

(2003) 01 AHC CK 0143
In the Allahabad High Court
Case No : Writ Petition No. 559 (HC) of 2002

Mohd. Tafsheer

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 8
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)
Constitution of India, 1950 — Article 226
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 8
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)
Constitution of India, 1950 — Article 226
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 8
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)

Citation : (2003) 90 ECC 89

Hon'ble Judges : Vishnu Sahai, J;V.S. Bajpai, J

Bench : Division Bench

Advocate : A.P. Misra, for the Appellant; B.B. Saxena and S.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this writ petition preferred under Article 226 of the Constitution of India, the petitioner-detenu Mohd. Tafseer has impugned the order 10th July, 2002 passed by Mr. J.P. Sharma, Deputy Secretary, Home and Confidential, Government of U.P., detaining him u/s 3(1) of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

The detention order, alongwith the grounds of detention, which are also dated 10.7.2002, was served on the petitioner-detenu on 25.7.2002 and their true copies have been collectively annexed as Annexure-1 to the petition.

2. The prejudicial activities of the petitioner-detenu impelling the detaining authority to issue the impugned detention order against him are contained in the grounds of detention. In short their perusal would show as under:

On 28.7.2001 on prior information received through an informer by Central Narcotics Bureau (CNB) a party of the said Bureau at 3.00 p.m. reached the culvert on Nanmau canal on Barabanki-Harakh road. At about 4.00 p.m., they saw a Vikram Tempo coming. The same was stopped by the CNB party. On the pointing out of the informer two persons, namely, Mohd. Tafseer (petitioner-detenu) and Rakesh Kumar Verma were stopped. Thereafter the CNB party disclosed to them that it wanted to search them and proceeded to search them. From both petitioner-detenu Mohd. Tafseer and Rakesh Kumar Verma heroin was recovered; 800 grams from the former and 300 grams from the latter. Thereafter the petitioner-detenu and Rakesh Kumar Verma were arrested and a case u/s 8/21 NDPS Act was registered against them. On 10.7-2002 the impugned detention order was issued against the petitioner-detenu.

3. We have heard learned counsel for the parties. In our judgment, in view of the averments contained in paragraph-11 of the petition and ground F of paragraph-20 thereof, this writ petition deserves to succeed. The substance of pleadings contained therein is that pursuant to the petitioner-detenu being arrested in the case u/s 8/21, NDPS Act and prior to his being detained vide the impugned order he did not prefer any application for bail in any Court and the detaining authority erred in clamping the impugned detention order against him on the fallacious premise that he had preferred an application for bail which had been rejected.

Mr. A.P. Mishra, learned counsel for the petitioner-detenu, strenuously urged that since there was no cogent material before the detaining authority that the detenu was likely to be released from custody in near future the impugned detention order is bad in law, in view of the ratio laid down by the Apex Court in paragraph-19 of the decision rendered by it in Dharmendra Suganchand Chelawat and another Vs. Union of India and others,

4. The averments contained in paragraph 11 of the petition and ground F of paragraph-20 thereof have been replied to in paragraphs 7 and 9 of the return of Mr. C.P. Singh, Deputy Secretary, Home and confidential, Govt. of U.P., Lucknow. In paragraph-7 it has been averred that the bail application preferred by the petitioner-detenu had been rejected by the Special Judge, NDPS Act, Barabanki. In paragraph-9 it has been stated that the petitioner-detenu had not preferred any application for bail [but he] had preferred an application before the Special Judge. NDPS Act, Barabanki, which was rejected by him on 19.9.2002, wherein the prayer was that he should be dealt under the Juvenile Justice Act.

Mr. S.K. Singh, learned counsel for opposite parties Nos. 2 and 3 frankly admitted that the petitioner-detenu did not prefer any application for bail.

5. We have perused the averments contained in the rival returns. In our view,

the impugned detention order warrants to be quashed on account of two infirmities, namely --

(a) There has been a total non-application of mind on the part of the detaining authority inasmuch as in the grounds of detention he has mentioned that the detenu had preferred a bail application in the Court of Special Judge. NDPS Act, Barabanki, which was rejected, whereas in paragraph-9 of the return filed by Mr. C.P. Singh the averment is that what the petitioner-detenu had preferred was not an application for bail but an application praying that he be treated as a juvenile under the Juvenile Justice Act and the said averment has also been reiterated by Mr. S.K. Singh, learned counsel for opposite parties No. 2 and 3.

(b) The pre-requisites laid down by the Apex Court in the time-honoured decision rendered by it in the case of Dharmendra Suganchand Chelawat (supra) regarding as to when a detention order can be issued against a person in custody have been flouted. Paragraph-19 of Dharmendra Suganchand Chelawat (supra) reads thus:-

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" 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." A perusal of the said paragraph would make it manifest that for detaining a person, who is in custody, there should be cogent material before the detaining authority that the person sought to be detained was likely to be released from custody in near future. In this case it is manifest that although the petitioner-detenu was arrested in the case u/s 8/21, NDPS Act way back on 28.7.2001 and the impugned detention order was issued against him more than eleven months later i.e. on 10.7.2002 in the interregnum the petitioner-detenu had not preferred any application for bail in any Court. It is thus obvious that there was no compelling necessity for the detaining authority to detain the petitioner-detenu as there was no likelihood of his being released from custody in near future.

6. For the aforesaid reasons, in our view, the impugned detention order cannot be sustained in law.

7. In the result we allow this writ petition; quash and set aside the impugned detention order; and direct that the petitioner-detenu Mohd. Tafseer be released

forthwith unless wanted in some other case.