

(2009) 05 DEL CK 0169

In the Delhi High Court

Case No : Writ Petition (Criminal) 383 of 2009

Diwakar Gupta and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-05-2009

Acts Referred:

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

Citation : (2009) 05 DEL CK 0169

Hon'ble Judges : Badar Durrez Ahmed, J;Ajit Bharihoke, J

Bench : Division Bench

Advocate : Sanjiv Kumar, S.S. Das, Gaurav Bhargava, S.K. Santosh, Arjun Mahajan and Sumit Arora, for the Appellant; P.P. Malhotra, ASG, Satish Aggarwal and Shirish Aggarwal, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This is a writ petition challenging detention orders in respect of the petitioners at the pre-execution stage. It is an admitted position that virtually identical detention orders have been issued against co-accused Rajesh Sharma and Nafe Singh. The present petition pertains to the detention orders in respect of Diwakar Gupta and Amit Kohli.

2. Insofar as Rajesh Sharma and Nafe Singh are concerned, they had also filed writ petitions challenging their respective detention orders. Those writ petitions were numbered as WP(CrI) 326/2009 and WP(CrI) 384/2009 respectively. Those writ petitions have been disposed of by a judgment delivered by this Court on 06.05.2009. The result of the said writ petitions was that the impugned detention orders therein were set aside and the petitioners therein, namely, Rajesh Sharma and Nafe Singh, who had been taken into custody pursuant to the detention orders, were directed to be released forthwith.

3. Those petitions as well as the present writ petitions pertain to the allegation that the petitioners herein as well as Rajesh Sharma and Nafe Singh had indulged in illegal trading of diazepam, lorazepam, alprazolam, clonazepam and phenobarbitone. Consequently, this was construed by the detaining authority as

falling within the expression "illicit traffic" as defined in the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as "the PIT-NDPS Act"). It is an admitted position that the above substances are psychotropic substances and are specified in the Schedule to the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act"). However, these substances are not mentioned in Schedule-I to the Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter referred to as "the NDPS Rules"). In the said decision of Rajesh Sharma and Nafe Singh, this Court examined in detail the submissions made by the learned Counsel for the parties as also the relevant case law on the subject and came to the conclusion that export of the aforesaid substances did not amount to illicit traffic in narcotic drugs and psychotropic substances and, therefore, the detention orders u/s 3(1) of the PIT-NDPS Act could not have been passed. Consequently, those orders were set aside.

4. The counsel for the parties agree that the fact situation in the present writ petition and those obtaining in Rajesh Sharma and Nafe Singh are virtually identical. The only difference being that in the cases of Rajesh Sharma and Nafe Singh they had been served with the detention orders and their writ petitions were filed post-execution. In the present writ petition, however, the detention orders have not been served on Diwakar Gupta and Amit Kohli for one reason or the other. Consequently, the present petition is at the pre-execution stage.

5. The learned Counsel for the petitioners referred to the decision of the Supreme Court in the case of Deepak Bajaj v. State of Maharashtra and Anr. 2008 (14) Scale 62. In the said decision, the Supreme Court categorically observed as under:

If a person against whom a prevention detention order has been passed can show to the Court that the said detention order is clearly illegal why should he be compelled to go to jail? To tell such a person that although such a detention order is illegal he must yet go to jail though he will be released later is a meaningless and futile exercise.

The said decision in Deepak Bajaj (supra) also explained the earlier decision of the Supreme Court in the case of Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, by observing that the five grounds mentioned in the latter decision for challenging a detention order at the pre-execution stage were not exhaustive but illustrative.

6. Taking into consideration the fact that in virtually identical cases of the co-accused Rajesh Sharma and Nafe Singh and the decision of this Court finding the detention orders to be illegal, it would, in view of the decision of the Supreme Court in Deepak Bajaj (supra), be futile to tell the petitioners herein that although the detention order is illegal they must yet go to jail though they would be released later on in view of the decision in Rajesh Sharma and Nafe Singh. Consequently, we direct that the detention orders in the case of the present

petitioners, for the same reasons as in the case of Rajesh Sharma and Nafe Singh, be set aside. Those detention orders shall not be given any effect to.

7. Before parting with this case, we would like to point out that initially none of the detention orders in respect of the petitioners had been placed on record. Subsequently, the petitioners had placed copies of the detention orders on record. The learned Additional Solicitor General had raised an objection as to how the petitioners came upon such detention orders when they had not yet been served with the same. When the matter came up for hearing on 18.05.2009, Mr Tulsi, the learned senior counsel appearing on behalf of the petitioners, stated that there would be no difficulty in explaining the circumstances under which the petitioners obtained copies of the detention orders and that an affidavit to the same effect would be filed. We find that an affidavit has been filed and it gives some kind of an explanation. We are not commenting upon the explanation given in the said affidavit and leave it to the respondents to enquire into and investigate the said circumstances.

The writ petition stands disposed of.