

(2004) 02 AHC CK 0157
In the Allahabad High Court
Case No : Writ Petition No. 663 of 2003

Desh Raj Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)

Citation : (2004) CriLJ 2676 : (2004) 3 RCR(Criminal) 675

Hon'ble Judges : Vishnu Sahai, J;G.K. Gupta, J

Bench : Division Bench

Advocate : Ran Vijai Singh, for the Appellant; B.B. Saxena and C.S.C. Janardan Singh, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this writ petition preferred under Article 226 of the Constitution of India petitioner-detenu Desh Raj Verma has impugned the order dated 30-5-2003, issued by Mr. C. P. Singh, Deputy Secretary, Home and Confidential Department, Govt. of U. P., on behalf of Govt. of U. P., detaining him u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

The detention order, along with the grounds of detention, which are also dated 30-5-2003, was served on the petitioner-detenu on 7-6-2003 and their true copies have been annexed as Annexures 6 and 5 respectively to this writ petition.

2. The prejudicial activities of the petitioner-detenu warranting the issuance of the impugned detention order against him are contained in the grounds of detention (Annexure-5). A perusal of the grounds of detention shows as under :--

On 15-1-2003, sometimes between 9.00 A. M. and 10.00 A. M., when a police party of Police Station Zaidpur reached Gulriha tiraha it found a person coming from the side of Zaidpur. On seeing the police party the said person starting

walking fast. The police party asked him to stop, but instead of stopping he tried to run away. At about 9.55 A. M. the police party apprehended him and seized from his person 650 grams of morphine under a recovery memo. It sealed the morphine and took the said person in custody. On interrogation, he disclosed his name as Desh Raj Verma (the petitioner).

A perusal of the grounds of detention further shows that on the basis of the aforesaid prejudicial act the detaining authority concluded that in order to prevent the detenu from committing such prejudicial acts in future it was imperative to detain him vide the impugned order.

A perusal of the grounds of detention also shows that the petitioner therein has been apprised of his right to make a representation to various authorities.

3. We have heard learned counsel for the parties.

4. Although in this writ petition learned counsel for the petitioner has made a number of pleadings and taken a number of grounds but he has pressed before us the pleadings contained in paragraphs 9, 11, 12 and 13 of the petition and grounds (E), (F), (G) and (H) of paragraph 29 thereof.

The substance of averments contained in the aforesaid paragraphs and grounds is that the detaining authority was prompted to pass the impugned detention order against the petitioner because it proceeded on the erroneous premise that the bail application of the petitioner-detenu dated 27-3-2003, which was filed before the Special Judge, NDPS Act, Barabanki, was still pending and there was likelihood of his being released on bail. It has been averred therein that in fact the bail application of the petitioner-detenu dated 27-3-2003 had been rejected by the learned Special Judge, NDPS Act, Barabanki on 25-4-2003 and no bail application was preferred by the petitioner-detenu thereafter and none was pending on the date on which the impugned detention order was passed.

The short and long of the pleadings contained in the said paragraphs and grounds is that since the bail application of the petitioner-detenu had been rejected on 25-4-2003 the impugned detention order was vitiated on a dual count, namely:--

(a) by the vice of non-application of mind on the part of the detaining authority; and

(b) there was no cogent material for the detaining authority to conclude that the petitioner-detenu was likely to be released from custody in near future.

5, The averments contained in paragraphs 9, 11, 12 and 13 of the petition have been replied to in paragraphs 9 and 11 of the return of Mr. R.C. Uttam, Under Secretary, Home and Confidential Department, U.P. Lucknow. The aforesaid paragraphs read thus :--

"9. That in reply to the contents of para 9 it is submitted that the detention order was passed by the State Government on the basis of the prejudicial act

committed by the petitioner/detenu as 650 grams heroine was recovered from his possession and the petitioner initiated proceedings for getting bail from the competent Court. The detention order was passed by the State Government on the basis of proposal of the Sponsoring Officer dated 31-3-2003 to prevent the petitioner/detenu from Indulging into illegal trade of Narcotic Drugs and Psychotropic Substances activities. The detention order is based on the prejudicial activity and the contents of the bail application besides other evidences furnished by the Sponsoring Officer.

11. That the contents of paras 11, 12 and 13 of the writ petition are not admitted in the manner stated. It is respectfully submitted that on 31-3-2003 District Magistrate Barabanki submitted a proposal addressed to the State Government to detain petitioner/detenu under PIT N. D. P. S. Act, 1988.

It is further submitted that the bail application of the petitioner /detenu dated 27-3-2003 was also annexed with the said proposal dated 31-3-2003. The Screening Committee considered the said proposal on 3-5-2003 and 6-5-2003 but the District Magistrate, Barabanki didn't informed about the rejection of the bail application to the State Government on or before passing of the detention order dated 30-5-2003. Therefore, when on 30-5-2003 the detention order was passed an apprehension delivered in the grounds of detention that the bail application of the petitioner/detenu is pending and at any time the petitioner/detenu may get bail and after releasing from jail on bail he may indulge himself into the activities of smuggling Heroin. However, the detention order is fully legal and constitutional.

In a recent case of K. Varadharaj Vs. State of Tamil Nadu and Another, the Hon"ble Apex Court has held that it is not always mandatory for the Detaining Authority to take into consideration the bail application filed by the detenu and any order passed thereon by the Criminal Court. The Hon"ble Supreme Court has also affirmed the verdict given in case of " Abdul Sathar Ibrahim Manik Vs. Union of India and others, in which it has been clearly mentioned that the bail application made by the detenu and order of rejection thereof not placed before the Detaining Authority Supreme Court held that the same would not amount to suppression of relevant material when Detaining Authority aware of actual custody of detenu, question of non-application of mind does not arise. It is respectfully submitted that the Hon"ble Apex Court has taken the said view after considering the verdict given by the Apex Court in other cases like Dharmendra Suganchand Chelawat and another Vs. Union of India and others, and other cases."

6. Mr. Janardan Singh, learned counsel for opposite parties 1 and 2, invited our attention to paragraph-1 of the return of Mr. R.C. Uttam, wherein there is a reference to the decision of the Supreme Court rendered in the case of K. Varadharaj Vs. State of Tamil Nadu and Another, . He contended that in the aforesaid case the Supreme Court, relying upon its earlier decision rendered in the case of Abdul Sathar Ibrahim Manik Vs. Union of India and others, has held

that it is always not necessary for the detaining authority to take into consideration the bail application filed by the detenu and the order passed on it by any criminal Court and therefore in every case the non-placement of the bail application and the bail order would not vitiate the detention order on the vice of non application of mind.

7. We have considered the averments contained in paragraphs 9, 11, 12 and 13 of the petition; grounds (E), (F), (G) and (H) of paragraph-29 thereof; and paragraphs 9 and 11 of the return of Mr. R. C. Uttam. In our view this writ petition deserves to succeed on two counts, namely :--

(a) the impugned detention order Is vitiated by the vice of non-application of mind; and

(b) there was no cogent material for the detaining authority to conclude that the petitioner-detenu was likely to be released from custody in near future.

A perusal of the grounds of detention would make it manifest that the detaining authority has passed the impugned detention order on the premise that the bail application of the petitioner-detenu dated 27-3-2003 was pending on 30-5-2003, the date on which the grounds of detention were formulated and the impugned detention order passed. We have seen that the bail application of the petitioner-detenu had been rejected by the Special Judge, NDPS Act, Barabanki on 25-4-2003 and thereafter the petitioner-detenu did not prefer any application for bail. In such a situation, there is no escape from the inference that the impugned detention order is vitiated by the vice of non-application of mind. It is well-settled that if a vital fact, which is likely to influence the subjective satisfaction of the detaining authority one way or the other, is not placed before the detaining authority when it passes the detention order the detention order would be vitiated by the vice of Ayya alias Ayub Vs. State of U.P. and Another, Ayya alias Ayub v. State of U. P.).

8. In our Judgment, the fact that the bail application of the petitioner-detenu, dated 27-3-2003, had been rejected by the Special Judge, NDPS Act, Barabanki vide his order dated 25-4-2003 and the detenu did not prefer any bail application thereafter was certainly a vital fact which may have influenced the subjective satisfaction of the detaining authority either way. It may be that bearing in mind the heavy quantity of the morphine recovered from the detenu and the provisions contained in Section 37 of the NDPS Act which virtually make the grant of bail impossible in such a case, the detaining authority may have thought that since there was no possibility of the detenu being released on bail there was no necessity to clamp the impugned detention order on him. At the same time, we cannot write off the possibility that despite bail having been refused to the petitioner-detenu the detaining authority may still have clamped the impugned detention order on him. Which way the mind of the detaining authority would have worked we cannot conjecture because that was a matter which was in the realm of his subjective satisfaction. However, we make no bones in observing

that there is no escape from the inference that since in the grounds of detention (on which the impugned detention order is founded) there is a mention that the bail application of the petitioner-detenu dated 27-3-2003 was still pending though in fact it had been rejected on 25-4-2003, the Impugned detention order would be vitiated by the vice of non-application of mind.

9. We are constrained to observe that the decision rendered by the Supreme Court in the case of K. Varadharaj Vs. State of Tamil Nadu and Another, which was cited by Mr. Singh was on the facts of its own case and the ratio laid down therein is not applicable to our case.

10. We now take up the second ground, on which, in our view, this writ petition deserves to succeed. The said ground is that since there was no cogent material before the detaining authority on the basis of which he could have concluded that the petitioner-detenu was likely to be released from custody in near future the impugned detention order is vitiated in law.

11. The Supreme Court in para 19 of the oft-quoted case of Dharmendra Suganchand Chelawat and another Vs. Union of India and others, has held thus :--

"The decisions referred to above lead to the conclusion that an order for detention can be validly passed 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."

11A. A perusal of the aforesaid passage would show that one of the pre-requisites for claiming a detention order against a person in custody is that there should be compelling necessity to detain him and one of the facets of compelling necessity is the existence of cogent material before the detaining authority on the basis of which it may be satisfied that the detenu was likely to be released from custody in near future.

In our judgment, this facet of compelling necessity is absolutely wanting in this case. We have seen that the bail application of the petitioner-detenu, dated 27-3-2003, was rejected by the Special Judge, NDPS Act, Barabanki on 25-4-2003 and no bail application of the petitioner detenu was pending on 30-5-2003, the date when the impugned detention order passed.

It is common knowledge that in a case, such as the instant, wherein 650 grams of morphine is recovered, the provisions contained in Section 37 of the NDPS Act, virtually make the grant of bail impossible.

In such a factual matrix, in our view it can be safely concluded that there was no cogent material before the detaining authority on the basis of which he could have reasonably concluded that the petitioner-detenu was likely to be released from custody in near future.

12. In the result, we allow this writ petition; quash and set-aside the impugned detention order; and direct that petitioner-detenu Desh Raj Verma be released forthwith unless wanted in some other case.