
(1988) 12 RAJ CK 0035

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 3300 of 1988

Bal Kishan Chandak

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-12-1988

Acts Referred:

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3

Citation : (1989) 1 RLW 174 : (1989) 2 WLN 101

Hon'ble Judges : R.S. Verma, J;K.S. Lodha, J

Bench : Division Bench

Judgement

K.S. Lodha, J.—This is an application in the nature of habeas corpus on behalf of Bal Kishan Chandak, who has been detained u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988, by the order of the Joint Secretary to the Govt. of India dated 6-7-88. One of the grounds mentioned in the order recording the grounds of detention was that he had been apprehended on 9-4-88 with his scooter and 1490 kgs. of heroin was recovered from the dicky of that scooter and "although the adjudication and prosecution proceedings under the Customs Act. 1962 against you if the matter were likely to be initiated and prosecution under the N.D P S Act, 1985 is also likely to be initiated," the detaining authority was satisfied that it was necessary to detain him under the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Ordinance, 1988 (7 of 1988) with a view to preventing him from engaging in purchasing and possessing of narcotic drugs. This order of detention has, inter alia, been challenged before us on the ground that the fact that the detainee was already in custody in connection with the aforesaid seizure of heroin and the question of his release on bail in that matter was not considered by the sponsoring authority or the detaining authority and it was not indicated that on the apprehended release of the detainee on bail, he will again indulge in smuggling activities against the State, and, therefore, the order of detention is bad. In reply, the order is sought to be justified on the ground that

the petitioner purposely did not apply for bail in that matter probably with a view to see that 90 days elapse before the challan is filed and he gets bail and, therefore, the detention was found necessary. It has, of course, been stated in the ground of detention that he is likely to continue his activities of purchasing and possessing narcotic drugs. It is submitted that although specific mention has not been made about the apprehension of grant of bail to the petitioner, this was certainly within the knowledge of the sponsoring and the detaining authorities.

2. So far as the question of detention of a person already in custody goes, there are a number of authorities of the Hon'ble Supreme Court throwing light on the matter. We shall refer to Ramesh Yadav Vs. District Magistrate, Etah and Others, , Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, and Shashi Aggarwal Vs. State of U.P. and Others, only although there are many other authorities but according to us, there are nearer to the question, with which we are concerned. In Ramesh Yadav's case (supra), the Court observed as under:

On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.

In Binod Singh's case (supra), the Hon'ble Supreme Court observed as under:

There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipso dixit of the Officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent.

This was not done in the order of detention and, therefore, it was held to be bad.

4. Then in Smt. Shashi Aggarwal's case (supra), the Court had gone further and has observed as under:

Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the

grant of bail. He cannot, be interdicted from moving the court for bail of clamping an order of detention. The possibility of the court granting bail may not be sufficient.

This view had already been expressed in Ramesh Yadav's case (supra).

4. Now, applying these principles to the present case, it may be stated in the first instance that there is no mention in the grounds of detention that the fact that the detenu may be released on bail was in the consideration of the sponsoring or the detaining authorities. In the second place, if by implication, as has been urged, on behalf of the detaining authority, the detention order was passed, on the apprehension that the detenu may be released on bail then also it should not have been done. On the other hand, if any bail application was to be moved by the petitioner, the State could oppose the same and if the bail was granted, it could be challenged before the higher court as has been held by the Hon'ble Supreme Court.

5. In these circumstances, the order of detention cannot be maintained and is quashed. It may, how ever, be made clear that this order would not in any way mean that the State would be prohibited from taking any such action if it thinks it necessary to take in case the petitioner is released on bail. It may also be further clarified that we have not touched the merits of the matter so far as the other grounds of detention are concerned and, therefore, this order should not in any way be interpreted to mean that the detenu is entitled to bail. That question would be considered as and when the occasion arises before the competent court.