
(1989) 02 DEL CK 0051

In the Delhi High Court

Case No : Criminal Writ Petition No. 477 of 1988

Manju Narula

APPELLANT

Vs

K.L. Verma and Others

RESPONDENT

Date of Decision : 27-02-1989

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 3

Citation : (1989) CriLJ 1302 : (1989) ILR Delhi 364

Hon'ble Judges : S. Duggal, J

Bench : Single Bench

Advocate : R.L. Mehta, Sunil Mehta, Rajender Dutt and S. Kohli, for the Appellant;

Judgement

Santosh Duggal, J.

(1) The petitioner, detained by means of detention order passed on 5th August, 1988 by Shri K. L. Verma, Joint Secretary to the Government of India in exercise of the powers conferred upon him u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Ordinance, 1988 (hereinafter referred to as the Ordinance), and served on her the same day, seeks a writ of habeas corpus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing her release forthwith, by quashing the order of detention, referred to above.

(2) The detention order has been passed on the allegations that she was closely, and actively associated in the activity of illicit trafficking, and transportation of narcotic drugs (heroin), and that her detention was necessitated with a view to preventing her from engaging in the aforesaid activity. The petitioner made a detailed representation against her detention on 18th August, 1988 whereby, besides pointing out a number of facts which militate against the validity of her detention, and while praying for the revocation of the same, she requested for copies of number of documents, which, according to her, were relied upon, referred to and taken into consideration by the detaining authority, but had not

been supplied with the grounds of detention, and which according to her, were necessary, to enable her to make an effective representation. She also pleaded that number of copies of the documents, has given to her, were illegible and thus she was deprived of her right to make a proper representation and prayed that legible set of copies be supplied to her.

(3) The representation was rejected, and! the .:communication thereof was sent to her by memorandum dated 2nd September, 1988. There was, however, no indication as to whether her request for supply of documents or for amending the defect in the copies of the documents already given, by making available legible copies, was being considered or not. The present writ petition was filed on 24th September, 1988, and by that time the petitioner had not before anything further with reference to her request, for supply of copies of documents, enumerated in the representation. Faced with this situation, one of the grounds taken is that the continued detention of the petitioner has be- come unlawful and liable to be quashed, for the reason that the detaining authority had failed to comply with the constitutional and mandatory requirements, which enjoin that copies of the documents relied upon, referred to in the grounds of detention, or taken into consideration, and incorporated in the grounds of detention by reference, by the detaining authority ought to be supplied to the detenu within 5 days of the detention in the normal course, and within 15 days in exceptional circumstances, and for reasons to be recorded in writing. It appears that not only this requirement was not adhered to, but even after request by means of the representation, the documents sought, for, had not been made available, nor the lapse in supplying illegible copies, made good by furnishing the petitioner with fresh legible copies. The view., that commends itself with reference to this ground, pleaded in the writ petition, in the light of the arguments addressed and authorities cited; makes it unnecessary, for me to take note of oilier grounds set up in the petition, because failure on the part of the detaining authority in observance of the constitutional requirement, so stares in the face that the petitioner becomes entitled to succeed, on me basis of this plea alone".

(4) It is to be noted, that the representation made on 18th August, 1988 very explicitly stated at the outself that in the event of the detention order not being revoked, the petitioner was further making a request for supply of copies of documents mentioned therein for the purpose of making more effective and fuller representation. In the first instance, it is stated in paragraph 6 of this representation that the documents detailed there- in had been relied upon, referred to as well as taken into consideration, and incorporated in the grounds of detention, and thus ought to have been supplied to her with the grounds of detention within 5 days, and in any case if there were any special reasons, then not later than 15 days, and that too for reasons to be recorded. The documents, inter alia, are : (ii) Field test report made by Ncb Officers at 36-A, Malviya Nagar, New Delhi showing that the seized powder was heroin as alleged in the case, (iii) office copy of the letter Ncb No. VII-20/DZU/87 dated 23-9-87, forwarding the samples taken out by the Ncb Officers to Crcl, (iv) original test report dated

16-10-1987 of Crcl New Delhi, (v) arrest memo and grounds of arrest of the petitioner, (ix) copy of the order of the Hon"ble High Court granting bail to N. P. Singh. (It has been taken into consideration), (xiii) copy of the orders passed for granting interim bail to S/Shri J. M. Malhotra and Y. Kumar by courts in Delhi. She has also added in this writ petition vide sub-para (xii) that many documents supplied to her were illegible and petitioner was unable to read most of the documents which were relied upon by the detaining authority. She has repeated her request for supply of field test report, office copy of the letter whereby the samples were forwarded to Crcl and the original test report of the said authority in paragraph 7(B) of the said representation, and further vide paragraph 12 she asked for copies of the documents seized from the house of J. M. Malhotra on 18-9-1987, copy of the search warrants/authorisation for the search conducted in the house of J. M. Malhotra, copy of the search warrants/authorisation for the search conducted in the house of the petitioner, copy of the search warrants/authorisation for the search conducted at 36-A, Malviya Nagar, New Delhi and also copy of the search warrants/authorisation for the searches conducted in the houses of Y. Kumar and N. P. Singh, besides copies of various summons issued to her as well as other persons involved in the case such as J. M. Malhotra, Y. Kumar, N. P. Singh, Anil Gandhi and S. M. Malhotra.

(5) By the time the writ petition was filed, namely, on 24th September, 1988, as already noticed, neither any of the copies were supplied nor any intimation sent to the petitioner enlightening her as to whether her request was being considered or not. It is, however, disclosed in the reply affidavit that these copies were supplied to the petitioner on 11th October. 1988. It is "also conceded in the counter, which is by means of an affidavit sworn by Shri K. L. Verma, Director Enforcement, Ministry of Finance, Govt. of India, who is detaining authority in this case, that the documents, copies whereof were being demanded by the petitioner in her representation, were placed before him but he had not relied upon the same. At one place he even states that some of the documents asked for, namely ,the application dated 20th September, 1987 u/s 167 Cr. P.C. moved by Narcotic Control Bureau in the Court and the orders passed by the magistrate thereon, "was considered by the detaining authority but was not relied upon by me", and that on that account, this fact finds mention in the grounds of detention.

(6) During hearing of the writ petition, Shri R. L. Mehta, appearing for the petitioner, urged that the inordinate and unexplained delay in the supply of copies of documents which have been relied upon or referred to in the grounds of detention, shall vitiate the legality of the detention order, and petitioner"s continued detention, was liable to be quashed, as on account of the failure of the detaining authority to supply her with copies of the material documents; constitutional safeguards as provided by Article 22(5) of the Constitution, conferring a right of representation on the detenu, has been violated. He argued that the right of representation as guaranteed by the Constitution carries with it the obligation on the detaining authority to enable the detenu to exercise this

right as early as possible, and it is for this reason that a mandate has been given that the grounds of detention shall ordinarily be furnished within 5 days so that the detenu is made aware of the material, taken into consideration by the detaining authority, thus enabling him/her to represent against the action of the detaining authority, and point out the factors militating against the detention order.

(7) Mr. Mehta read out from the grounds of detention, and contended that the documents asked for by the petitioner find reference in the grounds of detention, or were of such a nature as can be taken, to have been relied upon or considered by the detaining authority. He further pointed out that it has come out now from the affidavit filed in counter by the respondents that these documents were supplied "as late as on 11th October, 1988 although the representation dated 18th August, 1988 whereby this request was made, had been admittedly received by the detaining authority on 19th August, 1988. It also came out during hearing that the meeting of the Advisory Board had taken place on 10th October, 1988. He also showed during hearing a number of copies supplied to the detenu with the grounds of detention, which were not clearly legible or which had marginal word) either on the right or on the left completely missing, with the result that it was not possible to make any sense out of the said documents.

(8) In the above setting of facts, the learned counsel argued that this delay in supply of copies of material documents or failure to supply legible copies on request, inspire of the plea that a number of copies were not legible, was fatal and thus the detention order was not sustainable. He went to the extent of saying that the question was not as to whether any prejudice had been caused or not, inasmuch as in cases of preventive detention, there had to be strict compliance with the constitutional and statutory provisions. He pointed out that here was a case, where copies had been supplied long after the writ petition had been filed, inspire of request for supply of the same had been made at a very early date, and that since documents asked for were such as had been referred to in the grounds of detention, failure to make them available within a reasonable time, has stultified petitioner's right of meaningful representation, and thus her continued detention has been rendered illegal. He placed reliance on a Division Bench judgment of this court, reported as 26 (1984) D.I.T. 275 (Vinod Kumar Arora v. The Administrator and others) (1), wherein it was held that E where the detenu specifically asks for a copy of the document, it has to be supplied to him to enable him to make effective representation, irrespective of the fact whether that document is relied upon or there is a casual reference to the same. He quoted another Division Bench judgment of this court reported as 1988 (2) D L 130, (Sukhdev Singh v. Union of India and others) (2), wherein it was held that even documents which . have been casually mentioned in the grounds of detention, have to be supplied if the detenu seeks copies of the same in order to enable him to make effective representation. Another Division Bench judgment on the point is 1988 (1) D L 203 (Jasbir Singh v. Union of India and others) (3), wherein it has been stressed that whereas documents relied upon

have to be supplied *pari passu* with the grounds of detention; copies of the documents though not relied upon, have to be supplied to the detenu, on his seeking the same and on such a request being made by the detenu, and that it is not for the detaining authority to conclude that the copies of documents sought for were not relevant, for the defense of the detenu. In the view of the court, this had to be left to the detenu, to consider as to how he can show his innocence from those documents.

(9) Mr. Mehta also placed reliance on a judgment of this court reported as 1988(2) Delhi Lawyer 308, (Gurdeep Singh @ Sarpanch v. Union of India and others) (4), that non-supply of documents, such as search authorisation *pari passu* with grounds of detention, would vitiate the order of detention, and that documents though not relied upon and even casually referred, have to be supplied, if detenu so demands. Learned counsel thus contended that the search authorisation has been held to be a vital document, and of such nature which ought to be supplied *pari passu* with the grounds of detention, and in any case these have to be supplied, on request being made by the detenu.

(10) The learned counsel further relied upon another judgment of this court in Criminal Writ No. 279/85-Rajesh Monga v. Union of India & others" decided on January 2". 1986 (5), it was also held that failure to supply copies of documents ending reference in the grounds of detention, on demand, or in case the copies given were not legible, would amount to contravention of the constitutional safeguards provided by Article 22(5), resulting in Vitiating of continued detention.

(11) Mr. Rajinder Dutt, appearing for the respondents. countered these arguments, contending that whatever documents were relied upon in the grounds of detention, copies thereof were supplied to the detenu with the grounds of detention and that the detaining surety was not obliged to make available copies of the documents to which there was only a passing or casual reference or which were not the basis for passing the grounds of detention. He supported his contention by citing Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, , where it was held that it was only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation that amounts to a violation of fundamental rights guaranteed by Article 22(5) of the Constitution, and that the order of detention will not stand vitiated in the event of non-supply of documents to which there was only a casual reference, in the grounds of detention. He also referred to a Division Bench judgment of Kerala High Court reported as 1987 3 Crimes 294, (Krishna Veni v. State of Kerala & others) (7). wherein it was held that where the stand of the detaining authority was that the documents asked turn had not been relied upon in the grounds of detention, failure to supply such copies would not render the detention order liable to be quashed, on the view that what is required to be supplied to the detenu is full statement of basic facts as distinguished from the factual details or subsidiary facts, and that his constitutional rights extended to receive the material

particulars, without which any effective and full representation could not be made but he is not entitled to receive material which is not relevant to, or required to make an effective representation against the order of detention. Mr. Dutt further contended that what was required to be seen was as to whether the documents sought for by the detenu were necessary for making effective representation.

(12) As earlier noticed, till the writ petition was filed, i.e. on 24th September, 1988, no reply in respect of the prayer of the petitioner for supply of copies of documents, made by means of representation dated 18th August, 1988, had been sent, nor the petitioner given any indication in the memorandum conveying rejection of the representation, on 2nd September, 1988 as to how the detaining authority proposed to deal with the request for copies. There is a bald statement in the counter filed on behalf of the respondents that the documents asked for were supplied on 11th October, 1988. There is no clear cut stand in this counter affidavit, to the effect that the documents demanded by the petitioner had not been referred to in the grounds of detention. There is rather an admission in the affidavit filed by the detaining authority himself that these documents were placed before him and that some of them were even taken into consideration; the only plea being that they were not relied upon. No distinction has been spelt out between "taken" into consideration" as against iccd. upon". (Reference paragraph 7 of the counter affidavit).

(13) All inference is inescapable from reading of the reply affidavit that the prayer of the petitioner for supply of copies of documents, made in the representation dated 15th August 1988. has been dealt with in a very indifferent and cavalier manner, and no attention seems to have been paid to this request while considering or disposing of the representation-, otherwise, the memorandum conveying rejection of the same would have given some inkling as to how this request was proposed to be dealt with. There was also no intimation to the petitioner that the request was being considered or as to who was processing this request. The unqualified statement in paragraph 4(h) of the counter affidavit that the documents demanded by the petitioner were supplied to her on 11th October, 1988 can lead to the only inference that at no stage the detaining authority felt that the documents were not relevant for the purpose of the petitioner, and even while filing the counter affidavit, it is not the case that the documents were not relevant or material.

(14) There is also no attempt at explaining the delay in supply of the copies of the documents asked for, by the petitioner. According to the reply affidavit, the representation dated 18th August, 1988 was rejected on 2nd September, 1988. there is absolutely no justification action for not taking a decision as to whether the documents are to be supplied or not. The time from 2nd September, 1988 to 11th October, 1988, taken in supplying the copies, demanded by the petitioner, constitutes such an indefensible delay in itself, that no other contention is possible than that the petitioner had been virtually deprived of opportunity of

making a purposeful and effective representation, because of failure on the part of the detaining authority to supply the copies of the documents asked for by her, within the shortest reasonable time.

(15) Apart from the fact that there are judgments of this court, as cited by learned counsel for the petitioner, starting from the Division Bench judgment in the case of Vinod Kumar Arora (*supra*), to the effect that it is obligatory for the detaining authority to supply copies of the documents specifically asked for by the detenu, to enable him to make an effective representation irrespective of the fact that whether the documents were relied upon or there was only a casual or passing reference to the same; otherwise also, in this case there are some of the documents requested for by the petitioner in her representation which were of material nature, such as field test report conducted at the time of seizure, allegedly showing the commodity recovered to be heroin, the report of the Crcl (Central Revenue Control Laboratory), search authorisation of different premises including the parental house of the petitioner, namely, 36-A. Malviya Nagar, New Delhi and summons served on her as well as co-detenus for appearance before the concerned authorities, pursuant to which different statements were recorded u/s 57 of the Narcotic Drugs and Psychotropic Substance Act.

(16) It is also to be noticed that a distinction has to be maintained between the requirement of supply of documents *par* passu with the grounds of detention, as against the documents specifically asked for by the detenu. It, no doubt, has been held by the Supreme Court, in *Mst. L. M. Ummu Saleema* (*supra*) that failure to supply documents, nor relied upon by the detaining authority, was not fatal but that was a case where the contention related to non-supply of documents along with the grounds of detention. The position is different where the detenu pleads in the representation that in case on a consideration of that representation, the detaining authority was not inclined to revoke the detention order, then the detenu would require certain other documents which find reference in the grounds of detention, for making a fuller and more purposeful representation, and in that event the uniform view is that it is not for the detaining authority to sit over judgment as to whether the documents asked for were relevant for the defense of the detenu or not.

(17) It has been held by the Supreme Court also in case *Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others*, , that even the High Court is not competent to determine the relevance of those documents nor was it entitled to go through the confidential files to see as to whether the documents were relevant or not, so as to reject the plea of the detenu in a writ petition filed under Article 226 of the Constitution. The question is thus no longer *res integra* and, there is a catena of judicial authorities subscribing to the view that the detaining authority is obliged to furnish copies of the documents asked for by the detenu on the plea that they were necessary to enable him/her to make a more effective representation. It has been further held in *Shri. Tushar Thakker Vs. Union of India (UOI) and Others*, ;_ that such documents should be supplied

expeditiously by the authority concerned because delay tends to stultify the detenu's right to make an effective representation and to have it considered speedily by the authority concerned. In that case, the delay of 25/26 days in supplying the copies demanded by the detenu, and not specifically explained, was held to be unreasonable, and such as had the effect of vitiating the continuance of the detention.

(18) In the present case, the delay is more than double that period and there is absolutely no Explanation for non-supply of the documents from 2nd September, 1988 when the representation was disposed of up to 11th October, 1988, when they are stated to have been supplied. This delay by itself has to be held on the authority of the Supreme Court judgments, referred to above, and various judgments of this court, noticed earlier, to be fatal. In this case, there is another angle involved in this delay, and that is that the Advisory Board meeting had been held on 10th October, 1988, as given out during hearing, where- as the documents were supplied later on, though one day after, but the fact remains that by the time the Advisory Board heard and disposed of the representation of the petitioner, the documents had not been supplied to her, for which she had made a request in her representation as early as on 18th August, 1988. This factor by itself is sufficient to vitiate the continued detention of the petitioner because she has been deprived of a valuable right to project her case properly, and in the light of the documents she thought important and material, before the Advisory Board.

(19) This Court has held in Criminal Writ No. 348/88 (Om Prakash Mahendru v. Union of India & others), decided on 16th December, 1988(10), that failure to supply documents such as search authorisation warrants in spite of demand, by the time the Advisory Board meeting had taken place, renders the: continued detention of the detenu liable to be quashed. This judgment, in turn is based on a Division Bench judgment of this Court in Criminal Writ Nos. 324-325 of 1986, M. M. Yusuf v. Union of India & others, decided on 17th March, 1987(11).

(20) In this view of the matter, and further in view of the fact that it was brought to the notice of the Court during hearing that some of the copies supplied were not legible, and had material portions on the margins missing, and which fact had also been pointed out by the petitioner in her representation dated 18th August, 1988, and as held by this Court in case reported as 1988(2) DL 318 (DB) (Shri Rajinder Gautam v. Union of India and others)(12) and 1988 (2) DL 159, (Subas Das v. Union of India and others)(13), this also affected the right of the petitioner to make an effective representation and for all these reasons, the continued detention of the petitioner becomes liable to be revoked. An order in Writ Petition No. 454/86 in SLP (Cri.) No. 2306/86 : Bhupinder Singh v. Union of India, decided by the Supreme Court on January 6, 1987(14), has also come to notice wherein the act of failure to supply legible copies of documents before the order of confirmation of detention order was held to be fatal. The principle thus, of obligation to supply legible copies, stands established, and the situation where

the copies were supplied after the confirmation order or the meeting of the Advisory Board, as in the present case, would be *pari materia*.

(21) In the view which I have taken on this aspect of the matter, I do not think it necessary to examine other contention of the writ petitioner.

(22) In the result, the writ petition is allowed and the rule is confirmed, quashing the order of detention and directing that the petitioner be set at liberty forthwith if not required to be detained in any other case or proceedings.

(23) No order as to costs.