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2025:CGHC:18791-DB

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 229 of 2025

Sheshnarayan Sahu S/o Late Sitaram Sahu Aged About 38 Years R/o Village Sarda, Police Station Berla, District Bemetara C.G., Prisoner Through Next Friend Brother-In-Law (Jija) Vicky Kumar Sahu S/o Arun Kumar Sahu, Aged About 29 Years, R/o Hathnipara Ward, In Front of FCI Warehouse, Bhatapara, District – Balodabazar-Bhatapara, Chhattisgarh.

... Petitioner

versus

1 - State of Chhattisgarh Through The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District Raipur, Chhattisgarh.

2 - The Commissioner-Cum-Detaining Authority, Durg Division, Durg Chhattisgarh.

3 - Superintendent of Police Bemetara, District Bemetara Chhattisgarh.

4 - Station House Officer Police Station Berla, District Bemetara Chhattisgarh.

---- Respondents

For Petitioner : Ms. Smita Mishra, Advocate.
For Respondents-State : Mr. S.S. Baghel, Deputy
Government Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Arvind Kumar Verma, Judge

Order on Board**Per Ramesh Sinha, Chief Justice****25.04.2025**

1. Heard Ms. Smita Mishra, learned counsel for the petitioner as well as Mr. S.S. Baghel, learned Deputy Government Advocate, appearing for the State/respondents.

2. The petitioner has filed this writ petition with following reliefs:-

“10.1 that, this Hon’ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioner for kind perusal of this Hon’ble Court.

10.2 That, this Hon’ble Court may kindly be pleased to allow the petition by setting aside the impugned order dated 24.02.2025 passed by the learned Commissioner-cum-Detaining Authority, Durg Division, Durg in Criminal Case No.21/2024.

10.3 That, this Hon’ble Court may kindly be pleased to pass an order to release the petitioner forthwith from the jail as he has been sent behind bar by the impugned order dated 24.02.2025.

10.4 That, this Hon’ble Court may kindly be pleased to pass an order whereby the police authorities / State may kindly be directed to pay the petitioner a sum of Rs.1,00,000/- as compensation for mental harassment and illegal detention from 24.02.2025.

10.5 That, any other writs and direction which this Hon’ble Court deems fit and just in the facts and circumstances of the case be granted to the petitioner.”

3. The facts of the present case are that a show cause notice dated 19.09.2024 was issued by respondent No.2/Commissioner-cum-Detaining Authority, Durg Division, Durg under section 3(1) of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'Act of 1988) alleging therein that the petitioner is a habitual offender and has been committing offences since 2023 and he is not under control of his family. It was further stated in show cause notice that the petitioner sells narcotic drugs and contraband due to which many youth and children have become addicted to injecting narcotic drugs and to take medicine of psychotropic substances and they are also committing offences for their needs. It is further alleged in the show cause notice that earlier the petitioner has already been caught twice by the police red handed whereby he was selling narcotic drugs and psychotropic substances and preventive action under CrPC has been taken against him, but there has been no improvement in the conduct of the petitioner.

4. By the show cause notice, the petitioner was asked by respondent No.2 why should he not be detained behind the bar under Section 3(1) of the Act of 1988 for a maximum term of one year and he was directed to submit his reply by 10.01.2025. On 10.01.2025 the petitioner submitted his reply through affidavit to the above show cause notice dated 20.12.2024 praying inter-alia that the Superintendent of Police/respondent No.3 has produced Istagasa on false and fabricated grounds against the petitioner that he is a habitual offender and the

Superintendent of Police has given five offences against the petitioner, out of which only two offences bearing Crime No. 265/2023 and Crime No. 68/2024 for offence punishable under Section 20(B) of Narcotic Drugs and Psychotropic Substances Act, 1988 are pending and other three cases were related to preventive actions under CrPC which have already been disposed of. Crime No. 68/2024 under Section 20(B) of NDPS Act is pending as Special Case (NDPS) No.12/2024 before learned Special Judge (NDPS), Bemetara, District Bemetara (C.G.), in which four independent witnesses have been examined and they turned hostile. In this case, Ishwar Verma and Ishu Yadav are the main accused and the petitioner has been implicated only on the basis of their memorandum statement. Crime No. 265/2023 under Section 20(B) of the NDPS Act is pending as Criminal Case No. 1415/2024 before the learned Judicial Magistrate First Class, Bemetara, District Bemetara (C.G.). The petitioner has not been convicted in any case so far, therefore, the entire proceedings under Criminal Case No.21/2024 before learned Commissioner-cum-Detaining Authority, Durg Division, Durg is not only bad, illegal, arbitrary, but there is violation of Article 14 of 21 of the Constitution of India. The impugned order dated 24.02.2025 also shows that proper opportunity of hearing has not been given to the petitioner and only on the basis of show cause notice and its reply, the impugned order has been passed. Neither any witness was produced by the police authorities nor the petitioner was given an opportunity to produce any witness with regard to his defence, therefore, the impugned order is bad, illegal, arbitrary and there is violation of Article

14 and 21 of Constitution of India as well as principles of natural justice. Hence, this petition.

5. Learned counsel for the petitioner would submit that the impugned order dated 24.02.2025 (Annexure P-1) is bad, illegal, arbitrary and there is violation of Article 14 and 21 of Constitution of India as well as principles of natural justice, hence it is liable to be quashed/set-aside. It is further submitted that the Hon'ble Apex Court in the matter of ***D.K. Basu (supra)***, after referring to the authorities in ***Joginder Kumar vs. State of U.P., reported in (1994) 4 SCC 260. Nilabati Behera (Smt.) Alias Lalita Behera Vs. State of Orissa & Others, reported in (1993) 2 SCC 746*** and ***State of M.P. vs. Shyamsunder Trivedi, reported in (1995) 4 SCC 262***; laid down certain guidelines to be followed in cases of arrest and detention till legal provisions are made in that behalf as preventive measures. She would further submit that in a similar case of ***Chandrika Prasad Sahu v. State of Chhattisgarh & others***, this Court allowed ***WPCR No. 186/2025*** vide ***order dated 07.04.2025*** with observations as follows:-

"12. Considering the overall facts and circumstances of the case, particularly the fact that petitioner has already been granted bail by the trial Court vide order dated 29.05.2024 and for the very same offence under the provisions of NDPS Act, he cannot be detained in the custody for a period of three months as ordered by respondent No.2, we deem it appropriate to exercise our discretionary

jurisdiction under Article 226 of the Constitution of India and allow the petition filed by the petitioner.

13. Accordingly, the impugned order dated 20.02.2025 (Annexure P1) is hereby set-aside. The petitioner be released forthwith, if not required in any other case. However, the petitioner shall not be entitled for any compensation.

14. In the result, the present writ petition is allowed to the extent indicated above."

7. It is further submitted by learned counsel for the petitioner that the respondents are State and they are duty bound to discharge to their duties in accordance with law, but in the case of the petitioner, the impugned order has been passed without giving proper opportunity of the hearing to the petitioner as neither any witness was produced to support the case of prosecution by the Superintendent of Police nor the petitioner was granted permission to produce any witness in his defence to put forth the case of the petitioner that he is not involved in any crime. It is further submitted that the order impugned is passed only on the basis of Istagasa prepared by the Superintendent of Police which is based on false and fabricated statement by him that the petitioner is a habitual offender and has been committing offences since 2023, but petitioner has not been convicted in any offence. However, two cases were pending against him in which the prosecution itself failed to produce prosecution witnesses before the Trial Court, therefore, the impugned order is liable to be set-aside. It is also submitted that the

petitioner has replied the show cause notice of learned Commissioner-cum-Detaining Authority, but same has not taken into consideration and learned Commissioner has passed the impugned order mentioning therein that in present also, there is complaint against the petitioner that he is involved in selling of narcotic drugs, though such fact is neither mentioned in the Istagasa or report prepared by the Superintendent of Police nor any kind of complaint is pending against the petitioner, therefore, the impugned order is passed against the principles of natural justice as the entire facts and circumstances of the case has not been considered and the impugned order is arbitrarily passed. The impugned order dated 24.02.2025 has been passed mechanically without application of mind and solely on the basis of unsubstantiated allegations contained in the show cause notice, which renders the order bad in law. The petitioner has not been convicted in any case till date, and mere pendency of criminal cases, including preventive actions under Cr.P.C., cannot be the basis of preventive detention under Section 3(1) of the 1988 Act. It is also submitted that out of five cases referred in the show cause notice, three are preventive in nature and already disposed of, and in the remaining two NDPS cases, the petitioner has not been found guilty. In one such case, all independent witnesses have turned hostile and no admissible evidence has come on record against the petitioner. The impugned order is violative of the fundamental rights guaranteed under Article 14 and Article 21 of the Constitution of India, as it is arbitrary, unreasonable and passed without following due process of law. The petitioner was not given an adequate

opportunity of hearing. No inquiry or oral evidence was conducted. The petitioner was not allowed to produce evidence in his defence, thereby violating principles of natural justice. The detention under the preventive detention law is a serious infringement upon the personal liberty of a person, and in the absence of compelling and cogent reasons, such an action cannot be sustained in law. The allegations that the petitioner is a habitual offender are vague, unsubstantiated, and not supported by any admissible material. She lastly submits that in Special Case (NDPS) No. 12/2024 pending before learned Special Judge (NDPS), Bemetara, District Bemetara (C.G.), four independent witnesses have been examined and they have turned hostile and have not supported the case of the prosecution. As such, the writ petition deserves to be allowed and the impugned order by which the petitioner has been ordered to send behind the bar for a period of six months under Section 3 read with Section 11 of the Act of 1988 deserves to be set aside.

4. Learned State counsel would support the impugned order and oppose the prayer made by learned counsel for the petitioner.

5. We have heard learned counsel for the parties, considered their rival submissions made herein-above and perused the impugned order and the material available on record.

6. From perusal of the impugned order, it transpires that learned Commissioner-cum-Detaining Authority has observed that action has

been taken by registering a total of 02 cases of the NDPS Act against petitioner Sheshnarayan Sahu S/o Late Sitaram Sahu in the year 2023 and 2024. Apart from this, action has been taken by registering preventive cases against the petitioner from time to time. Learned Commissioner has further observed that after being released from jail, the petitioner has been continuously involved in criminal activities and there seems to be no improvement in his behaviour. Even at present, complaints of selling alcohol and other intoxicants including ganja have been continuously received against the petitioner. The statement of the independent witness has brought to light the fact that petitioner Sheshnarayan Sahu is continuously selling ganja/alcohol in the village. The petitioner's morale is increasing after being released on bail from the Court. Learned Commissioner has also observed that the petitioner has become addicted to illegal trade of narcotics like alcohol and ganja. The possibility of adverse effect of the petitioner's criminal activities on his living in society cannot be ruled out. Based on the report, reply, statements of the witnesses and arguments in the case, it has been decided that petitioner Sheshnarayan Sahu S/o Late Sitaram Sahu is involved in illegal trade of narcotic drugs and psychotropic substances and hence, it is necessary to detain him. Therefore, under Section 3 read with Section 11 of the Act of 1988, petitioner Sheshnarayan Sahu S/o Late Sitaram Sahu is ordered to be imprisoned in District Jail Bemetara for six months.

7. Considering the submissions advanced by learned counsel for

the parties, perusing the impugned order and other documents appended with writ petition, conduct of the petitioner and the finding recorded by learned Commissioner by which the petitioner has been ordered to send behind the bar for a period of six months under Section 3 read with Section 11 of the Act of 1988, we are of the considered opinion that learned Commissioner has not committed any illegality or irregularity in the impugned order warranting interference by this Court.

8. Accordingly, the writ petition being devoid of merit is liable to be and is hereby **dismissed**. No cost(s).

Sd/-

(Arvind Kumar Verma)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice