

Narcotic Drugs and Psychotropic Substances Act, 1988, Section 3 - Whether Section 3 can be exercised as a means of enforcement of law and order, by defeating the orders whereby bail had already been granted or the sentence had been suspended ?

Narcotic Drugs and Psychotropic Substances Act, 1988, Section 3 - Whether the State Government ought to have taken appropriate steps for seeking cancellation of bail (in the event there is a breach of any of the conditions of bail) or invoked powers under Section 3 of the Act of 1988 and in the said process extend incarceration of the suspect without any actual future involvement ?

56. The position in law has been culled out by the Hon'ble Supreme Court in a catena of judgments referred above under the circumstances in which order of preventive detention may be passed. An order of preventive detention needs to be examined from the availability of the legal framework and the statutory requirements for directing preventive detention along with reasonable grounds laying foundation for directing such detention. The satisfaction of the competent authority has to be seen on the basis of credible evidence and not just a mere apprehension and must be propelled by public interest. Besides, the proportionality of preventive detention also needs to be kept in mind along with the fact as to whether there is an effective alternate measure with the authority to seek the desired result but for adopting the course of preventive detention. For examining as to whether the satisfaction of an authority is formed on reasonable grounds, the Court is also required to see the relevant factors which may be essential for giving rise to reasonable grounds and it usually refers to a standard suggesting rational basis or credible evidence to believe that the detainee is likely to engage in such activity. The fact which may be crucial for propelling a satisfaction include the prior criminal record/past involvement, the credibility of the witness/informant, the existence of physical evidence in the form of seizure of any narcotic etc. The assessment of the flight risk, public safety and tampering with evidence as also input from the intelligence and surveillance. A perusal of Section 3 of the Act of 1988, requires that the competent authority should be satisfied with respect to the involvement of the person and with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, deem it necessary to direct detention. The subsequent part necessitates that as and when an order of detention is made, the same shall be forwarded to the Central Government within a period of ten days and that communication of the grounds of detention to the detainee shall be made within a period of five days from the date of detention. Further, the appropriate Government is required to make a reference to the Advisory Board within a period of five weeks of the detention and the Advisory Board thereafter has a period of six weeks (a total of 11 weeks from the date of order of detention) to prepare its report specifying its opinion as to whether there is a sufficient cause for detention or not. The appropriate Government is thereafter required to confirm the order of preventive detention and continue the detention for such period as it thinks fit.

57. A perusal of the provisions as also the precedents establish that the timelines prescribed and the safeguards evolved are mandatory and have to be adhered to. The power of preventive detention is not a mode of infliction of punishment and that the proximity of the cause to the past conduct and the imperative need to detain a person has

attained vital significance. Where the satisfaction of the authority is not based upon a live and proximate link between the past conduct of a person and the imperative need to detain, such detention is deemed as based on a stale cause and the orders of preventive detention held to be bad. Similarly, where there has been an inordinate delay in passing the order of preventive detention from the date when the proposal was mooted, such order of detention has also been held to be bad. It is apparent from a perusal of the order of Hon'ble Supreme Court passed in the matter of *Sushanta Kumar Banik* (supra) that as the order of preventive detention was passed after a period of five months, the same was held to be bad and liable to be set aside. However, the Division Bench of the Gauhati High Court set aside the order of preventive detention when there was a delay of 2 ½ months in decision making in the matter of *Babul Ahmed* (supra).

58. Even though the grounds for which preventive detention may be invoked may vary in statutes, however, the safeguards prescribed under the Constitution are in addition to the safeguards that may be provided under the respective statute. The tests prescribed in the judgment of *Ameena Begum* (supra) have to be satisfied collectively and any disregard of such circumstances may render the order of preventive detention bad and liable to be set aside. The said circumstances do not transcend the decision but examine the decision making process only with a view to ascertain as to whether an order of preventive detention is imperative. Being an extra ordinary power which infringes on the rights and liberties of an individual in anticipation of crime, the exercise of power has to be sparing and as an exceptional contingency.

59. The power of preventive detention is not just an empowering provision with no responsibility or checks. When the power is immense, invocation of the power needs to be justified as per the exceptional circumstances and to establish as to how only the mode of preventive detention is the only way forward. It is not a mode of enforcing Police rule on suspicion or heightened probabilities but for reasons beyond that and on credible likelihood of his involvement in another crime. Such credibility may be required to be supported by some proximate and live link to an imminent involvement in another crime and not just on the belief that the past defines the future and that there is no other way forward to a detenu than indulge in another crime. Any lack of such credible input and the proximate live link is likely to label the exercise of such power as excessive, arbitrary, draconian and liable to be set aside.

60. An objective decision is backed by cogent material and objective conclusion and not just a subjective decision on a perceptive conclusion.

61. A Court of law thus is required to see whether the necessary tests, parameters and circumstances justifying need for preventive detention exist or not. Where any of the safeguards are found lacking, the fundamental rights guaranteed to a citizen would override such order being in violation of the safeguards and not fulfilling the cardinal test of authority in law.

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