(2014) 08 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9668/2013

Elahibus APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 82, 83, 84, 85
Penal Code, 1860 (IPC) — Section 143, 148, 149, 323, 447
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 3(1), 8

Citation : (2014) 4 MPHT 337

Hon'ble Judges : Shantanu Kemkar, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : A.M. Mathur, learned Senior Counsel and Abhinav Dhanodkar, learned counsel, Advocate for the Appellant; Manoj Soni, learned counsel, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—By filing this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of his detention passed on 17.11.2005 (Annexure P/1), (served upon the petitioner on 30.04.2013) by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 (for short, the Act). He has also challenged the order dated 05.06.2013 (Annexure P/5), by which his representation was rejected by the Central Government as also the order dated 15.07.2013 (Annexure P/6), by which the detention order has been confirmed and he has been ordered to be detained for a period of one year.

2. The challenge to the aforesaid orders is on the grounds that since there is a delay of about eight years in serving the detention order, there is no live link between the activities and the order of detention. That for a singular incident,

the detention order could not have been passed. That the case against the petitioner may be relating to "law and order" but was not affecting "public order", and therefore, no detention order could have been passed against him. The petitioner has also alleged that the representation submitted by him has not been appropriately considered by the Competent Authority and as such, the impugned orders are liable to be quashed.

3. The respondents have filed reply and have supported the impugned orders. According to the respondents, the petitioner was detained not on the basis of singular incident, but he was involved in offences relating to NDPS Act since long. In the detention order, apart from involvement of the petitioner, in the raid many other cases, which were registered against him were considered. In a raid conducted on 30.12.2004, 6.980 kilograms of Opium Solution, 16.970 kilograms of Crude Morphine, 34.430 kilograms of Opium Makh, 110.510 kilograms of Opium Solution, 6.520 kilograms of Ammonium Chloride which was ultimately found to be Sodium Carbonate and other apparatus used for manufacturing of morphine, like Weights and Balance, Wooden Lab Machine, four big Steel Containers, Gas Cylinder and Stove, Filter Cloth, one large Shallow circular metallic vessel (Paraat), 2 big and 2 small hollow utensils (Tagaar), 2 rubber Gloves, Steel Jug, Plastic Mug, two big Spoons, two big Pots etc. were seized. Alongwith these articles, one spectacle cover with the words "Chashma Ghar, Krishi Upaj, Mandi Road, Pratapgarh, Rajasthan" printed on it and containing in it four handwritten papers were also recovered. The contraband, apparatus and the other documents so recovered were seized. Three motorcycles bearing Registration No. Nil (make New Hero Honda Splendor), Bajaj MP-14 N-0962 and Suzuki MP-14 E-0595 were also found parked in the house of Shri Banshilal. Shri Banshilal, who was present at his house during the search, stated that the aforesaid vehicles were being used by him for illicit transportation of narcotic drugs. Search of the Hero Honda motorcycle, resulted in recovery of Rs. 22,100/- kept in an envelope. On being asked, Shri Banshilal disclosed that the money was meant for purchase of Opium. The said money was seized along with the three motorcycles. In the voluntary statement dated 30.12.2004, Shri Banshilal S/o Nandlal Patidar stated that he and his associate Shamshuddin son Mohammed Ali r/o village Basad, Pratapgard, Rajasthan (the petitioner) had collected Opium for manufacture of Morphine; on 30.12.2004, in the early morning at about 0200 hours, he (Banshilal), Shri Shamshuddin (the petitioner) and two other persons known to the petitioner were busy in preparation of Opium solution and Morphine etc. at his residence; sensing the arrival of preventive party, petitioner Shamshuddin and the other two person fled away leaving him behind in his house; he was caught with the stuff; for preparation of Morphine they had collected about 1 Quintal Opium, out of which 30 kilograms of Opium was purchased by him from some cultivators of village Deori-Khavasa and Bhatkhedi and rest of the Opium was brought by Shri Shamshuddin; total Morphine to be prepared was to be handed over by him to Shri Shamshuddin and you would have taken it to Paragraph and for this act, you were to pay him Rs.

700/- per kilograms as commission; the currency of Rs. 22,100/- recovered from Hero Honda Splendor was given to him by Shri Shamshuddin for purchase of Opium; he had been indulging in illegal trade of manufacture of Morphine for the last 2-3 years; the spectacle cover and some papers so recovered during his house search belonged to his associate Shamshuddin and were left behind when you fled away. Apart from this, following record regarding his criminal activities was also considered by the detaining authority:-

(a) The S.H.O. Police Station, Pratapgarh, District Chittorgarh (Raj) vide his report dated 15.04.2005 has intimated that a crime No. 234/04 under sections 143-148-149-447-323 IPC has been registered at Charge Sheet No. 196/04 on 13.07.2004.

(b) He was also involved in crime No. 26/98 i.e. seizure case of 56.800 kilograms of Opium Solution effected on 28.08.1998 by Central Bureau of Narcotics, Neemuch. A supplementary complaint was filed against him on 07.08.1999. He had filed a revision petition before the Rajasthan High Court on which the Hon''ble Court vide its order dated 21.12.99 discharged him.

(c) The S.H.O. Narcotics Wing, Indore has informed that the petitioner was also involved in seizure case of 26 kilograms of Heroin in Crime No. 7/2005 effected by Police Station, Narcotics Wing, Indore on 25th June, 2005.

(d) During the follow-up, search of residential premises of the petitioner conducted on 02.01.2005 and subsequently on 24.01.2005 but he was found absconding. Raids were conducted on his residential address on 26.04.2005 and 30.08.2005 but he was not present. Raids had also been conducted by the Police, Thana, Narcotics Wing, Indore at his house in connection with seizure of 26.000 kilogram Heroin but he was found absconding as mentioned in the challan filed by them in Crime No. 7/2005.

4. According to the respondents, keeping in view the aforesaid, the impugned detention order was passed. It has also been stated by the respondents that as the petitioner was absconding, the detention order could not be served. The respondents in their return have filed a detailed datewise statement showing the efforts made from time to time by the respondents for arresting and serving of detention order on the detenu.

5. It is the case of the respondents that the detenu Shamshudin remained involved in the activities of illicit traffic for various offences, including the case of seizure of 26 kilograms of heroin from him, registered at Crime No. 11/2005 at Police Station, Narcotics Wings, Indore. The action taken against the detenu was justified. He remained absconded, therefore, provisions of Section 8 of the Act were resorted to. Procedure for attachment prescribed u/s 82 to 85 of the Criminal Procedure Code was also adopted and property of the detenu was attached and auctioned. He even then kept himself away from the course of law and thereafter on 25.04.2013, the petitioner/detenu was arrested in Crime No. 11/2004. His representations against the order of detention were duly considered

and decided by the Competent Authority, in accordance with law. In the circumstances, according to the respondents, no case for interference in the impugned orders is made out.

6. Having considered the submissions made by the learned counsel for the parties, we are of the view that so far as the petitioner''s contention that the preventive detention order could not be executed after a long lapse of several years, as there remain no live link between the order and the objects sought to be achieved by executing the order, we are of the view that the question raised by the petitioner has already been answered by the Supreme Court in the case of Subhash Popatlal Dave Vs. Union of India (UOI) and Another, The Supreme Court, as per the majority view held that the detention order cannot be quashed merely because there is a long delay in execution of the detention order beyond the period of detention. The Supreme Court has further held that although preventive detention order is not punitive and in case of long delay, a fresh application of mind by the detaining authority is normally required as the live proximate link is snapped due to such delay, but if the delay is adequately explained and if it is found to be the result of recalcitrant or refractory conduct of the proposed detainee in evading arrest, the ground of delay in execution of the order would not be available. In the present case, in the reply, the respondents - Central Bureau of Narcotics (CBN) have furnished a detailed statement showing the efforts made by the Department for arresting and serving of detention order on the detenu. On going through the said detailed datewise statement, showing the efforts made by the Department to serve the order of detention on the petitioner, who was absconding and to search and arrest him makes it clear that the respondents had taken all requisite necessary steps to secure arrest of the petitioner. The explanation of the delay thus, being satisfactorily explained. Thus, in our considered view, the petitioner, who was absconding for this long period, cannot be allowed to take advantage of his own wrong.

7. As regards the contention of the petitioner that he has been ordered to be detained without there being any adequate material for passing the order of detention, we find this submission also to be not acceptable. As noticed earlier, there is enough material to hold that the detenu had propensity and potency to continue to indulge in such activities in future. In the circumstances, the judgment relied on behalf of the petitioner in the case of Pooja Batra Vs. Union of India (UOI) and Others, is of no help to the petitioner. It is now well settled that the detention order under the Act can be ordered even on a single act of smuggling. However, as observed in the present case, it was not a single act, but there was sufficient material available against the petitioner to pass the impugned order of detention. We have also gone through the orders by which the petitioner''s representations were rejected and we find that the same have been duly considered and rejected by the Competent Authority. No violation of the provision of Act has been noticed in deciding the representation.

8. Thus, we find no ground to interfere in the impugned order. As a result, the

petition fails and is hereby dismissed.

