

(1989) 04 DEL CK 0038

In the Delhi High Court

Case No : Criminal Writ Petition No. 540 of 1988

Jyotin Vyas

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 — Section 3

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 67

Citation : (1989) CriLJ 2235 : (1989) ILR Delhi 248 : (1990) 1 RCR(Criminal) 161 : (1989) 1 RCR(Criminal) 619

Hon'ble Judges : M. Sharief-ud-din, J; Charanjit Talwar, J

Bench : Division Bench

Advocate : P.P. Grover, J. Sethi, Sat Pal and Rekha Agarwal, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) (RULE D.B.).-By this petition, Jyotin Vyas who has been preventively detained, challenges the order of detention made by Shri K.L. Verma, Joint Secretary to the Government of India, a specially empowered officer u/s 3(1) of the Prevention of Illicit Traffic, in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (hereinafter referred to as the Ordinance) on 6th July, 1988. The said order was passed with a view to preventing the detenu from engaging in possession, sale and purchase of psychotropic substances. The impugned order of detention and the grounds of detention were served on the detenu while he was in judicial custody in Central Jail, Tihar.

(2) To appreciate the contentions urged before us, a few may be noticed.

(3) On a secret information received by the Officers of the Narcotics Control Bureau, the godown of M/s. Delhi-Kanpur-Gondia Transport Company, Delhi was searched on 5th August, 1987 and two packages containing in all 50,000 Prodorn tablets containing Methaqualone Psychotropic substance were seized. The said consignments were booked by one Tejinder Singh under Goods Receipt No.

627020. As a result of interrogation of Tejinder Singh, the residential premise of the petitioner (the detenu) were searched on 6th August, 1987 which led to the recovery of one polythene bag containing white powder weighing 25 Kg. On being tested with a test kit, the white powder was found to be Methaqualone Psychotropic Substance. It was seized under a Panchnama.

(4) The petitioner's statement u/s 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the Ndps Act) was recorded on 6th August, 1987 itself. In the said statement, the petitioner is alleged to have named his co-accused Ashok Kumar Jaidka of Ghaziabad. It was to Ashok Kumar Jaidka that the petitioner had by then supplied about 1000 Kg. approximately of Methaqualone powder in piecemeal. Approximately two bags weighing 25 Kg. each were being supplied by the detenu to Ashok Kumar Jaidka in a month. Ashok Kumar Jaidka used to get the powder converted into tablets. The conversion or the manufacturing process was being carried out in the factory of Tejinder Singh, was, as it has been noticed above, had consigned the tablets which were recovered from the godown of the company. The petitioner is also alleged to have disclosed the manner and the parties from whom he used to get the Methaqualone powder and how after the manufacturing of the tablets, the narcotic drug was being disposed of.

(5) The petitioner was arrested on 6th August, 1987. It appears that his co-accused Ashok Kumar Jaidka's statement had been recorded a day earlier. Along with Tejinder Singh, he was also arrested for having committed an offence under the Ndps Act. The petitioner was produced before the Additional Chief Metropolitan Magistrate, New Delhi on 7th August, 1987, who remanded him to judicial custody. After completion of the investigations, a criminal complaint was filed in the court of competent jurisdiction against the petitioner and others for offences under the Ndps Act. The detaining authority, in the list of documents, has relied upon this complaint. It is mentioned at Item No. 19. It is admitted at the Bar that the complaint was filed on 2nd November, 1987 and is pending for trial. It was almost after eight month of the filing of the challan that the detention order was served on the petitioner. The detaining authority was of the view that in case the detenu was released on bail. he was likely to indulge in the prejudicial activities detailed in the detention order and a summary of which has been noticed above.

(6) At this stage it is relevant to quote paragraphs 6 and 7 of the grounds of detention. The main argument of Mr. Grover that the subjective satisfaction of the detaining authority is not made out, is based on these two paragraphs.

"6. I have carefully considered the facts and circumstances of the case, documents, statements and other material available in the subject case. I have also gone through the various applications moved in the court of law and orders passed by the Magistrate on those applications. 7. In view of the facts mentioned hereinabove I have no hesitation in arriving at the conclusion that you have been engaging in possession, sale and purchase of psychotropic substances, in case if

you are released on bail, you are likely to indulge in the aforesaid activities. Although the criminal proceedings under the Ndps Act, 1985 have been initiated against you, I am satisfied that you should be detained under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 with a view to preventing you from engaging in possession, sale and purchase of psychotropic substances."

(7) The contention of Mr. Grover is that in a case like the present, the possibility of the detenu coming out on bail, is nonexistent. In any case the petitioner had not filed any application seeking bail in the case under the Ndps Act pending against him. He admits that by an order of 9th November, 1987, the petitioner (the detenu) has been released on interim bail for a period of three weeks by this Court on the ground that as his brother had expired, he had to attend certain ceremonies. After the interim bail of three weeks, he surrendered before the Court of the A.C.M.M., New Delhi, as directed. This interim bail was granted to him prior the passing of the detention order but the facts that he had been granted interim bail and that there was no complaint of his having committed any prejudicial activity during that period when he was a free man, have gone unnoticed by the detaining authority.

(8) At this stage, the provisions of Section 17 of the Ndps Act may be noticed as this Section has made the grant of bail to an accused very stringent. This Section was substituted by the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988. The Section reads :

"37. Offences to be cognizable and non-bailable-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

(9) The above provision is yet to come into force. However, we were informed at the Bar that the required Notification as per Section 3 of the Amendment Act, 1988 enforcing the provision is likely to be published in the very near future, most probably, in a week or so. As it is, the Courts are loath to grant bail to an accused who does not fall in the category of "addict" for an offence punishable under the N.D.P.S. Act. The reasons are obvious. Because of the gravity of the offence and the deterrent punishment provided under the Act, the grant of bail on merits in a case like the present is ordinarily not possible. However, the cases in which bail is granted for an interim period stand on a different foot in. Even

under the Preventive Detention Laws, temporary release of the detenu is permissible. u/s 13(1) of "the Ordinance", "(now the Act), the Central Government or the State Government, as the case may be, is empowered to release a person detained for any specified period even without condition. We are aware that in fit cases such power is being exercised by the Government. So also the Courts in exceptional circumstances do pass the orders for release of an accused for interim period. As noticed above, in this case the petitioner while he was in judicial custody and prior to his being detained under the Guidance was granted bail for three weeks. That order was passed by one of us (Malik, J.) to enable the petitioner to attend the funeral of his brother and other ceremonies connected with the death. The petitioner in paragraph 7 of the petition has referred to the grant of interim bail to him by this Court Therein, he was complained that if the detaining authority had been apprised of that fact, the detention order might not have been passed. The plea is as follows :-

"THE detaining authority was not apprised of the fact that the petitioner was admitted to an interim bail by Hon"ble Delhi High Court vide its order dated 16th October, 1987 and the petitioner remained on bail for a period of three weeks and did not abuse the concession of the said bail. Had the detaining authority been apprised of this fact the present detention order might not have been passed. The petitioner is attaching photo copy of the said order, which is Annexure J. During this period the petitioner did not indulge in any activity covered by Act, 1985. Therefore, the apprehension of the detaining authority is not borne out by the facts of the case."

(10) The return has been filed by the detaining authority himself. The above averment has not been replied to at all by him. Paragraph 7 of the counter affidavit is to the following effect:-

"PARA-7.It is wrong and denied because the detaining authority has gone through all the case records before passing the detention order including various applications moved by the petitioner and orders passed by the Magistrate on the same."

(11) The High Court and not the Magistrate had passed the order while deciding the Criminal Misc. No. 1159/187 on October 16, 1987. The impugned detention order was passed on 6th July, 1988, almost after 9 months of the order granting the interim bail to the petitioner. Along with the grounds of detention the list of documents relied upon shows that the detaining authority had gone through various bail applications moved by the co-accused Ashok Kumar Jaidka before the Magistrates. The only document relied upon by the detaining authority as far as petitioner's bail application was concerned, was the reply dated the 4th April, 1988 of the respondents made in the High Court. At Serial No. 20, the list of document relied upon was a document described as :

"REPLY of Ncb dated 4-4-88 to the petitioner's petition u/s 439 read with Section 482 Criminal Procedure Code . for grant of interim bail,"

(12) Thus the petitioner's grievance that the said order of this Court passed on 16th October, 1987 was not placed before the detaining authority is made out. Mr. Grover, learned counsel for the petitioner in support of his contention that the subjective satisfaction of the detaining authority is vitiated relies on a recent judgment of the Supreme Court in Abdul Razak Abdul Wahab Sheikh v. Shri S. N. Sinha. Commissioner of Police, Ahmedabad and another (Writ Petition No. 307 of 1988) decided on 3rd March, 1989(1). In that case the detenu had been released on parole from 14th March, 1988 to 13th April, 1988. During that period, it was averred by him that no act prejudicial to the maintenance of the Public order had been alleged to have been committed by him. The respondents had merely denied the specific averment of the detenu. The Supreme Court while setting aside the detention order in the last paragraph of the judgment has observed as follows:-

"IT is highlighted in this connection that in the affidavit- in-reply filed by the respondent No. 1, the detaining authority, he merely denied the specific averments made in para 3(III) that no act prejudicial to the maintenance of law and order on the part of the detenu is alleged to have been committed by the detenu between 14th March to 13th April, 1988 etc, without specifically denying those statements. In this background, a mere bald statement that the detenu who is in jail custody is likely to be released on bail and there are full possibilities that he may continue the above offensive activities without reference to any particular case or acts does not show on the face of the order of detention that there has been subjective satisfaction by the detaining authority in making the order of detention in question."

(13) The law laid in Abdul Razak Abdul Wahab Sheikh's case (supra), which case we may notice was read to us at great length, is applicable to the facts of the present case. Following that law, the detention order is liable to be set aside.

(14) In the view, which we have taken, no useful purpose would be served by analysing the argument that in a case like the present where the detenu is already in judicial custody for grave offence under the N.D.P.S. Act, there was no possibility of his being released on bail. We may notice, however, that 9 months have already passed since the making of the detention order and the petitioner has been detained for one year only. So far it was admitted at the Bar that he has moved no bail application.

(15) The result is that the writ petition is allowed. The Rule is made absolute. The petitioner is not required to be detained under any other valid order passed by a Court or any other competent authority, be set at liberty forthwith.