

(1990) 08 DEL CK 0072

In the Delhi High Court

Case No : Criminal Writ Petition No. 188 of 1990

Bachan Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-08-1990

Acts Referred:

Customs Act, 1962 — Section 135(1)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 3(1)

Citation : (1991) CriLJ 662 : (1990) 42 DLT 424 : (1991) 31 ECC 16 : (1990) 2 ILR Delhi 320

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : Harjinder Singh, P.K. Jain, Ajay Kumar, G. Prakash and T.T.K. Kannan, for the Appellant;

Judgement

M.K. Chawla, J.

(1) In exercise of the powers conferred by Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (Central Act 46 of 1988), in short (PIT Ndps Act), Shri Ram Chandran, Secretary to the Government of India, passed an order dated 11-1-90 detaining the petitioner Bachan Singh Wig, with a view to preventing him from engaging in illicit traffic in narcotic drugs.

(2) This followed an incident when the petitioner Along with one Shri Ramdevji Shah was found to be in possession of some incriminating documents leading to the recovery of 2404 slabs of hashish concealed in 74 metal boxes in the packings of Iron grills which were meant for export to Baltimor, U.S.A. under shipping bill no. 0766 dated 15-11-89. After interrogation, the petitioner was arrested for the commission of offence u/s 20/23 & 28 of the N.D.P.S. Act read with Section 135(1)(a) of the Customs Act and produced before the Additional Judicial Magistrate, Arunakulam on 21-4-89, who remanded the petitioner to judicial custody till 4-12-89. The petitioner moved an application for his release

on bail before the learned Addl. Judicial Magistrate but the same was dismissed on 29-11-89. His second application for bail dated 15-11-89 met the same fate.

(3) While the petitioner was in jail, the above-said order of his detention u/s 3(1) of the Pit Ndps Act was passed. He was duly served with the order and the grounds of his detention within the stipulated period. In the grounds of detention, he was also informed that if he wishes to make a representation against the order of detention, to the detaining authority and/or to the Central Government and/or to the Advisory Board, he may do so and forward the same through the Superintendent, Central Prison Trivandrum. Shri K. Prakash Anand, Additional Secretary to the Government of India passed the order u/s 10(1) of the Pit Ndps Act for the continued detention of the petitioner for a period of 2 years from the date of the service of the order u/s 3(1) of the Act. As suggested, the petitioner made a representation dated 27-3-90 against the order of his detention u/s 3(1) of the Pit Ndps Act to the detaining authority. This representation has not yet been disposed of.

(4) The petitioner has now challenged the order of his detention dated 11-1-90 and his continued detention by virtue of declaration dated 20-2-90 u/s 10(1) of the Pit Ndps Act, by way of his writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, for the issuance of directions for the quashing of the said orders and his immediate release.

(5) Though the learned counsel for the petitioner has urged numerous grounds for the quashing of the impugned orders of his detention but for the purpose of deciding the present petition, it is not necessary to go into each and every ground as, in my opinion, the petition can be disposed of on the following grounds.

(1) The order of detention and/or the grounds of detention which were served on the petitioner while he was in judicial custody do not show that there was a compelling necessity to pass the order of detention inasmuch as there was no imminent possibility of the petitioner being released on bail in the near future. The order of detention and his continued detention stand vitiated on this score alone.

(2) The Central Government while passing the impugned order of declaration u/s 10(1) of the Pit Ndps Act, has not intimated the petitioner either contemporaneously or simultaneously that he has a right to make the representation and to whom against the said declaration. This inaction of the respondent has infringed upon the constitutional right of the petitioner under Article 22(5) of the Constitution resulting in violating the detention and the continued detention of the petitioner.

(6) Respondent No. 2 State of Kerala has not cared to file any affidavit to counter the first submission of the learned counsel for the petitioner. The case of the other respondent on the second aspect in brief is that while communicating the

grounds of detention, the petitioner was duly informed of his right to make a representation to the detaining authority, the Central Government and the Advisory Board. It was not incumbent upon the declaring authority to repeat the same and similar sentences over again.

(7) On both the counts, the petitioner has a case. It is not disputed that the petitioner is involved in the recovery of huge quantity of hashish which is considered to be a very serious offence under the Ndps Act. During his judicial custody, the petitioner did move two applications for his release on bail which were rejected by the competent court on 29-11-89 and 15-12-89. Therefore, there was no possibility of his immediate release in the near future. The order of detention dated 11-1-90 was duly served on the petitioner while he was in judicial custody on 20-1-00. The grounds of detention do not show any apprehension in the mind of the detaining authority that the petitioner was likely to be released on bail and if released, he would engage himself in any prejudicial activities of illicit traffic under Ndps Act.

(8) In support of this submission, learned counsel for the petitioner has placed reliance on a judgment reported as Dharmendra Suganchand Chelawat and another Vs. Union of India and others, , wherein in similar circumstances, the detention of The petitioner therein was. quashed holding.

"THE decisions referred to above lead to the conclusion that an order for detention can be validly pasted " against a person in custody and for that purpose it is necessary that the grounds of detention must show that, (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that : (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

This very ratio fairly and squarely applies to the case of the present petitioner. It is true that nothing prevented the petitioner from moving another bail application but the grounds of detention did not disclose any material from which the subjective satisfaction could be reached by the detaining authority that the detenu was likely to be released on bail in the near future. The fact that the two bail applications of the petitioner had already been rejected, there was a remote possibility of his being released on bail, in his subsequent attempt. On this score, the order of detention and the order of his continued detention stand vitiated.

(9) On the second aspect, learned counsel for the respondent does not dispute that the provisions of Section 9(1) of the Cofeposa Act and those of Section

10(1) of the Pit Ndps Act are analogous. There is no difference even in the wording used therein. It is not disputed that in the impugned order of declaration u/s 10(1) of the Pit Ndps Act, the declaring authority has not intimated the petitioner that he has a right to make a representation against the said declaration. The contention of the learned counsel for the petitioner is that the detenu is only a matriculate and is not aware of his constitutional rights under Article 226 of the Constitution of India. It was enjoined upon the authorities making the declaration to appraise the petitioner in the body of the said declaration or by a contemporaneous document that the petitioner has a constitutional right to make the representation against the said declaration to the said authority, the Central Government and to the Advisory Board. This precaution has not been taken by the respondents.

(10) In this view of the matter, the ratio descend of the Judgment of the Supreme Court reported as Jagpreet Singh vs. Union of India and others Jt 1990(3) Sc 293(2) will fully cover the case of the present petitioner. In the said case, the Supreme Court quashed the order of declaration on the short ground that there was a delay of about a month and 13 days before the detenu was made aware of his rights under the Constitution to make an effective representation against the order of his declaration. The Supreme Court considered this delay to be unreasonable and inconsistent with the provisions of Article 22(5) of the Constitution.

(11) On his aspect, as noted above, there is no Explanation from the respondent/ Union of India for passing the order of declaration. The case of Jagpreet Singh (Supra) which has been followed by this Court in a number of such like petitions, squarely covers the case of the present petitioner also. Accordingly, the order of declaration dated 20-2-90 is also liable to be set aside.

(12) On both the counts, the order of detention u/s 3(1) and the order of declaration u/s 10(1) of Pit Ndps Act are bad in law and cannot be allowed to stand.

(13) In the result, I accept the petition and make the Rule absolute. The order of detention dated 11-1-90 and that of continued detention dated 20-2-90 are quashed. The petitioner is directed to be set at liberty forthwith if not required to be detained in any other case.