn with liberty to challenge the order dated 15<sup>th</sup> March 2023 by filing writ petition.*

I.A No. 1884 of 2023

*This interlocutory application has been filed in view of objection no. 9(iii) raised by the Registry.*

*The objection raised is that the petitioner is required to produce a certified copy of the detention order dated 15<sup>th</sup> September 2022.*

*I.A No. 1884 of 2023 is allowed and consequently objection no.9(iii) raised by the Registry is ignored.*

I.A No. 4260 of 2023

*This interlocutory application has been filed to change the nomenclature in the writ petition in view of the order dated 05.01.2023 passed by this Court in L.P.A No. 568 of 2022 [“Prakash Chandra Yadav @ Mungeri Yadav v. State of Jharkhand & Ors.”].*

*I.A No. 4260 of 2023 is not necessary in view of the order for listing of all preventive detention matters and is, accordingly,*

*disposed of.*

W.P.(Cr.) No. 598 of 2022

*Mr. Rupesh Singh, the learned counsel for the petitioner brings to our notice a copy of the order dated 28<sup>th</sup> April 2023 passed in Writ Petition (Criminal) No. 182 of 2023 to inform the Court that the Hon'ble Supreme Court has expressed its desire that this writ petition may be heard preferably within a period of two weeks.*

*Since this Bench was not available from 20<sup>th</sup> April till 8<sup>th</sup> May 2023 except 5<sup>th</sup> May 2023 this matter could not be heard.*

*Issue notice.*

*Mr. M. K. Roy, the learned GA-I appears and waives service of notice on behalf of the respondents. The learned G.A-I seeks one week's time for filing response to this writ petition.*

*Post this matter on 19<sup>th</sup> May 2023."*

4. Just to indicate, this writ petition was filed on 30<sup>th</sup> November 2022 with defects but thereafter no step was taken by the petitioner for hearing of this writ petition at an early date. On 11<sup>th</sup> January 2023, when the matter was listed before Joint Registrar (Judicial) for removal of the defects no one appeared on behalf of the petitioner and, in the meantime, I.A No.1883 of 2023 for amendment and I.A No.1884 of 2023 for ignoring the defects were filed. Later on, I.A No.4260 of 2023 for changing nomenclature of the writ petition was also filed but the matter was not prosecuted on behalf of the petitioner. As a matter of fact, no application for an early hearing of this writ petition was filed by the petitioner and we may further indicate that a defective petition shall not be automatically listed before the Court for hearing.

5. Curiously, I.A No. 4783 of 2023 was filed on 17<sup>th</sup> May 2023 for quashing of the orders dated 15<sup>th</sup> December 2022 and 15<sup>th</sup> March 2023 by which the period of preventive detention has been successively extended. To recapitulate, by an order dated 11<sup>th</sup> May 2023 similar applications vide I.A Nos.1883 and 4489 of 2023 for amendment in the writ petition to challenge the orders dated 15<sup>th</sup> December 2022 and 15<sup>th</sup> March 2023 were dismissed with liberty to the petitioner to challenge the aforesaid orders by filing fresh writ petition. Notwithstanding that, this interlocutory application was filed on behalf of the detenu which accordingly was dismissed with an observation that delay caused in the hearing of this writ petition was on account of the procedure adopted by the writ petitioner.

6. The order dated 19<sup>th</sup> May 2023 reads as under:

“IA No.4783 of 2023

*In the order dated 11<sup>th</sup> May 2023, this Court has noticed the order passed in Writ Petition (Criminal) No. 182 of 2023 which was filed before the Hon'ble Supreme Court.*

*2. On that day, the applications filed for amendment to challenge the subsequent detention orders were dismissed with liberty to the petitioner to challenge the orders dated 15<sup>th</sup> December 2022 and 15<sup>th</sup> March 2023 by filing fresh writ petitions.*

*3. Notwithstanding that, IA No.4783 of 2023 has been filed with the following prayers:*

*“(a) Quashing of order as contained in Memo No.253/CCA/Ranchi dated 15.12.2022, whereby and whereunder the Government of Jharkhand has extended the period of preventive detention of the petitioner for a further period of three months from 16.12.2022 to 15.03.2023.*

*(b) Quashing/ setting aside of Memo No.307/CCA/Ranchi dated 15.03.2023, whereby and wherein the Government of Jharkhand has been pleased to extend the order of preventive detention of the petitioner for a further period of six months in one stretch from 16.03.2023 to 15.09.2023.*

*(c) Direction upon the respondents to allow home cooked food and non-alcoholic beverages to the petitioner under the preventive custody in the light of law laid down by the Hon'ble Supreme Court in the case of A.K. Roy Vs. Union of India reported in (1982) 1 SCC 271 (para107).*

*4. The petitioner has made the following statement in para-2 of the Interlocutory Application:*

*“2. ... ..*

*It is stated that the aforesaid two Interlocutory Applications being IA Nos. 1883/2023 and 4489/2023 in W.P.(Criminal) No. 598/2022 was permitted to be withdrawn by the Hon'ble Court vide order dated 11.05.2023 with liberty to challenge the same by way of separate writ petition.*

*That due to the fact that the petitioner is under preventive detention/custody, fresh vakalatnama for filing a fresh writ petition in short span of time could not be obtained and instant writ petition was posted for 19.05.2023 and hearing of the two writ petition separately would cause prejudice to the case of the Petitioner. Under such circumstances, although the I.A. No. 1883/2023 and I.A. No. 4489/2023 were withdrawn but due to compelling circumstances, the instant I.A. petition is being filed in the interest of justice and also for the reason that the relief prayed in the main writ petition will get further support from the subsequent conduct of the Respondents challenged in the instant I.A. Petition. Hence, the Petitioner tenders his apology for not being able to file fresh writ petition.”*

*5. At this stage, we must observe that the delay caused in hearing of this writ petition is on account of the procedure adopted by the writ petitioner. The explanation offered in the present Interlocutory Application is unacceptable.*

*6. In view of the order dated 11<sup>th</sup> May 2023, IA No.4783 of 2023 is dismissed.*

*7. Post this matter on 16<sup>th</sup> June 2023.”*

7. At this stage, we need to clarify why we have recorded the previous proceedings in this writ petition. As it appears from the records, on the one hand the petitioner did not prosecute this matter for about 6 months

and on the other hand an impression was given before the Hon'ble Supreme Court as if this writ petition is not being heard by the High Court. This admits no controversy that the exercise of powers under Article 226 of the Constitution is discretionary and must necessarily depend upon the unblameworthy conduct of the person seeking relief. Therefore, the doctrine of laches can be invoked to deny relief to a person if he fails to put forth a plausible and acceptable explanation to the Court.

8. Sir Barnes Peacock<sup>1</sup> has once said, thus:

*“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”*

9. A Constitution Bench<sup>2</sup> of the Hon'ble Supreme Court has also approved this doctrine that dis-entitles a party for grant of relief under Article 226 of the Constitution of India.

10. However, having regard to the Constitutional safeguard provided to a detenu and an apparent error in the procedure adopted by the respondents, we have decided to examine the matter in detail.

11. The main point urged on behalf of the detenu is that there is inordinate and unexplained delay in deciding his representation dated 26<sup>th</sup> October 2022.

12. Mr. Vimal Kirti Singh, the learned counsel for the detenu would submit that delay of 50 days in taking a decision on the representation of the detenu speaks volumes about blatant violation of the Constitutional right of the detenu as enshrined under Article 22(5) of the Constitution of India.

13. The learned counsel for the detenu has referred to the following

1. Lindsay Petroleum Co. v. Hurd : (1874) 5 PC 221

2. Moon Mills Ltd. v. M.R. Meher, President, Industrial Court : AIR 1967 SC 1450

judgments to fortify his submission that the continued detention of the detenu is illegal on account of delay in deciding his representation:

- (i) *“Jayanarayan Sukul v. State of W.B.”*<sup>3</sup>
- (ii) *“Icchu Devi Choraria v. Union of India”*<sup>4</sup>
- (iii) *“Khatoon Begum v. Union of India”*<sup>5</sup>
- (iv) *“Aslam Ahmed Zahire Ahmed Shaik v. UOI”*<sup>6</sup>
- (v) *“Kundanbhai Dulabhai Shaikh v. Distt. Magistrate, Ahmedabad”*<sup>7</sup>
- (vi) *“Ankit Ashok Jalan v. Union of India”*<sup>8</sup>

14. In the counter-affidavit dated 13<sup>th</sup> June 2023 filed on behalf of the respondent nos.3 to 5, a brief history of criminal antecedent of the petitioner has been given. The respondents have stated that the petitioner is anti-social element and his main profession is illegal mining and extortion and; he is an associate of Prakash Chandra Yadav alias Mungeri Yadav and is involved in gang wars. According to the respondents, the petitioner is involved in six criminal cases in which serious allegations of attempt to murder, extortion, illegal possession of stolen property; and offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Jharkhand Mines and Minerals Act, 2004 and Arms Act, 1959 have been leveled against him.

15. As the order rejecting representation of the detenu was not produced alongwith the counter-affidavit dated 13<sup>th</sup> June 2023, the Sub-Divisional Police Officer who had sworn the affidavit was called by the Court on 19<sup>th</sup> June 2023. On that day, original records were produced in the Court and a direction was issued to the Secretary, Department of Home, Prison and Disaster Management to file her personal affidavit as regards disposal of representation of the detenu.

16. The order dated 19<sup>th</sup> June 2023 reads as under:

*“There is no affidavit filed on behalf of the respondent nos. 1 and 2.*

*2. On 16<sup>th</sup> June 2023 this Court has passed the following order:*

*“A counter-affidavit has been filed by one Pradeep Oraon who is presently working as S.D.P.O, Barharwa.*

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- 3. *Jayanarayan Sukul v. State of W.B.* : (1970) 1 SCC 219
  - 4. *Icchu Devi Choraria v. Union of India* : (1980) 4 SCC 531
  - 5. *Khatoon Begum v. Union of India* : (1981) 2 SCC 480
  - 6. *Aslam Ahmed Zahire Ahmed Shaik v. UOI* : (1989) 3 SCC 277
  - 7. *Kundanbhai Dulabhai Shaikh v. Distt. Magistrate, Ahmedabad* : (1996) 3 SCC 194
  - 8. *Ankit Ashok Jalan v. Union of India* : (2020) 16 SCC 127

*This counter-affidavit has been filed on behalf of the respondent nos.3 to 5.*

*Mr. Rupesh Singh, the learned counsel for the petitioner has brought to our notice the statements made in paragraph nos.22 and 23 to submit that neither a copy of the rejection of representation of the detenue has been produced on record nor the date of rejection has been indicated in this counter-affidavit filed on behalf of the respondent nos.3 to 5.*

*Post this matter on 19<sup>th</sup> June 2023 on which date Pradeep Oraon, S.D.P.O, Barharwa shall remain physically present in the Court with all relevant records.*

*We would further indicate that if not satisfied with the explanation given by S.D.P.O, Barharwa, we may call the Home Secretary, Government of Jharkhand to remain physically present in the Court on 21<sup>st</sup> June 2023. ”*

*3. From the affidavit dated 19<sup>th</sup> June 2023, we gather that the representation of the detenue submitted by him on 26<sup>th</sup> October 2022 has been considered and rejected by Under Secretary to the Government, Department of Home, Prison and Disaster Management on 15<sup>th</sup> December 2022.*

*4. Mr. Mrinal Kanti Roy, the learned GA-I states that the original records which have been handed over to him reveal that a proposal was moved by the Home Secretary on 1<sup>st</sup> December 2022 for rejecting the representation of the detenue and extending the period of detention.*

*5. If the aforesaid facts are correct, there appears to be serious lapse on the part of the Home Secretary and, accordingly, a direction is issued to the Secretary, Department of Home, Prison and Disaster Management to file her personal affidavit within next three days.*

*6. Post this matter on 22<sup>nd</sup> June 2023. ”*

17. In the counter-affidavit filed by the Principal Secretary, Department of Home, Prison and Disaster Management, it is stated that the order of preventive detention dated 16<sup>th</sup> September 2022 was approved by the appropriate government on 27<sup>th</sup> September 2022 and the Advisory Board vide its proceeding dated 1<sup>st</sup> November 2022 has recorded its opinion that there is sufficient cause for detention of the detenu.

18. However, this is an admitted position that representation of the detenu has been received in the Department on 3<sup>rd</sup> November 2022 and the rejection order has been issued under the signature of the Under Secretary of the Government on 15<sup>th</sup> December 2022.

19. The powers to legislate preventive detention laws which seriously abrogate the liberty of a person at the discretion of the government can be found in Entry 9 of List I of Schedule VII which empowers the Union Legislature and Entry 3 in List III of Schedule VII which empowers the Union and State Legislatures to make laws for preventive detention in normal times. The Constituent Assembly debates indicate that there was a

serious discussion as regards making a provision for preventive detention but finally the interest of the State was accorded precedence over liberty of the individual. However, the framers of Constitution thought it necessary to make the powers of preventive detention subject to certain Constitutional safeguards.

20. The right to make representation against the order of detention flows from Article 22(5) of the Constitution of India. Section 17 of the Crimes Control Act also gives a right to the detenu to make representation against the preventive detention order. The provisions under section 17 are only reiteration of the Constitutional remedy available to the detenu under Article 22(5) and any infraction of this right of the detenu has been frowned upon by the Courts. In “*Amid Shad Khan v. L. Hamid Liyani*”<sup>9</sup> the Hon'ble Supreme Court has held that the right to make a representation against the detention order thus flows from the Constitutional guarantee enshrined in Article 22(5) which casts an obligation on the authority to ensure that the detenu is afforded an earliest opportunity to exercise that right, if he so desires. Therefore, inordinate and unexplained delay in disposal of representation made by the detenu against the preventive detention order dated 16<sup>th</sup> September 2022 must be held illegal and unconstitutional and, as a consequence thereof, the continued detention of the detenu must end forthwith.

21. A Constitution Bench<sup>10</sup> of the Hon'ble Supreme Court has elaborated upon this issue, as under:

*“18. It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.*

*19. No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of detenu to have his representation considered as expeditiously as possible. It will*

9. *Amid Shad Khan v. L. Hamid Liyani* : (1991) 4 SCC 39

10. *Jayanarayan Sukul v. State of W.B.* : (1970) 1 SCC 219



*depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible for otherwise in the words of Shelat, J., who spoke for this Court in the case of Khairul Haque "It is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning".*

20. *Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu."*

22. The order dated 15<sup>th</sup> December 2022 issued under the signature of the Under Secretary of the Department of Home, Prison and Disaster Management is extracted below:

**झारखण्ड सरकार**  
**गृह, कारा एवं आपदा प्रबंधन विभाग**

**आदेश**

राँची, दिनांक- 15/12/2022 ई०।

संख्या-05/सी०सी०ए०/01/55/2022-253 (A)/CCA/झारखण्ड अपराध नियंत्रण अधिनियम-2002 के अध्याय-II की धारा-12 (3) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए जिला दंडाधिकारी, साहेबगंज द्वारा झारखण्ड अपराध नियंत्रण अधिनियम, 2002 की धारा-12(2) के प्रावधानों के अंतर्गत अशोक यादव, पिता-स्व० यमुना प्रसाद यादव, सा०-समदा नाला, पो०-सकरीगली, थाना-मुफसिल, जिला-साहेबगंज के विरुद्ध दिनांक-16.09.2022 को पारित निरुद्धादेश (पत्रांक-685/विधि, दिनांक-16.09.2022) को विभागीय आदेश संख्या-213/सी०सी०ए० दिनांक-27.09.2022 द्वारा अनुमोदित किया गया है।

2. उक्त निरुद्धादेश के विरुद्ध निरुद्धबंदी अशोक यादव द्वारा अभ्यावेदन समर्पित किया गया है, जो अधीक्षक, मंडल कारा, साहेबगंज (पत्रांक-1020/जेल दिनांक-26.10.2022) द्वारा कारा निरीक्षणालय, झारखण्ड, राँची के माध्यम से प्राप्त है।

3. निरुद्धबंदी अशोक यादव द्वारा प्रतिवेदित किया गया है कि:-

(i) उपयुक्त वर्णित निरुद्धादेश वास्तविकता एवं कानूनी तौर पर दुर्भावना से ग्रसित

है। निरुद्धादेश पारित करने वाले पदाधिकारी ने जल्दबाजी में सरकार में मौजूद वरीय लोगों को प्रसन्न करने के लिए यह आदेश पारित किया है।

(ii) यह निरुद्धादेश जिला दण्डाधिकारी द्वारा निरुद्धबंदी के विरोधियों की ओर से पारित किया गया है।

(iii) उपायुक्त, साहेबगंज द्वारा बिना किसी उचित कारण ही अभ्यावेदनकर्ता को आदतन अपराधी एवं असमाजिक तत्व उल्लेखित किया गया है, जबकि आज तक किसी भी मामले में दोषी नहीं करार दिया गया है।

(iv) अभ्यावेदनकर्ता के उपर गरीब पहड़िया आदिवासियों को डराने, मारपीट तथा उनसे पैसे की उगाही का आरोप लगाया गया है, परन्तु अब तक किसी भी पहड़ाइया आदिवासी द्वारा न तो कोई शिकायत न ही कोई प्राथमिकी आवेदनकर्ता के उपर की गई है।

(v) कुल दर्ज 06 मामलों में से अधिकतर मामलें व्यवसायिक प्रतिद्वंद्विता के कारण दर्ज है, जिसमें से 05 मामलों में आवेदनकर्ता को Bail प्राप्त है, जबकि शेष एक मामला मुफसिल केस नं०-30/2022 दिनांक-12.03.2022 जिसपर निरुद्धादेश आधारित है, उससे संबंधित जमानत याचिका माननीय उच्च न्यायालय में लंबित है।

(vi) निरुद्धादेश में वर्णित सभी काण्ड पूर्व के हैं, जिससे वर्तमान कानून व्यवस्था को कोई खतरा नहीं है।

(vii) आवेदनकर्ता साहेबगंज जिले का एक नामी व्यवसायी है जो कि पत्थर उत्खनन तथा जल मार्ग यातायात व्यवसाय से जुड़ा हुआ है। व्यवसायिक प्रतिद्वंद्वता के कारण उनके विरोधियों द्वारा गलत तरीकें से उन्हें कई वादों अभियुक्त बनाया गया है।

(viii) एक नागरिक की स्वतंत्रता उसे संविधान द्वारा प्रदत्त है। निरुद्धादेश पारित करने वाले पदाधिकारी की इच्छानुसार इसे बाधित नहीं किया जा सकता। केवल उचित आधार मौजूद होने वाली स्थिति में ही विधि व्यवस्था को ध्यान में रखते हुए निरुद्धादेश पारित किया जा सकता है।

(ix) अभिलेख जिनके आधार पर निरुद्धादेश पारित किया गया है उसकी प्रति निरुद्धबंदी को उपलब्ध नहीं करायी गयी है जो कि संविधान द्वारा प्रदत्त मूलभूत अधिकारों Article 22(5) का उल्लंघन है।

4. निरुद्धबंदी द्वारा आवेदन में अंकित तथ्यों के समर्थन में पर्याप्त साक्ष्य संलग्न नहीं किया गया है। उपायुक्त-सह-जिला दण्डाधिकारी, साहेबगंज द्वारा पारित निरुद्धादेश को झारखण्ड अपराध नियंत्रण अधिनियम 2002 के अंतर्गत गठित Advisory Board द्वारा संपुष्ट किया गया है। उपायुक्त-सह-जिला दण्डाधिकारी, साहेबगंज के द्वारा इनके विरुद्ध पारित निरुद्धादेश में अंकित किया गया है कि इसके विरुद्ध गंभीर आपराधिक काण्ड दर्ज है एवं इसके हिरासत से मुक्त होने की स्थिति में लोक शांति तथा कानून व्यवस्था भंग होने की संभावना है। अतः उपायुक्त-सह-जिला दण्डाधिकारी, साहेबगंज द्वारा पारित निरुद्धादेश को यथावत रखते हुए निरुद्धबंदी अशोक यादव के अभ्यावेदन को निरस्त किया जाता है।

5. उक्त प्रस्ताव में माननीय विभागीय (मुख्य) मंत्री अनुमोदन प्राप्त है।

ह०/-  
(चन्द्रशेखर गुप्ता)  
सरकार के अवर सचिव।

23. A glance at the order dated 15<sup>th</sup> December 2022 makes it abundantly clear that representation of the detenu has been decided by the Under Secretary, Department of Home, Prison and Disaster Management who is not the concerned competent authority under the Crimes Control Act. In the affidavit dated 21<sup>st</sup> June 2023, all that respondent no.1 has pleaded is that an order of the government can be issued under signature of the Under Secretary of the Department in view of notification dated 15<sup>th</sup> November 2000. In this affidavit, the respondent no.1 has nowhere stated that representation of the detenu has been dealt with and decided by the concerned competent authority, or that the order passed by the competent

authority is the order which has been issued under the signature of the Under Secretary, Department of Home, Prison and Disaster Management.

24. In the affidavit dated 21<sup>st</sup> June 2023, the respondent no.1 has stated as under:

*“13. That it is submitted that against the detention, the petitioner represented before Superintendent, District Jail, Sahibganj.*

*14. That it is submitted that representation of the petitioner received in the department on 03.11.2022 after order of Advisory Board dated 01.11.2022.*

*15. That it is submitted that on the date of receipt of representation of the petitioner, the concerned file was under process /under movement, for confirmation order of detention issued earlier.*

*16. That it is submitted that Deputy commissioner Sahibganj sent vide letter no. 927 dated 28.11.2022 the proposal for extension of detention of the petitioner.*

*17. That it is submitted that for decision / approval on next extension of detention of petitioner and for decision on representation of the petitioner, the concerned file of the department moved on 01.12.2022.*

*18. That it is submitted that government of Jharkhand decided to extend period of detention of the petitioner and also decided to reject the representation of the petitioner and accordingly rejection order has been issued vide letter no. 253 (A) dated 15.12.2022 and detention period has been extended vide letter no. 253 dated 15.12.2022 and the same has been issued under the signature of under Secretary of the department in view of notification of the government of Jharkhand.*

*19. That it is submitted that state of Jharkhand has issued Notification no. 1 dated 15.11.2000 whereby Secretary/Joint Secretary/Deputy Secretary/ under secretary/Assistant Secretary/ Budget officer has been authorized for signing any order or written of the State of Jharkhand.*

*20. That it is submitted that in view of notification dated 15.11.2000, the rejection order of representation of the petitioner has been issued under the signature of the under secretary of the department.”*

25. Under section 12 of the Crimes Control Act, it shall be competent to the Government of Jharkhand to exercise its powers through the District Magistrate to detain a person on the ground that his detention is necessary for the maintenance of public order. And, as noticed above, the reports of the Sub-Divisional Police Officer and Superintendent of Police have been made the foundation for passing the preventive detention order against the detenu. Therefore, the learned Government Advocate has submitted that the subjective satisfaction of the detaining authority is based on materials placed before him and the order of preventive detention reflects proper application of mind and, while so, this Court may not substitute its

judgment for satisfaction of the executive authority by undertaking an inquiry as to sufficiency of the materials on which the order of preventive detention is made. It is further submitted that there was no delay in deciding representation of the detenu inasmuch as the file was “under the process”. We however do not see any justifiable reason for the delay of 50 days atleast on the ground that the matter was “under the process”. Even where the order of preventive detention reflects proper application of mind inasmuch as the detention order records the reason for detention any violation of the Constitutional safeguards shall render the preventive detention order illegal. There are as many as 3 affidavits filed by the respondents but there is not even a whisper how the matter was under process between 3<sup>rd</sup> November 2022 to 1<sup>st</sup> December 2022. The detenu may be a criminal, a hardened criminal or a smuggler but having regard to the Constitutional mandate it is imperative that his representation is decided at the earliest without any delay. The law on this issue is in no uncertain terms that if there is unreasonable delay in considering representation of the detenu it would have the effect of invalidating the preventive detention order.

26. In “*B. Sundar Rao*”<sup>11</sup> the Hon'ble Supreme Court has held as under:

*“21. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration and fourthly the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. In the present case it was open to the Government to consider the representation as soon as it was received by the Government on May 17, 1971, in spite of the fact that six days earlier it had made the reference to the Advisory Board. Secondly, having regard to the second principle referred to above the Government cannot absolve itself from considering the representation even at a later stage. We have seen that after the Advisory Board's opinion is received the State Government is bound under Section 11 to consider whether it should confirm the detention order and continue the detention of the person concerned. Since the Government had not considered the representation as soon as it was received nor even at the time of the confirmation and continuation of the detention, the Government had failed in one of its obligatory duties with regard to the detention of the prisoners and,*

11. *B. Sundar Rao v. State of Orissa* : (1972) 3 SCC 11

*therefore, for that reason also the detention becomes illegal.”*

27. Furthermore, this is beyond any measure of doubt that the authority concerned who shall be the State Government for the purposes of dealing with preventive detention matters himself is bound to consider the representation of the detenu. From the original records which were again produced in the Court on 13<sup>th</sup> July 2023, it appears that approval of the Departmental Minister has been taken on the files for rejecting representation of the detenu against the preventive detention order dated 16<sup>th</sup> September 2022. This is also revealed from the original files that a proposal was moved by the Joint Secretary of the Department on 1<sup>st</sup> December 2022 for rejecting representation of the detenu and this proposal was forwarded through the Secretary, Department of Home, Prison and Disaster Management to the Departmental Minister on 2<sup>nd</sup> December 2022, who accorded his approval on the same day.

28. The power exercisable by the State Government under the Crimes Control Act is a statutory power which can be exercised only by the authority concerned and no other authority. In *“State of U.P. v. Neeraj Awasthi”*<sup>12</sup> the directions issued by an officer of the State which were not established to have been issued pursuant to any decision taken by the competent authority in terms of the Rules of Executive Business of the State framed under Article 166 of the Constitution of India have been held illegal by the Hon'ble Supreme Court. The records reveal that there was no independent application of mind by the Departmental Minister and he has simply accorded his approval to the proposal prepared by the Joint Secretary, Department of Home, Prison and Disaster Management. Therefore, the order dated 15<sup>th</sup> December 2022 has been rendered illegal for this reason also. The act of the Secretary, Department of Home, Prison and Disaster Management in moving the proposal prepared by the Joint Secretary to the Departmental Secretary was an irresponsible act on account of which a valuable Constitutional right of the detenu has been seriously impaired. There is also no explanation offered by the Secretary for the delay of 29 days between 3<sup>rd</sup> November 2022 when the representation of the detenu was received in the Department and 2<sup>nd</sup> December 2022 when the file was placed before the Departmental Minister. These acts of the Secretary,

12. *State of U.P. v. Neeraj Awasthi* : (2006) 1 SCC 667

Department of Home, Prison and Disaster Management must be held done in abdication of the official duty and a reflection of lack of devotion to duty, which would warrant initiation of a departmental proceeding against her.

29. The petitioner has been preventively detained by an order dated 16<sup>th</sup> September 2022 and the period of preventive detention has been extended on 15<sup>th</sup> December 2022 and 15<sup>th</sup> March 2023. The scheme of the Crimes Control Act is that the order of preventive detention shall ordinarily be made in writing for such period as may be specified in the order but shall not exceed 3 months in the first instance and may be extended by any period not exceeding 3 months at any one time by the State Government upon its satisfaction that it is necessary so to do it. The expression used in proviso to sub-section (2) of section 12 is “amend such order” which has an obvious reference to the order of preventive detention passed under sub-section (2) of section 12.

30. Sections 12 of the Crimes Control Act is hereinafter extracted below:

**“12. Power to make order detaining certain persons. - (1)**

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 maintenance of public order and there is reason to fear that the activities of anti-social elements can not be prevented otherwise than by the immediate arrest of such person, make an order directing that such anti-social element be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1) exercise the powers conferred upon by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made by District Magistrate, he shall forthwith report, the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than 12 days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under Section 17 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted."

31. Now this proposition in law is by now well-settled that if the initial action is not in consonance with law no subsequent proceeding can be validated by any means. The legal maxim *sublato fundamento cadit opus* which means "when the foundation is removed the super structure falls" has been approved and applied by the Courts in India to hold subsequent proceedings originating from an illegal order *non est*. In "*Mangal Prasad Tamoli v. Narvadeshwar Mishra*"<sup>13</sup> the Hon'ble Supreme Court has held that if an order at the initial stage is bad in law then all further proceedings consequent thereto shall be *non est* and have to be necessarily set-aside. Therefore, since the initial order of preventive detention of the petitioner has been held invalid the subsequent orders issued by amending the original order have also become bad in law.

32. In summation, the preventive detention order dated 16<sup>th</sup> September 2022 has turned invalid and illegal on account of unexplained delay in disposal of representation of the petitioner and the procedural illegalities as mentioned hereinabove and is accordingly quashed. As a consequence thereof, the orders dated 15<sup>th</sup> December 2022 and 15<sup>th</sup> March 2023 by which preventive detention of the petitioner has been successively extended are also quashed.

33. The writ petition is allowed and it is hereby ordered that the petitioner shall be released forthwith.

**(Shree Chandrashekhar, J.)**

**(Ratnaker Bhengra, J.)**

**(Ratnaker Bhengra, J.)**

*Jharkhand High Court, Ranchi*  
Dated: 14<sup>th</sup> July, 2023  
R.K./A.F.R.

13. *Mangal Prasad Tamoli v. Narvadeshwar Mishra* : (2005) 3 SCC 422