

(1989) 02 CAL CK 0014
In the Calcutta High Court

Azimuddin Ansari

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-02-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3, 5A
Constitution of India, 1950 — Article 22, 226
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 43
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 3

Citation : (1989) CriLJ 1298 : 93 CWN 837

Hon'ble Judges : Sankari Prasad Das Ghosh, J;Ajit Kumar Nayak, J

Bench : Division Bench

Judgement

Sankari Prasad Das Ghosh, J.—The validity of an order of detention u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (hereinafter referred to as the "Ordinance" for the sake of convenience) is under challenge, in this application under Article 226 of the Constitution.

2. Intelligence was collected by the Eastern Zonal Unit of the Narcotics Control, Bureau at Calcutta that the petitioner used to engage carriers to bring charas from Nepal to Calcutta and that a consignment of charas was expected on 12-1-88 or 13-1-88 through two of the petitioner's carriers, Chinta Shah and Ainul Haque Ansari alias Garju, who had been sent by the petitioner to Nepal from Calcutta a few days back. To work out this information, vigilance was kept at Mikado Lodge at 68/1, Surya Sen Street, Calcutta-9, by the officers of the Narcotics Control, Bureau. At about 7 a.m. on 13-1-88 Chinta Shah and Ainul Haque Ansari alias Garju, were found carrying two bags, when they arrived at Mikado Lodge. On search of these bags in presence of two independent witnesses, a total quantity of 16.500 Kgs. of charas (6.5 Kgs. from inside the leather folio bag of Chinta Shah and 10 Kgs. from inside the bag of Ainul Haque

Ansari) was recovered and seized u/s 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "Act" for the sake of brevity). On interrogation, it was revealed by Chinta Shah and Ainul Haque that they had come to Mikado Lodge to deliver the goods to the petitioner, as the petitioner was to say at Mikado Lodge on that date, as planned earlier. At about 11-30 a.m. on that date (i.e. 13-1-88), the petitioner was found entering room No. 15A at Mikado Lodge. The officers of the Narcotics Control, Bureau then intercepted the petitioner and on searching his belongings, 700 gms. of charas were recovered from a VIP suitcase owned by him. Several cash-memos, one small diary and two bank pass books were also then recovered from the petitioner in presence of witnesses, Besides Chinta Shah and Ainul Haque, the petitioner, one Dwijendra Nath Maity and Satindara Mohan Mazumdar were interrogated by the officers of the Narcotics Control Bureau. On 14-1-88, the petitioner was arrested. A complaint was filed on 22-3-88 in the court of the learned Chief Metropolitan Magistrate, Calcutta, u/s 20(b)(ii) of the Act against the petitioner, Ainul Haque and Chinta Shah. Prayers for bail were repeatedly made for these petitioners in the court of the learned Chief Metropolitan Magistrate, Calcutta. These prayers for bail were rejected by the learned Chief Metropolitan Magistrate, Calcutta. On 23-6-88, an order for bail in favour of Ainul Haque and Chinta Shah was passed by this Court. There was an application before this Court for relaxation/modification of conditions of bail granted to Ainul Haque and Chinta Shah on 23-6-88. That application for bail, registered as Criminal Misc. Case No. 719 of 1988, was disposed of by this Court on 11-7-88, when the order for bail granted to Ainul Haque and Chinta Shah was modified to some extent by this Court. There was no order for bail by this Court in respect of the petitioner/While the case against the petitioner, Chinta Shah and Ainul Haque in the court of the learned Chief Metropolitan Magistrate, Calcutta, being case No. C. 402 of 1988, was pending, an order of detention dt. 7-7-88 was passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi (the respondent 2) u/s 3(1) of the Ordinance with a view to preventing the petitioner from engaging in the possession, purchase and sale of narcotic drugs. The order of detention along with grounds for detention dt. 7-7-88 was served on the petitioner in the Presidency Jail, Calcutta on 9-7-88, Thereafter on 21-9-88, this Court was moved for issuing a writ in the nature of Habeas Corpus for setting the petitioner at liberty by quashing the order of detention and the grounds therefore.

3. Mr. Sengupta, the learned Advocate for the petitioner, has challenged the order of detention on several grounds. Broadly speaking, the contention of Mr. Sengupta is that the order of detention is mala fide and that the provisions in Clause (v) in Section 6(a) of the Ordinance have deprived the petitioner of making any representation regarding his detention to the appropriate government or to the Advisory Board.

4. To show the mala fide nature of the order of detention, Mr. Sengupta has first urged that the arrest of the petitioner is mala fide inasmuch as there is no

mention of the arrest of the petitioner in the statement of Dwijendra Nath Maity recorded on 13-1-88. We are unable to accept this contention. The statement of Dwijendra was recorded on 13-1-88 when the petitioner was not arrested. The petitioner was actually arrested on 14-1-88. As such, there cannot be any mention of the arrest of the petitioner in the statement of Dwijendra. Mr. Sengupta has contended that in the statement of Dwijendra, there is no mention of the statements of Chinta Shah and Ainul Haque. The affidavit-in-opposition filed for the respondents 1, 2 and 4, shows that the statements of Chinta Shah, Ainul Haque, Dwijendra and the petitioner were recorded at different times. As such, non-mention of the statements of Chinta Shah and Ainul Haque in the statement of Dwijendra does not create any infirmity in the order of detention, Mr. Sengupta has next contended that there is no proximate relationship between preventive detention of the petitioner in July, 1988 and the arrest of the petitioner on 14-1-88, specially when prayer for bail for the petitioner was being consistently refused by the learned Chief Metropolitan Magistrate, Calcutta, and was also rejected by this Court. This contention cannot also be accepted. The Ordinance came into effect on and from 4-7-88, Before the promulgation of the Ordinance, the petitioner could not be detained under the provisions of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, as there was no question of conservation or augmentation of foreign exchange or smuggling of goods in this case. As such, the preventive detention of the petitioner on and from 9-7-88 cannot be challenged on the ground that the petitioner was arrested much earlier on 14-1-88 in connection with the same alleged transaction. It is to be stated, in this connection, that it is now well-settled after the decision of the Supreme Court in the case of Masood Alam etc. Vs. Union of India (UOI) and Others, , which has also been considered in a Division Bench decision of the Delhi High Court in the case of Vijender Kumar Jain Vs. Union of India and Others, that service of an order of detention on a person in jail custody is not illegal where the detaining authority is satisfied with the likelihood of objectionable activities on the release of the person concerned soon. No doubt, in an earlier case of Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, an order of detention was set aside on the ground that the person concerned of that case was already in jail custody and it could not be rationally postulated that if he was not detained, he would act in a prejudicial manner. Nevertheless, the order of detention is to be considered in the facts and circumstances of each case. As the test of proximity of time has been fully satisfied in this case, inasmuch as the Ordinance came into effect from 4-7-88 and there could not have been any detention under the provisions of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and as no invalidity or infirmity can be said to "be attached to the making of the order or its service, in the facts and circumstances of this case, the order of detention cannot be challenged on the ground that at the time the petitioner was served with the order of detention on 9-7-88, the petitioner was in jail and there was no question of preventing him from engaging in the possession, purchase and sale of narcotic drugs. Moreover, there was a

possibility of release of the petitioner soon, after granting of bail to Chinta Shah an Ainul Haque.

5. As decided by the Supreme Court in the case of Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, , it is not open to a detenu to challenge the order of detention by arguing that the subjective satisfaction of the detaining authority is not reasonably based on any of the grounds mentioned in the order of detention. In the order of detention several instances have been referred to, as transpiring from the statements of Chinta Shah, Ainul Haque, Dwijendra Nath Maity and the petitioner, going to show that on and from April, 1985 the petitioner was engaged in bringing charas from Nepal by employing carriers like Chinta Shah and Ainul Haque on payment of money and selling the same and that even in the month of December 1987 as well as in January, 1988, there was such bringing of charas from Nepal to Calcutta by Ainul Haque and Chinta Shah. With a view to prevent the petitioner's possession, purchase and sale of charas, if the detaining authority is satisfied, on the basis of these transactions; as transpiring from these statements of these persons including the petitioner, that the petitioner should be detained, the subjective satisfaction of the detaining authority is not justiciable.

6. Mr. Sengupta has made a grievance of the fact that though the petitioner made a representation on 8-8-88 to the Chairman, Advisory Board under the Ordinance, the result of the representation of the petitioner had not been communicated to the petitioner, The affidavit-in-opposition filed by the respondents 1, 2 and 4 goes to show that there was no representation by the petitioner on 8-8-88. Instead, the Advisory Board considered the entire materials on 29-8-88 after giving due opportunity to the detenu to be heard and gave their report to the effect that there was sufficient cause for detention of the detenu. On receipt of the report of the Advisory Board, the order of detention was confirmed by the Central Government which directed detention of the petitioner for one year from 4-7-88 and this confirmation of the detention was communicated to the petitioner through the Superintendent, Presidency Jail by a letter dt. 20-9-88.

7. Apart from the aforesaid contentions relating to the alleged mala fide nature of the order of detention, Mr. Sengupta has challenged the Ordinance on two other grounds. His first contention is that as no time limit was fixed in the order of detention for making the representation to the Advisory Board or to the Central Government, the petitioner has been deprived of reasonable opportunity to make a representation. This contention cannot be accepted. It was stated in ground No. 13 of the grounds for the order of detention that if the petitioner desired to make any representation to the Advisory Board, he could address it to the Chairman, Advisory Board (The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988) Delhi High Court, Shershah Road, New Delhi and forward the same through the Superintendent of the prison where he was detained. It was further! stated in that Ground No, 13 of the Grounds of

Detention appended to the order of detention dt. 7-7-88 that the petitioner would be heard by the Advisory Board in due course if the Board considered it essential to do so and if the petitioner so desired. The constitutional guarantee of affording opportunity to the petitioner to make a representation, as provided in Article 22(5) of the Constitution, was thus observed in this case. When the petitioner's detention was considered by the Advisory Board on 29-8-88, there is no question of fixation of time-limit in the grounds of detention for enabling the petitioner for making a representation, as the petitioner was at liberty to make a representation even after the order of confirmation of the order of detention by the Central Government, As the petitioner was at liberty to make a representation against the order of detention both before or after the order of confirmation of the order of detention, non-fixation of any time-limit in Ground No. 13 in the grounds of detention does not invalidate in any way the order of detention.

8. The last contention of Mr. Sengupta is that Clause (v) to Section 6(a) of the Ordinance renders the order of detention invalid as it virtually deprives the detenu of his constitutional right of making a representation. Clause (v) to Section 6(a) of the Ordinance is to the effect that an order of detention shall not be deemed to be invalid or inoperative for being "invalid for any other reason whatsoever". u/s 6(a) of the Ordinance, an order of detention shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are (i) vague, (ii) non-existent, (iii) not relevant, (iv) not connected or proximately connected with such person or (v) invalid for any other reason whatsoever. Such provision for not rendering an order of detention inoperative on the ground of invalidity for any other reason whatsoever is not a new provision in the Ordinance. Such a provision is also to be found in Section 5A(a)(v) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. In the present case, different separate grounds have not been made out in the grounds of detention. When no separate ground apart from the grounds of purchase, carriage and sale of charas, is mentioned in the grounds of detention, we do not consider it necessary to decide the validity of Clause (v) to Section 6(a) of the Ordinance.

9. In short, all the contentions of Mr. Sengupta fail. The application under Article 226 of the Constitution is to be rejected.

10. The application under Article 226 of the Constitution is, accordingly, rejected. The Rule is discharged.

Ajit Kumar Nayak, J.

11. I agree.