
(1989) 04 DEL CK 0035

In the Delhi High Court

Case No : Civil Writ Appeal No. 471 of 1988

G.R. Newar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-04-1989

Acts Referred:

Citation : (1990) 1 Crimes 650 : (1989) 38 DLT 260

Hon'ble Judges : S. Duggal, J

Bench : Single Bench

Advocate : J.K. Srivastava, H.K. Thakur and Rajender Dutt, for the Appellant;

Judgement

Santosh Duggal, J.

(1) By this petition under Article 226 of the Constitution, the petitioner challenges his detention vide order dated 7th July 1988 passed by Shri K.L. Verma, Joint Secretary to the Government of India Ministry of Finance, Department of Revenue, New Delhi, as an officer india empowered in this behalf u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Ordinance, 1988 (for short the "Ordinance").

(2) As a sequel to recovery of 3 packages received at Calcutta on 5th August, 1987 under one consignment note from Delhi, the police registered a case against Govind Ram Newar (petitioner herein), the consignor as also against the consignee of the said goods. He had been arrested earlier by the West Bengal Police, in another cases registered u/s 22/29 of Ndps Act. It appears from .the grounds of detention that the petitioner was released on bail on 22nd September, 1987, under orders of the Chief Judicial Magistrate, Calcutta, in the earlier case. The petitioner appeared before the Officers of the Narcotic Control Bureau, Calcutta on 25 September, 1987 in connection with the consignment allegedly received on 5th August, 1987. and pursuant to the statement given by him, he was placed under arrest in the aforesaid case on 26th September, 1987. The order of detention which is under challenge in this petition was passed on 7th

July, 1988.

(3) One of the pleas urged, assailing the legality of the detention order, is that all the relevant and material facts were not disclosed/placed before the detaining authority with the result that the satisfaction of the said authority stands vitiated, and the petitioner's continued detention is liable to be revoked.

(4) Mr. J.K. Srivastava appearing for the petitioner drew my attention to ground G of the petition, where a specific plea has been taken to the effect that the petitioner was released on bail in this very case. and this bail was not opposed by the Narcotics Control Bureau officials, which clearly shows that there was no evidence against the petitioner about his involvement in purchase and sale of psychotropic substance and that failure of the detaining authority to apply its mind to this vital information vitiates the order. He has also referred to the copy of the order, dated 19th October, 1987 placed on record as Annexure-E. This order is required to be reproduced, for proper appreciation of the contentions, urged by the learned counsel :- "Heard. Learned lawyer for the petitioner and the Ld. P. P. This is an application for bail u/s 439 Cr. P. C. in connection with complaint case u/s 43 of Narcotic Drugs and Psychotropic Substances Act, 1988. The lawyer moving the bail application submitted that the petitioner will not abscond if he is released on bail and that the petitioner is a responsible person. The Ld. P.P. submitted that he does not oppose bail application provided the petitioner be directed to see the I.O. for the purpose of investigation of this case and a heavy amount be imposed on bail bond. Perused the C.D. considered. The petitioner may find bail of Rs. 50,000.00 with two sureties of Rs. 25,000.00 each of whom one must be a regd. surety to the satisfaction of the Learned Chief Metropolitan Magistrate, Calcutta with the condition that the petitioner to see the I.O. twice a week for the purpose of investigation of this case. Directed and carried by me sd/- P.C. Ghosh Vacation Judge

(5) The learned counsel argued that it is not the plea of the respondents in the counter affidavit that this petition for bail or the order passed thereon were brought to the notice on the detaining authority, for all that is stated in reply to ground "G" is that save what was matter of record, the contentions made in the paragraph are denied. It was, however, admitted " that G.R. Newar was released on bail vide order dated 19th October, 1987 passed by the Vacation Judge of City Sessions Court, Calcutta imposing heavy conditions.

(6) Mr. Srivastava argued that it is thus the uncontroverted case that this factum of the bail application having been moved and the same having been allowed, was not placed before the detaining authority, as there is no plea that the order had been passed after taking into consideration this piece of information nor do the respondents take the stand that this information was not material or relevant for the purpose of formation of satisfaction of the detaining authority. The learned counsel submitted that the law is well settled, and it has been held by a series of judicial authorities, that bail application made by a person proposed to be put under preventive detention. and order passed thereon by the court

concerned, are relevant considerations, which may effect the mind of the detaining authority one way or the other, and that failure to place such an information/material before the detaining authority, renders the order invalid and liable to be quashed.

(7) Reference was made to a Supreme Court judgment directly on the point, namely, *Sita Ram Somani Vs. State of Rajasthan and Others*, . In this case the plea of non-application of mind was raised with reference to two documents; one being the retraction of the confessional statement, and second : granting of bail in the criminal case against detenu, subject to certain conditions. This what was observed by the Supreme Court :-

"No one can dispute the right of the detaining authority to make an order of detention if on a consideration of the relevant material, the detaining authority came to the conclusion that it was necessary to detain the appellant. But the question was whether the detaining authority applied its mind to relevant considerations. If it did not, the appellant would be entitled to be released".

(8) This view has been very explicitly reiterated in the case of *Anant Sakharam Raut Vs. State of Maharashtra and Another*, , where alone on the facts of that case, when no mention had been made of the order of bail granted to detenu in the cases pending against him, it was held that this indicates a total absence of application of mind on the part of the detaining authority while passing the order of detention. It was observed that in case the petitioner therein was found to be disturbing law and order or misusing the bail granted to him, the authorities would be at liberty to move the appropriate Court to get the bail orders cancelled. One does not know how the detaining authority would have acted if he was made aware of the above details. (Italics supplied)

(9) In yet another case reported as *The Union of India and others v. Manoharlal Narang*.MR 1987 Sc 1472, the Supreme Court took grave exception to the stand taken by the Respondent-Union of India that the order passed on the bail application or conditions, if any, imposed by the Cour while ordering release on bail were not necessarily required to be placed before the detaining authority and that the sponsoring authority was not required to collect materials of the record of proceedings before the courts, and held that if the sponsoring and the detaining authority are to adopt such cavalier attitude towards orders of courts and of this Court in particular, their orders will meet with the same fate as the one under review.

(10) The Supreme Court in the case under reference said in unequivocal terms that the absence of consideration of this important document, viz the order of bail imposing conditions amounts to non-application of mind on the part of the detaining authority rendering the detention order invalid.

(11) The dictum laid-down in the case of *Ashadevi Mehta (Detenu) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another*, was quoted with approval, which was to the effect that :

"It is well settled that the subjective satisfaction requisite on the part of the detaining authority, the formation of which is a condition precedent to the passing of the detention order will get vitiated if material or vital facts which would have a bearing on the issue and would influence the mind of the detaining authority one way or the other are ignored or not considered by the detaining authority before issuing the detention order."

(12) It may be noted that the material in question in the case of Ashadevi (supra) was also absence of any reference to the criminal case launched against the petitioner therein as also to the effect that the prosecution has been dropped or the petitioner had been discharged.

(13) In reply Mr. Thakur appearing for the State of Union of India assisted by Mr. Rajinder Dutt, pleaded that broad features of the case have to be taken note of, and that the general milieu was that here was a person arrested on the accusation of drug peddling, and this fact itself had been brought to the notice of the detaining authority and satisfaction would not have been vitiated simply because the factum of bail application having been moved and the same having been allowed was not brought to the notice of the detaining authority, and that this for the reason that the order of bail has been passed almost a year before the order of detention and that the failure to take note of this order ought not to militate against validity of the detention order in this case.

(14) The learned counsel has placed reliance on the case of Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, , where it was held that considering the totality of circumstances where there was sufficient material before the detaining authority, the Court ought to take pragmatic and commonsense point of view, and not proceed by technicalities .He also made reference to a judgment of the Supreme Court in the case of Haridas Amarchand Shah of Bombay Vs. K.L. Verma and Others, . where the Court held on the facts of the case that the subsequent order allowing modification of the term of original order of bail were not vital or relevant material, and failure to consider the same by the detaining authority would not vitiate the validity of the detention order.

(15) I have gone through the grounds of detention in this case and I find that there is not even a mention of the fact that the petitioner was released on bail after his arrest in this case on 26th September, 1987. There are authorities to the effect that even mere mention of the factum of bail does not suffice, and that what was required was that the application for bail which contains the plea of the detenu, as an accused before the Court in his defense, as also the orders passed by the Court, be placed before the detaining authority and that failure to do so renders the detention order illegal and invalid. This Court has also following the judgments of the Supreme Court referred to above, struck down detention orders, in a number of cases, on this very ground of failure to place before the detaining authority the petition for bail as well as the orders passed thereon. Reference Division Bench judgment of this Court in Criminal Writ No. 495 of 1988

P. Bhaskara Nayyar v. Union of India, decided on 20th December, 1988; (2) Criminal Writ No. 7 of 1988 Patta Ibrahim v. 177110/1 of India, decided on 21st July. 1986 also by the Division Bench, and another judgment by a Division Bench in Criminal Writ No. 14 of 1988, decided on 27th July. 1988, Jayant Khushal Dass Sanghani v. Union of India, in all these cases on the authority of the judgment of the Supreme Court in Anant Sakharam (supra), it was held that the bail petition and the orders passed^ by the Court on the said petition directing release of the petitioner on certain conditions was a very relevant material and vital information, which was required to be brought to the notice of the detaining authority, and that this was irrespective of the fact as to what view the detaining authority might have taken on consideration of the said material, but failure to do so is tantamount to non-application of mind to relevant and material facts resulting in vitiation of the detaining order.

(16) In view of the settled position, and in view of the uncontroverted fact that this order of bail, and, the application for bail moved by the petitioner were not brought to the notice of the detaining authority I do not feel it necessary to go into and examine other pleas raised in the writ petition and urged during, hearing, because I find the order of detention is liable to be quashed on the short ground of failure on the part of the detaining authority to apply its mind to the pleas raised in the bail application, and orders passed thereon by the court on 19th October, 1987.

(17) In the result the writ petition is allowed and the rule is made absolute. The petitioner be set at liberty, if not required in any other case.