

(2012) 03 DEL CK 0064

In the Delhi High Court

Case No : Writ Petition (Criminal) 773 of 2011 and Criminal M. (Bail) 6372/ 2011

Idris (Mohd.)

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 120, 34, 347, 365

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

Citation : (2012) 4 AD 317

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Nikhil Jain, for the Appellant; Pavan Narang, Anish Dhingra, Pushkar Gogoi and Ms. Akriti Jain, for the Respondent

Judgement

S. Ravindra Bhat

1. The petitioner seeks a direction to quash and set aside an order for detention u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS), issued by the second respondent against Mohd. Ayub, S/o Abdul Rahim Chippa, his brother-in-law. It is argued that the detention order is patently illegal and violative of Article 21 of the Constitution. Several grounds were urged in support of the contention that the claim has to be allowed. The petitioner submits that this proceeding falls within the acceptable categories crafted out in the judgment reported as Addl. Secretary to Govt. of India and Ore. Vs. Alka Subhash Gadia, 1992 (Suppl.)1 SCC 496.

2. Counsel for the writ petitioners argued primarily that the detention order remained unserved for a considerable period of time and, therefore, has lost its efficacy and relevance. In support of this proposition, reliance is placed on Rajinder Arora Vs. Union of India (UOI) and Others, and subsequent decisions of the Supreme Court.

3. The writ petitioner argues that he had been detained by the Rajasthan Police for alleged offences committed under the local State Excise Act and taken into custody on 21.04.2011. It was claimed that by a representation (a copy of which has been produced in support of the petition) the present respondent, i.e., the detaining authority was made aware of the detention by the State Excise authorities. The petitioner's argument led to this Court directing on 26.05.2011, to renotify the matter on 31.05.2011.

4. After hearing submissions of the parties on 01.06.2011, an interim order was made requiring the respondent not to serve the detention order upon the detainee Mohd. Ayub. In the meanwhile, in response to petitioner's allegations, the detaining authority had filed an affidavit dated 20.11.2010. The subsequent proceeding in Court revealed that controversy was as to what happened to the original detention order. The order of this Court dated 22.12.2011 reveals that the Court was made aware of Annexure P-9 to the writ petition which was a typed copy of the detention order of 14.03.2005.

5. The learned counsel for the petitioner was, therefore, required to file a copy of the said order which formed basis of that typed copy. The same was brought on the record. It is evident from a bare reading that the photocopy produced later was attested on 27.5.2011. The affidavit filed, however, states that a photocopy was handed over to petitioner's family in March, 2005. It does not elaborate when the said copy was received and why the attestation of the photocopy was made on 27.05.2011 just a day after the notice was issued by Court. Furthermore, the attestation is by the Director, PITNDPS.

6. The learned counsel for respondents, therefore, submits that in these circumstances, the Court should not exercise its writ jurisdiction, since the petitioner's grievance is not that the Detention Order with grounds was not served. Furthermore, subsequent pleadings on behalf of the writ petitioner are silent as to whether such order was served along with grounds. Even in the absence of such claim, the Court normally would have been justified in interfering and allowing petitioner's claim since Sec. 3(3) of the Act mandates that the order of detention should contain the grounds when it is served to the detainee by the concerned authority. Not furnishing such grounds would have vitiated the order. However, there is another subsequent development which this Court cannot lose sight of. The detainee Mohd. Ayub escaped the custody of Rajasthan Police on 24.12.2011 when he was in the process of his production before the concerned court at Ratlam in connection with offences under Sections 365/347/120/34 IPC. Having regard to these facts, we are of the opinion that this is, not appropriate case for the Court to intervene in exercise of writ jurisdiction. We are also mindful that the detainee did not approach the Court and his brother-in-law is the writ petitioner. There is no denial of the fact that the detainee escaped the custody.

7. In the present case, the fact that the petitioner was made aware of the order, at least on 27.05.2011, when the necessary papers were given to him, and he

did not represent against the grounds, or even specifically make out any grievance, cautions the Court against exercising jurisdiction. We, however, clarify that if the detainee has any remedy available in law in respect of this detention order, the same shall not be prejudiced in any manner by the present order.

The writ petition is disposed of accordingly.