
(2000) 03 DEL CK 0084

In the Delhi High Court

Case No : Criminal Writ 835/97 Along with Criminal W. P. 345/98

Jagdish Chander Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 22, 226

Criminal Procedure Code, 1973 (CrPC) — Section 482

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 10(1), 21, 23, 29, 3(1)

Citation : (2000) 4 AD 846 : (2000) CriLJ 3162 : (2000) 85 DLT 384 : (2000) 56 DRJ 206(2)

Hon'ble Judges : Devinder Gupta, Acting C.J.; Kripa Shankar Gupta, J

Bench : Division Bench

Advocate : Sh. Sanjeev Kumar and Sh. S.K. Santoshi, for the Appellant; Sh. Maninder Singh, for the Respondent

Judgement

K.S. Gupta, J.—Crl. Writ 835/97 under Article 226 of the Constitution of India read with section 482 Cr.P.C. was filed by Jagdish Chander Sharma, inter alia, alleging that on 1st February, 1997 at about 2.30 AM acting on the basis of specific intelligence about transportation of narcotics, the officers of DRI (Headquarters), New Delhi intercepted two trucks bearing registration Nos.-HR-29A-0705 and DL-1GA-9499 at Suraj Kund Road- Delhi Haryana border. At the time of interception truck No. HR-29A-0705 was occupied by Manoj Kumar @ Goldie, while truck No. DL-1GA-9499 by Jaspal Singh Jassa. Both these trucks were brought to I.P. Bhawan, I.P. Estate. New Delhi and search thereof resulted in recovery of 65.765 Kgs of heroin. In follow up action the house of petitioner who is alleged to be owner of truck No. HR-29A- 0705, was searched on 1st February, 1997 itself but nothing incriminating was recovered there from. Statement of the petitioner u/s 67 of the NDPS Act was recorded wherein he is alleged to have confessed about the ownership of said truck and his having knowledge of the truck being loaded with packets containing heroin. It is further

alleged that the petitioner was arrested, produced before ACMM, New Delhi and remanded to judicial custody on 2nd February, 1997. On 21st April, 1997 the petitioner moved a retraction petition and the prosecution has not bothered to file any reply thereto.

2. It is stated that detention order dated 6th May, 1997 made by respondent No. 2 under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short "the Act") was served on the petitioner in jail along with the grounds of detention. The petitioner made a representation dated 5th June 1997 from the jail to the detaining authority for quashment of the said detention order. By the letter dated 26th June, 1997 Sh. B. K. Arora, Under Secretary to the Government of India intimated the petitioner in regard to rejection of that representation. Simultaneously, the petitioner on 5th June 1997 itself sent a representation to the Secretary, Government of India, Ministry of Finance, Department of Revenue, against his detention and rejection thereof was communicated to him by the letter dated 30th June 1997 by Sh. B.K. Arora, Under Secretary working in the said Department. It is alleged that on 23rd July 1997 the petitioner was produced before the Advisory Board. Representation made before the Advisory Board for quashing the said detention order too was rejected. In the meantime declaration u/s 10(1) of the Act dated 30th May 1997 was issued by Sh. S.S. Dawra, Additional Secretary to the Government of India. It is claimed that the aforesaid detention order violative of Articles 14, 19, 21 and 22 of the Constitution of India. Grounds of challenge have been set out in Para No. 8 of the petition. It was prayed that by issuing a writ of habeas corpus or any other appropriate writ or order or direction the detention order dated 6th May, 1997 may be quashed and petitioner be set at liberty forthwith.

3. In Crl. Writ No. 345/98 on the facts and grounds identical to that taken in Crl. Writ No. 835/97, Jaspal Singh @ Jassa, who was found occupying aforesaid truck No. DL-1GA-9499, has sought quashing of the detention order dated 6th May, 1997 issued u/s 3(1) of the Act against him by respondent No. 2 and his immediate release.

4. Since in both the writ petitions the facts, grounds of challenge as well as argument advanced are identical, we propose to dispose them of by this common order.

5. It was contended by Sh. Sanjeev Kumar appearing for the petitioners that there was no cogent material before the detaining authority to form the opinion (a) that the petitioners were likely to be released on bail in near future in respect of the offences punishable under Sections 21, 23 and 29, NDPS Act for which the complaint has been filed and (b) that there was likelihood of the petitioners indulging in illicit traffic in narcotic drugs in the event of their being granted bail and in the absence of such a material the detention orders in question are bad in law. In support of the submission strong reliance was placed on the decisions in Dharmendra Suganchand Chelawat and another Vs. Union of India and others, and Gurminder Singh @ Lalli Vs. Union of India and Others 1999 1 AD (Cri.) 308.

Although number of grounds have been taken in the petitions to challenge the detention orders in question but the others were not pressed on behalf of the petitioners. On the other hand, it was contended by Sh. Maninder Singh appearing for the respondents that a mere bald statement that the detenu is likely to be released on bail and/or that he would repeat his criminal activities after release, is enough for passing detention order u/s 3(1) of the Act. Reliance was placed on the decisions in Sanjay Kumar Aggarwal Vs. Union of India (UOI) and Others, and Noor Salman Makani Vs. Union of India and others, . As a Part of the submission it was further argued by him that Gurminder Singh's case (supra) was rendered by a Division Bench of this Court particularly taking note of the ratio in Kamarunnissa and Others Vs. Union of India and another, and in that decision Sanjay Kumar Aggarwal's case (supra) though rendered prior in time, was not considered. According to the learned counsel Kamarunnissa's case (supra) was not taken note of in the later decision in Noor Salman Makani's case (supra) by the Apex Court. Therefore, the petitioners cannot take advantage of the ratio in Kamarunnissa's case (supra). Obviously, there is conflict of opinion in the decisions in Sanjay Kumar Aggarwal and Noor Salman Makani's cases (supra), on the one hand, and Kamarunnissa's case (supra). on the other hand, in as much as according to the ratio in both the former two decisions mere bald statement that the detenu is likely to be released on bail or that he would repeat the criminal activities after release, is enough for making order of detention while as per the ratio in later case reliable material must be before the detaining authority that there is real possibility of the detenu being released on bail and that on being so released, he would in all probabilities indulge in prejudicial activities before an order detention is made. These three decisions have been rendered by two Judge benches of the Apex Court. A Full Bench of the Karnataka High Court in Govindanaik G. Kalaghatigi Vs. West Patent Press Co. Ltd. and Another, after having considered a number of decisions held "that if two decisions of Supreme Court on the question of law cannot be reconciled and one of them is of bench while the other is of a smaller bench, the decision of the larger bench whether it is earlier or later in point of time should be followed by High Courts. However, if both such benches of the Supreme Court consist of equal number of Judges, the later of the two decisions should be followed by High Court and other courts. It may, however, be noticed that reliance was also placed on behalf of the petitioners to the decision in Dharmendra Suganchand Chelawat's case (supra) which was rendered by three Judge bench and was also taken note of as is evident from Para No.11 of the decision in Kamarunnissa's case (supra). In Para 21 of the decision in Dharmendra Suganchand Chelawat's case (supra) which is relevant, it was held:-

"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."

6. To appreciate the submission referred to above, advanced on behalf of the petitioners, reference to the averments, particularly made in Para No. 27 of the grounds of detention in Crl. W. 835/97 has become necessary. The same reads as under:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri. Jagdish Chander Sharma, I am satisfied that there is compelling necessity, in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the prevention of Illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

7. Verbatim are the averments made Crl. W. 345/98 except change of name as Jaspal Singh @ Jassa in place of Jagdish Chander Sharma. In the reply filed on behalf of respondents on the affidavit of Smt. Reva Nayyar, detaining authority in Para 8(B) it is stated that the detaining authority in the grounds of detention has already expressed her awareness that the detenu was in judicial custody. The authority has also indicated in Para 27 of the grounds that there is compelling necessity to detain the detenu under PITNDPS Act, 1998 in view of the likelihood of the detenu moving an application for bail in the event of being granted bail, his likelihood of indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities. Offences under Sections 21, 23 and 29 NDPS Act for which a complaint has been filed against the petitioners and others, are punishable with imprisonment for a term exceeding 5 years. u/s 37 of that Act bail in such offences can be granted only when the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence(s) and that he is not likely to commit any offence while on bail. Statements of both the petitioners u/s 67 of the said Act are alleged to have been recorded by the officers of DRI which, prima facie, indicate the involvement of the petitioners for the offences for which complaint stands filed against them. 35 packets are stated to have been recovered from truck bearing registration No.HR-29A-0705 while 34 packets from truck No. DL-1GA-9499 and the total weight of the heroin of these packets is alleged to be 65.765 kgs. In the face of this evidence as also the provisions contained in said Section 37 as they stand, there is remote possibility of the petitioners being released on bail in the complaint case. Petitioners are not shown to have been involved in the trafficking of narcotic drugs at any point of

time before the passing of two orders of detention both dated 6th May, 1997. Evidently, except the averments made in aforementioned Para 27 there was no other cogent material available on the basis whereof the respondent No.2 may have formed the opinion that on petitioners' filing bail application, they are likely to be granted bail or that there was likelihood of petitioners' indulging in illicit traffic in narcotic drugs in the event of their release on bail nor any such material was even brought to our notice at the time of hearing. Considering the ratio in Dharmendra Suganchand Chelawat's case (supra) which is binding on us, the bald statement made in said Para 27 of the grounds of detention which has been reiterated in Para 8(B) of the counter affidavit filed by respondent No.2 in the matter, was not enough for making the detention orders in question and the same, Therefore, being not legally sustainable, deserve to be quashed. It will not be out of place to state that although two year period of detention had already elapsed by the time the arguments in both the petitions came to be finally heard by us it was insisted on behalf of the petitioners that petitions may be disposed of on merits.

8. For the foregoing discussion, both the petitions are allowed and the detention orders in question dated 6th May, 1997, are hereby quashed.