

(2001) 07 DEL CK 0038

In the Delhi High Court

Case No : Criminal W. No. 1132 of 2000

Jagmohan @ Mohar Singh

APPELLANT

Vs

U.O.I. and Others

RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 22
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 120, 34

Citation : (2001) 93 DLT 522 : (2001) 59 DRJ 746 : (2001) 4 RCR(Criminal) 287

Hon'ble Judges : Usha Mehra, J;Mahmood Ali Khan, J

Bench : Division Bench

Advocate : Mr. Harjinder Singh, for the Appellant; Ms. Mukta Gupta, for the Respondent

Judgement

Usha Mehra, J.—Jagmohan @ Mohar Singh, aged about 38 years is kept under detention u/s 3(2) of the National Security Act, 1980(hereinafter called the Act) with a vie to preventing him from acting in any manner prejudicial to the maintenance of Public Order.

2. The above said order was passed by the Commissioner of Police(in short C.P.) on 20th August, 2000 pursuance to the delegation of powers to him vide Government of the National Capital Territory of Delhi's order dated 11th July, 2000.The order of the C.P. dated 20th August,2000 was approved by the Lt.Governor, the approving authority vide order dated 30th August, 2000.Representation made by the petitioner dated 22nd September, 2000 was rejected by the Central Government on 26th September, 2000.It was conveyed to the petitioner vide Central Government's letter dated 29 September, 2000.Representation of the petitioner was rejected by the Lt.Governor on 16 October, 2000.

3. The detention order has been assailed primarily on the following counts

namely (i) Delay in disposal of his representation. (ii) All relevant documents not placed before the Advisory Board. His brother Jai Chand was also detained. His release order was not placed before the Advisory Board nor the Bail application and the order was placed before the appropriate Authority. This vitiates the detention. (iii) Petitioner has been acquitted in regular trial by courts. This aspect was not looked into by the detaining Authority. (iv) Documents, in Hindi, the language known to petitioner, were not supplied. (v) Reliance on criminal case was misplaced because those were stale and reliance on DD entries could not be done because those were vague, imprecise. He was thus denied making effective representation. (vi) Suppression of material and vital facts effecting the detention order. (vii) Case against him being false and the grounds non-existent. (viii) finally grounds do not relate to public order. The allegations made against him only relate to law and order and the order passed is punitive in nature.

4. Mr. Harjinder Singh appearing for petitioner contended that as per respondent's own showing the delay in considering petitioner's representation has not been satisfactorily explained. The factual position is that the representation of the petitioner dated 22nd September, 2000 was rejected and communicated to him on 16th October, 2000. In his affidavit, Mr. G.L. Meena, Deputy Secretary, Home, NCT of Delhi has sought to explain the delay in the following words:-

"That in addition to the affidavit submitted in reply to para-23 it is submitted by the present additional affidavit that the representation dated 22.09.2000 of the petitioner was received in the Home Department of Government of NCT of Delhi on 25.09.2000 and on the same day it was sent to the Legal Advisor to the Commissioner of Police, Delhi for comments. The comments from the Legal Advisor to the Commissioner of Police, Delhi were received in the Home Department on 06.10.2000 (7th and 8th of October, 2000 were holidays on account of Saturday and Sunday respectively). As such, the comments were finally received from police Headquarters on 09.10.2000 and on the same day the representation was processed and put up to the Lt. Governor for consideration through proper channel. The said file was examined by OSD (Home), Deputy Secretary (Home) and Addl. Secretary (Home), Govt. of NCT of Delhi on 10.10.2000. The Principal Secretary (Home), Govt. of NCT of Delhi examined the said file on 11.10.2000 and on the same day the Lt. Governor also considered the same. After consideration the same was rejected by the Lt. Governor on 11.10.2000. The file was received back in the Home Department on 16.10.2000 through the same channel (14th and 15th October, 2000 were holidays being Saturday and Sunday respectively). The information to this effect was communicated to the detenu vide this government's memorandum dated 16.10.2000."

5. According to Mr. Harjinder Singh no Explanation has been offered as to why it took almost 15 days in getting the comments. This delay has remained unexplained, hence, vitiated the detention. To support his contentions he placed

reliance on the following decisions: Harish Pahwa Vs. State of U. P. and Others, , Rajender Pd.Khanna Vs. UOI & Ors. 1988 (3) Crimes 829, Mrs. Venmathi Selvam Vs. State of Tamil Nadu and Another, , Rajammal Vs. State of Tamil Nadu and Another, , S.M. Jahubar Sathik Vs. State of Tamil Nadu and Others, , Kundanbhai Dulabhai Shaikh Vs. dies Vs . Distt. Magistrate, Ahmedabad & Ors. : 1996CriLJ1981 , Gazi Khan alias; Chotia Vs. State of Rajasthan and another, . From the record we find that dealy has been explained satisfactorily. The decisions relied by Mr. Harjinder Singh are distinguishable on facts.

6. So far Gazi Khan's case (supra) is concerned the apex court rejected the reply affidavit filed by the respondent giving Explanation of delay because it was filed by a person who could not have got any personal knowledge with the passing of the order, whereas in the case in hand affidavit has been filed be Dy. Secretary (Home) NCT of Delhi who is the person who dealt with the representation of the petitioner. Therefore, on facts of this case the ratio of Gazi Khan's case does not apply.

7. As regard Harish Pahwa's case (supra) on facts it is distinguishable. In that case comments were called from other Departments seeking opinion of Secretary after Secretary and allowing the representation of the detenu to lie without being attended to. But that is not a fact in the present case. In the case in hand immediately on receipt of information it was dealt with continuously. So far Rajinder Prasad Khanna's case (Supra) is concerned, in that case detenu's representation dated 26th September, 2000 made to State Government was rejected on 16th October, 2000. Thereafter he made another representation to Central Government on 15th October, 2000 which was rejected on 9th November, 2000. Central Govt. filed affidavit attempting to explain the delay. Apex Court found that there was no Explanation offered as to why his representation from 23rd October, 2000 to 9th November, 2000 was not dealt with expeditiously. As regard his representation made to State Government dated 26th September, 2000 which was rejected on 16th October, 2000 Apex Court found delay was satisfactorily explained. Same is the position in the present case. Petitioner's representation dated 22nd September, 2000 was received by Home Department of NCT of Delhi on 25th September, 2000. It was rejected by the State Govt. on 11th October, 2000. He received the rejection order on 16th October, 2000. Hence it cannot be said that his representation remained unattended.

8. Similarly efforts of the Government in Rajammal's case (supra) to justify delay on facts of that case were found lacking.

9. In the case of S.M. Jahubar Sathik (supra) the Apex Court after scrutiny of record found that govt. sought clarification thrice without there being any need for it. But in the present case, clarification on a material point was sought on 6th October, 2000 which was immediately answered. Hence it can't be said that govt. unnecessarily wasted time in seeking clarification.

10. In Kundanbhai Dulabhai Sheikh's case (supra) Apex Court found there was

red tapism and lethargic attitude of govt.and its officers. These observations are not applicable to the facts of this case. In the case of K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, the Apex Court observed;

"It is a constitutional mandated commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

11. As observed in Rajammal's case (Supra) if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect future detention of the detenu. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

12. In the present case, representation of the petitioner was received on 25th September, 2000. On the same day it was sent to the legal Advisor to the Commissioner of Police for comments. Comments dated 5th October, 2000 were received in the Home Dept. of NCT of Delhi on 6th October, 2000 (30th September, 1st October and 2nd October, 2000 were holidays being Saturday, Sunday and National holiday respectively). Moreover, during this period, case was listed before Advisory Board on 26th September, 2000 and 29th September, 2000 and the complete file was placed before the Advisory Board. On receipt of the comments, the Home Department found that some clarification are needed from police headquarters. On the same day i.e. 6th October, 2000 letter was written seeking clarification. Clarification was immediately furnished by the police headquarters. It was received by Home Dept. of NCT of Delhi on 9th October, 2000 (because 7th and 8th October, 2000 were holidays being Saturday and Sunday respectively.) File with comments was thereafter put up to the Lt. Governor on 10th October, 2000. Lt. Governor considered and rejected the representation of the petitioner on 11th October, 2000. File thereafter was sent back through the same channel by the Lt. Governor. It was received back by Home Dept. of NCT of Delhi on 16th October, 2000 (as 14 and 15th October, 2000 were holidays). Rejection as pointed out above was conveyed to detenu on 16th October, 2000 itself. From these facts it is apparent that respondent has furnished Explanation for the delay. From the perusal of the same there does not appear to

be any lethargic attitude of red tapism on the part of the respondent in dealing with his representation. For support reference can be made to the decision of Supreme Court in the case of Rajappa Neelakantan Vs. State of T.N. and Others, wherein in similar circumstances the court accepted the Explanation offered by the Department and held that there was no inordinate delay. We also find that the Explanation rendered by the respondent in disposal of the representation of the petitioner has been sufficiently explained. There was no inordinate delay in dealing with petitioner's representation. It has been dealt at every level expeditiously and continuously.

13. Turning to his contention that material documents were not placed before Advisory Board and the relevant & vital documents were suppressed from detaining authority, we find no force in this submission. According to petitioner his bail application dated 21st August, 2000 and order passed on his bail had not been placed before the approving authority. Vide following cases he tried to support his contention; Mohd. Shakeel Wahid Ahmed Vs. State of Maharashtra and Others, ; Vashisht Narain Karwaria Vs. State of U.P. and another, . Abdul Sathar Ibrahim Manik Vs. Union of India and others, , M. Ahamedkutty Vs. Union of India (UOI) and Another, and finally Madan Gopal @ Madan Bhaiya Vs. Union of India and Others, . There cannot be any quarrel with the proposition laid down in these cases that if material, relevant and vital documents are suppressed or concealed either from the detaining Authority or from the Advisory Board then detention stand vitiated. But facts on record negates this contention of the petitioner. He filed the application seeking bail on 21st August, 2000 whereas the detention order was passed on 20th August, 2000, Therefore, there was no question of placing his application for bail before the appropriate authority for consideration as the same was not in existence when the detention order was passed. Ms. Mukta Gupta rightly contended that in the case of Mohd. Ahmed Kutty (supra) the bail application was a relied upon document by the detaining authority and the said application was not supplied to the petitioner. It was for this reason court observed that relevant document was not placed before the Authority nor was considered hence detention vitiated. But in the case in hand question of non placing of the non-existent document like his bail application and order would not vitiate his detention. Even otherwise Apex Court in the case of Abdul Sattar (supra) observed that non supply of the documents like bail application does not affect the right of the detenu for making an effective representation.

14. According to Mr. Harjinder Singh grounds of detention in the case of his brother Jai Chand and that of the petitioner are identical. Since the Advisory Board in the case of Jai Chand formed an opinion that there was no sufficient cause for the detention of Jai Chand and ordered his release and the Appropriate Government revoked his detention then on the same ground he should have also been released had the opinion of the Advisory Board and order of revocation of Jai Chand been placed before the detaining authority of the petitioner. Having not done so it amounted to suppression of material and relevant facts from the

appropriate authority. Thus his detention stood vitiated. We find, on the facts of this case, no substance in this submission. Because all the transaction and incidents as mentioned in the grounds of detention of Jai Chand are not identical to that of the petitioner. Three cases find mention in the grounds of detention of Jai Chand as well as of the petitioner but beyond that there is no similarity. Besides these three cases other material has also been taken into consideration by the detaining authority qua the petitioner which is totally different. Petitioner is involved in number of cases for which his brother Jai Chand was not involved. Therefore, it cannot be said that the transaction and incidents were identical in the case of the petitioner as well as his brother Jai Chand. Hence the opinion of the Advisory Board in the case of Jai Chand and the revocation order of detention even if not produced before the detaining authority of the petitioner it could not have effected the subjective satisfaction of the detaining authority. For support reliance can be placed on the decision of Supreme Court in the case of *Rajappa Neelakantan Vs. State of T.N. and Others*, wherein it was held as follows:-

"It is not possible to accept the contention that had the records connected with the detention of the co-traveler R been placed, perhaps, the detaining authority would have come to a different conclusion, for two reasons. First is that the detention order in respect of the present petitioner should be based principally on the facts centered on what he had done in collaboration with his co-traveler. In other words, if the detention order and the connected records relating to the co-traveler were to be placed before the detaining authority there could possibly be an apprehension that the detaining authority would be biased against the petitioner because of the various allegations contained therein. Second is that the detaining authority cannot be said to be totally ignorant of the fact that R was also detained under a separate order, for, the aforesaid detention order against R was passed by the same detaining authority just six days prior to the impugned detention order."

15. In the ground of detention of Jai Chand, following cases were mentioned:-

- i) FIR No.64/94 u/s 452/506/323/34 IPC, P.S. Darya Ganj.
- ii) FIR No.215/95 u/s 506/34 IPC, PS Darya Ganj.
- iii) FIR No.853/96 u/s 307/302/34 IPC and 25 to 27 Arms Act, PS Kotwali.
- iv) FIR No. 30/98 PS Sabzi Mandi.
- v) FIR No. 198/98 P.S. Sabzi Mandi
- vi) FIR No. 366/98 u/s 302/120B IPC, PS Darya Ganj, Delhi.

16. Out of the above said cases mentioned in the ground of detention of Jai Chand only three cases i.e. FIR No. 30/98, FIR No.198/98 and FIR No. 366/98 were relied in the ground of detention of the petitioner. The other cases namely FIR No.64/94, FIR No. 215/95 and FIR No.853/96 were mentioned to narrative

the past criminal history of the petitioner. Those were not relied against the petitioner in the ground of detention communicated to him. This was made clear in the ground of detention itself. In the ground of detention of the petitioner other criminal material relied like criminal activities of the petitioner of which did not find mention in the ground of detention of Jai Chand namely DD No.28/2000 PS Darya Ganj, DD No.26-A/2000 PS Darya Ganj, DD no.15-A/2000 PS Darya Ganj under Wild Life Protection Act, 1972. Petitioner was involved in the case of killing of Pawan Gulati with fire arm on 19th August, 1996 for which case FIR No.853/96 u/s 392 IPC, PS Vasant Vihar, Delhi. It is the case of the detaining authority that even the judicial custody did not deter the petitioner from conspiring and committing crimes and threatening the public witnesses in Tis Hazari Court who had come to depose against him. In case registered Vide DD No.28-A dated 18th January, 2000, 4th and 5th August, 2000, it is alleged that on 18th January, 2000 while SI Dharma Pal along with Const. Devender Kumar posted at PS Darya Ganj were on patrolling duty in the area at 3.00 P.M when they reached near David Street Iron Bridges they found shop keepers pulling down the shutters of their shops. Reason on enquiry came to light that petitioner who was the registered Bad Character of the area was going to come shortly. People of the area were so afraid that seeing him they started pulling down shutters of their shops. On 4th August, 2000 at about 3.00 P.M. an information was received on telephone that petitioner with his Gundas was using force to extort money from the area of David Streets and its surroundings. When ASI Gurdeep Singh went to the spot to find out the correctness of the information, the people were so much in terror that nobody came forward to make any statement against the petitioner. Similarly on 5th August, 2000 at about 6.05 P.M. an anonymous call was received at the Police Station again informing that the petitioner who is desperate criminal was extorting money from shop keepers at Daya Nand Road, Delhi. When SI Dharmender kumar tried to extract information from the shop keepers they were so terrified that out of ear of petitioner no one was willing to make any complaint. Similar was the fate of DD No.26-A dated 27th January, 2000, DD No.15-A & 15-B dated 1st August, 2000 SI Dharm pal recorded that shopkeepers were pulling the shutters of their shops and were shouting that the petitioner had made a list of the people who had given anonymous information to police against him and that he would kill them like he killed Pawan Gulati and Satish Kohli. He threatened the public at large that people would meet the same fate as Pawan and Satish if they make any complaint to the police. These were the facts which were in addition to what there in the ground of detention of Jai Chand. Therefore, non placing of the opinion of Advisory Board in the revocation order of Jai Chand. Therefore, non placing of the opinion of Advisory Board and the revocation order of Jai Chand did not materially effected the subjective satisfaction of the detaining authority in the present case. We also find that there was no question of suppression of facts and material as Mr. Harjinder Singh wants us to believe.

17. Next contention raised by Mr. Harjinder Singh is that detenu did not know

English. He was unable to read and write English properly. Therefore, here requested the detaining authority to supply him the ground of detention and documents in Hindi language. Having not done so the detention stood vitiated. Refuting these allegations Ms. Mukta Gupta has drawn our attention to the affidavit of Mr. Keshav Dwivedi, Deputy Commissioner of Police, (Hqrs.) dated 6th February, 2001 and in particular para 5 of the said affidavit wherein it is specifically pleaded that petitioner is a graduate from Khalsa College, Delhi University. He did his graduation in the year 1983 as per the record. He knew English. He even made his representation in English language only and that is the reason he did not raise any objection in respect of supply of the documents in English at the first available time. Rather he signed each and every page received by him in English language. Moreover the ground of detention were read over to him in English and also translated in Hindi at the time of detention. This is so reflected in the Daily Diary vide entry No. 35-A dated 21st August, 2000 PS Darya Ganj. Since the petitioner was a graduate and knew English language as he has studies from Delhi University, Khalsa College. Moreover, the ground of detention having been read over and translated to him in Hindi, we find there was no violation of Article 22(5) of the Constitution of India on this count.

18. Now turning to the other ground raised by the petitioner that he has been acquitted in all the cases registered against him, to our mind, this plea has no substance. Firstly acquittal by itself does not prove that he is innocent particularly when there was sufficient material on record before the detaining authority to come to the conclusion that he got acquittal by terrorising the witnesses and even the victim's close relations either kept mum or went hostile because of the fear created by him. The mere fact that he got acquittal is not sufficient to hold that there was non application of mind by the detaining authority. Secondly out of the cases mentioned in the ground of detention, one case bearing FIR No. 366/98 u/s 302/120B IPC, P.S. Darya Ganj was still pending for trial. The subsequent acquittal of the petitioner in that case during the period of detention would not materially effected the detention order because at the relevant time the case was still pending. The second case at that time was at the stage of investigation. Therefore, acquittal in a criminal case is no ground to conclude that the preventive action could not have been taken. The preventive action has to be taken recourse to if the detaining authority is satisfied that the activities of a person are such which have travelled beyond the capacity of being dealt with by ordinary law. Supreme Court in the case of Ashok Kumar Vs. Delhi Administration and Others, observed as under:-

"Justification for such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. Thus any preventive measure even if they involve some restraints or hardship upon individual, do not partake in any way of the nature of punishment but are taken by way of precaution to prevent mischief to the State."

19. The object is not to punish a man for having done something but to intercept

before he does it and to prevent him from doing. Therefore, there is no reason why the State cannot take recourse of its power of preventive detention in cases where the courts is genuinely satisfied that no prosecution could possibly succeed against such detenu because he is a dangerous person. He has overawed witnesses or against him no one is prepared to depose. In the case in hand, the cases in which the petitioner was acquitted he was able to terrorise the prime prosecution witnesses. In there murder cases no witness came forward specially after they found that the prime witness was killed in the broad day light. Shri Satish Kohli was murdered in full view of the public by the hired killer of the petitioner. Because of the fear of the petitioner wife of Shri Satish Kohli who was an eye witness of the murder of her husband turned hostile as a result of which he got acquitted in the murder of Satish Kohli. While in custody he could create fear in the witnesses as a result of which the first cousin of the victim kept complete silence when came to depose in the court in case FIR No.30/98, PS Sabzi Mandi.

20. When the petitioner was arrested he was wearing a necklace studded with tiger nail which was in blatant disregard of the law. He thus created an atmosphere of terror and fear in the area and made the life of the people difficult to live in peace. His criminal activities thus were prejudicial to the maintenance of public order.

21. Mr. Harjinder Singh contended that facts of FIR No.366/98 are false. He brought to our notice the fact that the incident shown in FIR No.366/98 was of 20th May, 1998 whereas during that period he was in custody at Karnal. While in custody at Karnal he could not have committed the crime at Delhi as projected in FIR No.366/98. Even if we accept the contention of the petitioner that he was in custody and was produced before the court at Karnal on 20th May, 1998 but this single fact by itself does not prove that the order of detention is bad. The activities of the petitioner were such which affected the tempo of the society. As already pointed out above when the petitioner was arrested he was found violating the Wild Life Act as he was wearing a necklace studded with tiger nail. He was also in possession of mobile phones, cash, blank signed cheques, two undated signed stamp papers. These documents were found from his possession indicating that he was desperate and had the intention to indulge in criminal activities which were prejudicial to the public order.

22. Moreover, the subjective satisfaction of the detaining authority cannot be questioned by this Court. His activities were such which affected the public at large and not any individual. Therefore, it could not be called a law and order problem. It is in fact related to public order.

23. For the reasons stated above, we find no merit in the petition. The same is accordingly dismissed with no order as to costs.