

(1991) 01 DEL CK 0039

In the Delhi High Court

Case No : Criminal Writ Appeal No. 410 of 1990

Mohd. Ashfaq @ Hajtkallu

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226(2)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 3(1)

Citation : (1991) CriLJ 2615 : (1991) 43 DLT 504

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : Harjinder Singh, O.P. Verma, A. Acharjee, S.K. Tiwari, S.K. Mahajan, P.K. Jain and Ajay Kumar, for the Appellant;

Judgement

V.B. Bansal, J.

(1) State Government of Rajasthan exercising the powers under Sec. 3, sub-sec. (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Act, 1988 (hereinafter called the Act) decided to detain Mohd. Ashfaq @ Haji Kallu in order to prevent him from the activities of keeping, concealing, transporting and disposing of the smuggled goods of Narcotic Drugs. This order was issued on 2nd April, 1990 under the signatures of Shri R. Rama Krishnan, Commissioner & Secretary, (Home), Home Department, Rajasthan. This detention order was served on the petitioner on the same day when the grounds of detention and the documents relied upon were also furnished to him. By way of this petition Mohd. Ashfaq has prayed that the order of detention dated 2nd April, 1990 confirmed on 30th May, 1990 may be quashed and he be set at liberty.

(2) According to the case of the respondents the petitioner was wanted in connection with the seizure of 105.750 Kgs. of heroin on 7th March, 1989 and 55.30 kgs. of heroin on 21/22nd September, 1989.

(3) In this writ petition a number of grounds have been taken up to challenge the

order of detention. Learned counsel for the petitioner has, however, restricted his submission only on the point of delay in consideration of the representation made by the petitioner.

(4) Learned counsel for respondents No. 1 and 2 has raised a preliminary objection with regard to the jurisdiction of this Court. It has been submitted by learned counsel for respondent No. 1 that the detention order was passed at Jaipur in Rajasthan and the same was confirmed at Rajasthan. In these circumstances, the High Court at Rajasthan alone has the jurisdiction and not this Court. This submission has been controverted by learned counsel for the petitioner and in my view rightly. Article 226 of the Constitution of India relates to the power of High Court to issue certain writs. Clause (2) of Article 226 of the Constitution reads as under :-

"THE Power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of Such person is not within those territories".

A bare reading of this provision makes it abundantly clear that even if the seat of such Government or authority issuing the orders is not situated within the jurisdiction of this Court the writ petition would lie if a cause of action has arisen within its jurisdiction. It is not disputed that sub-sec. (2) of Sec. 3 of the Act provides that when a detention order made by the State Government or by an Officer empowered by State Govt., the State Government shall within 10 days forward to the Central Government a report in respect of the order. It would necessarily mean that a copy of the detention order would also be required to be sent to the Central Government along with its report by the State Government. Sec. 12 of the Act deals with the revocation of the detention orders and it has specifically been provided that an order of detention passed by State Government can be revoked by the Central Government. The purpose of sending a report on the order of detention to the Central Government could only be to enable the Central Government to exercise its supervisory powers and in appropriate cases to revoke the order of detention passed by the State Government. In these circumstances, it is clear that a part of cause of action arises within the jurisdiction of this Court where the seat of Central Government is situated and in these circumstances this Court has jurisdiction in the matter. I find support in this from the case *Harish Taneja Vs. Union of India and Others*, and *Jamal Haji Jakaria v. Union of India & Ors.* 1988 (2) DL 409. This argument has, thus, no force and is rejected.

(5) Case of the petitioner has been that after the order dated 30th May, 1990 by the State Government directing that the petitioner be kept in detention for one year, i.e. from 3rd April, 1990 to 2nd April, 1991, a representation dated 25th June, 1990 was made by the petitioner addressed to the Central Government

and also the State Government. It has also been submitted that the said representation made to the Central Government was not decided by the Union of India until 10th August, 1990, the date on which the writ petition was filed. It has, thus, been submitted that there has been an inordinate delay in the disposal of the representation made by the petitioner on account of which his fundamental right of getting the representation disposed of expeditiously as provided under Art. 22(5) of the Constitution of India has been violated on account of which the detention order is liable to be quashed.

(6) Learned counsel for respondents No. 1 and 2 has, however, submitted that the date of representation made by the petitioner is 26th June and not 25th June as claimed by the petitioner. Learned counsel for the petitioner has conceded and submitted that the date of representation may be considered as 26th June, 1990.

(7) Paragraph 2 of the affidavit of Shri S.A.Huda, Deputy Secretary to the Government of India sworn on 20th September, 1990 deals with the grounds of delay in the disposal of the representation made by the petitioner. It would be appropriate to quote the said para which reads as under :-

"WITH reference to para 16 of the writ petition, in so far as it relates to the Union of India, it is submitted that a copy of the representation dated 26.6.1990 addressed by the petitioner to the Secretary, Ministry of Finance, Department of Revenue, Narcotic Control Bureau, New Delhi was received in the Central Registry Section of the Department of Revenue located in North Block, on 29th June, 1990. As the address contained the name of Narcotic Control Bureau, this representation was forwarded by the Central Registry Section to the N.C.B. situated in Ranjit Hotel, New Delhi. The N.C.B. passed it on to the Pints Section located in Janpath Bhawan and the same was received in the Section on 9th July, 1990. On 10th July, 1990, a copy of this representation was sent to the Home Secretary, Government of Rajasthan as well as the Collector, Government of Rajasthan as well as the Collector, Central Excise, Jaipur for their perusal and comments. The Comments dated 18.7.1990 from the Central Excise Collector, Jaipur, were received in this Department on 3rd August, 1990. 4th and 5th August, 1990 were Weekly holidays. During the next four days, the Staff in the Section was busy with other important work. So the representation was examined and put up to the Joint Secretary on 10th August, 1990. The Joint-Secretary put up the file with her recommendations to the Finance Minister on 10th August, 1990. During this period, the Finance Minister was busy with Parliament work. Also 11th, 12th, 18th and 19th August, 1990 were weekly holidays. The Finance Minister considered and rejected the representation on 21st August, 1990. On its return the file got mixed up with files of Central Economic Intelligence Bureau and it came back to the Section only on 29th August, 1990. The petitioner has been informed of the rejection of the representation by a Memorandum dated 30th August, 1990, which has been served to him in Central Prison, Bikaner on 10th August, 1990. In view of this, the allegation made by the petitioner is wrong and denied."

(8) A perusal of the averments made on behalf of respondent No. 1 in the said paragraph makes it abundantly clear that the representation of the petitioner was received in the Central Government Registry Section of the Department of Revenue on 29th June, 1990. It was sent to the concerned Section on 9th July and that very day, i.e. 10th July, 1990 a copy of the representation was sent to the Home Secretary, Government of Rajasthan as well as the Collector, Central Excise, Jaipur for their comments. It is also clear that the comments dated 18th July, 1990 from Central Excise Collector, Jaipur were received by the department on 3rd August, 1990. Without considering the other delay I am clearly of the view that there is absolutely no Explanation at all from the side of the respondents 1 & 2 for this inordinate delay from 18th July to 3rd August, 1990. At this stage it would be appropriate to refer to the case Aslam Ahmed Zaire Ahmed Shaik Vs. Union of India and Others, . It would be appropriate to quote para 9 of the judgment which reads as under :-

"THUS when it is emphasised and re-emphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority will ultimately result in the delay of the disposal of the represent which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution".

Submission of learned counsel for respondents No. 1 and 2 has been that the comments dated 18th July, 1990 were received by respondent No. 1 on 3rd August, 1990 but he was unable to say anything as to how and where this delay occurred .He could not say definitely as to whether the comments were dispatched by the sponsoring authority on 18th July, 1990 itself or on a subsequent date and where the delay took place. The sponsoring authority is a functionary of the Government and if there is an unexplained delay on the part of the functionary of the Government the benefit of the. delay has to go to the detenu who has a fundamental right of his representation being considered expeditiously and the result also communicated to him without undue delay. In the instant case there is absolutely no Explanation for this delay which, in my view, is fatal. I am supported in this view by a judgment Mahesh Kumar Chauhan @ Bante v. Union of India & Ors. 1990 (2) Cri 472 and Judgment Today 1990 (2) S.C. 592. In the said judgments copy of the representation was sent to the sponsoring authority on 25th August, 1989 where from the comments were received on 11th August, 1989 without any Explanation about the delay which had occurred .Considering this delay to be inordinate the detention order was held to be in violation of the Constitutional obligation enshrined in Article 22(5) of the Constitution of India rendering the impugned order invalid. In case Gazi Khan @ Chotia v. State of Rajasthan & Anr. 1990 (2) Cri 482 there was delay of 7 days on the part of Assistant Secretary in putting up a note on the basis of the

comments received and on account of this unexplained delay the order of detention was held to be violative of Article 22(5) of the Constitution of India. Learned counsel for respondents No. 1 and 2 has referred to judgment *Abdu Salam @ Thiyyan v. Union of India & Ors.* in Criminal Appeal No. 271 of 1990 decided on 17th April, 1990 by Supreme Court of India. In the said case representation was made by detenu on 27th September, 1988 which was disposed of by the Central Government on 2nd November, 1988. Counter affidavit filed on behalf of Central Government indicated that the representation in Malayalam language was received in Cofeposa section of the Ministry of Finance on 10th October, 1988 and that a copy of the representation was sent to the sponsoring authority on the same day wherefrom the comments dated 25th October 1990 were received in the Cofeposa section on 27th October, 1988. The representation was considered by the Minister of State on 31st October, 1988 and was finally rejected by the Finance Minister on 1st November, 1988. Considering the facts and circumstances of the case, it was held that the representation was dealt with expeditiously and there was no negligence or callous inaction or avoidable red-tapism. It may be noted that in the case of *Mahesh Kumar Chauhan (Supra)* decided on 2nd May, 1990, the point of delay in receipt of the comments from the sponsoring authority has specifically been dealt with and conclusion arrived at that there is no Explanation for the delay. Similar has been the position in the instant case in which learned counsel for respondents No. 1 and 2 is unable to offer any Explanation for that delay. He was not in a position to even contradict the suggestion of learned counsel for the petitioner that may be that though the comments are dated 18th July, 1990 the same were not disposed of for a long period and may be that on this account that the comments reached the concerned section of the Union of India on 3rd August 1990.

(9) Considering all the facts and circumstances, I am clearly of the view that there has been an extra ordinary unexplained delay from 18th July to 3rd August, 1990 in dealing with the representation of the petitioner on account of which the detention order is invalid being violative of the provisions contained in Article 22(5) of the Constitution of India.

(10) As a result the petition is allowed. Rule is made absolute. The detention order dated 2nd April, 1990 confirmed on 30th May, 1990 is quashed. The petitioner shall be released forthwith, if not required in any other case.