
(1991) 08 BOM CK 0056

In the Bombay High Court

Case No : Criminal Writ Petition No. 270 of 1991

Niranjan Singh Dilipsingh Bhullar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

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

Citation : (1991) 3 BomCR 691

Hon'ble Judges : M.G. Chaudhary, J; H.H. Kantharia, J

Bench : Division Bench

Advocate : Prabha Mane, for the Appellant; S.G. Page, Public Prosecutor, for the Respondent

Judgement

H.H. Kantharia, J.—The petitioner-detenu has filed this habeas corpus petition under Article 226 of the Constitution challenging the detention order passed by the Secretary (Preventive Detention) to the Government of Maharashtra, Home Department and Detaining Authority on February 26, 1991 detaining him u/s 3(1) of the Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 in order to prevent him from engaging in transportation, warehousing and concealment of narcotic drugs.

2. The grounds of detention of the same date (annexure "B" to the petition) show that the allegations against the petitioner were that on February 9, 1990 at about 00.50 hours the control room of the Bombay Police directed the Inspector of Kalachowkey Police Station to verify abandoned and suspected vehicles parked near the compound wall of Veterinary College, Dr. Vijay Walimbe Marg. On receipt of such information, Police Inspector Ingale and Head Constable Shirish Desai and staff of Kalachowkey police station rushed to the spot. They met Senior Police Inspector Nikam who was on the zonal night round at the junction of Dr. Vijay Walimbe Marg and informed him about the message received from the control room upon which Inspector Nikam also accompanied them. On reaching the spot, it was noticed that a motor lorry No. RNQ-6258 and motor tax

No. 2597 were stationary. Motor car no. DEB-8090 was also parked there. It was further noticed that the engine of motor lorry No. RNQ-6258 was on. There was no trace of the occupants of the vehicles. A search for the occupants of the vehicles was made, but in vain. It appears that Police Inspector Pawaskar thereafter was contacted at his residence. During the investigation it was revealed that motor lorry No. RNQ-6258 was loaded with gunny bags containing lime stones. However, peculiar smell was coming out of the consignment in the said lorry. A further search revealed that gunny bag contained something soft and powder like thing which turned out to be brown sugar. On further search, 5 more gunny bags full of packets with different markings and numbers in Urdu were found. In the Ambassador Car No. DEB-8090 3 gunny bags were found near the rear seat. The contents of the said gunny bags also gave a peculiar odour like the packets found in the motor lorry. The drivers of the vehicles were not traceable. During the search of motor tax No. MMT-2597 a gunny bag was found in the dickey. Ultimately it was revealed that all the three vehicles contained large quantities of narcotic drugs. Thereafter the three vehicles were brought to the Kalachowkey police station and the incident was reported to the Deputy Commissioner of Police in-charge of the narcotic drugs. Police Inspector Pathan from the narcotic cell reached Kalachowkey police station with drug identification kit and tested the substance-taken out from the bags and found that the contents found from the bags from said three vehicles was heroin. On further investigation, the owners of the vehicles were traced and brought to the Kalachowkey police station. The owner of the truck was one Bhagwandas Ratanlal Rathi from Rajasthan who had no concern with the incident. The petitioner was arrested on May 12, 1990, on being found that he was the owner of the ambassador car No. DEB-8090 and also the car No. MMT-2597. During further investigation, the premises of the petitioner at 35, G.D. Ambedkar Marg, Bombay were searched. But no narcotic drug was found at the above place. However, on reliable information the premises allegedly occupied by the petitioner were again visited on February 14, 1990 during which a heap of grey sand lying in the front of the closed door of a room facing west was found. Concealed under the sand were two pieces of Shabadi tiles. There were plywood planks covering the same by which a hollow portion was created. When the plywood planks were removed, it was noticed that there was a trench admeasuring 31"x25". On thorough search of the said trench it was noticed that the trench was filled in with polythene bags. The said polythene bags were then removed and it came to the light that these bags contained small packets numbering 40. The contents of these 40 packets were hashish, weighing 193 kgs.

3. It is in this background that the petitioner came to be detained under the impugned detention order.

4. A number of contentions are raised in this petition challenging the detention order. However, this writ petition can be disposed off on one important point raised by Miss Mane appearing on behalf of the petitioner. Thus, the contention raised by the learned Counsel is that the petitioner was ordered to be released

on bail in Sessions Case No. 759 of 1990 and Sessions Case No. 767 of 1990 arising from the facts alleged against the petitioner as above. The submission of the learned Counsel is that the said bail orders were passed by the learned Additional Sessions Judge, Greater Bombay with reasons in detail and the bail orders were quite vital and material documents which the Sponsoring Authority had not placed before the Detaining Authority on account of which the said documents were not considered by the Detaining Authority due to which the subjective satisfaction of the Detaining Authority about the involvement of the petitioner in the incident in question was vitiated. This contention raised on behalf of the petitioner was replied by the Secretary (Preventive Detention) of the Government of Maharashtra, Home Department, in his affidavit and it is the case of the respondents that the application for cancellation of bail was filed by Sponsoring Authority in this Court and the said documents were placed before the Detaining Authority. According to Home Secretary-in-charge of the Preventive Detention, in the said application for cancellation of bail, the detailed reasons for the objection to the grant of bail were given and the grounds on which the bail was granted could be easily ascertained and, therefore, there was no need to place the bail orders before the Detaining Authority. It is the contention of the respondents that non-placing of the said judgments granting bail to the petitioner and consequent non-consideration of the same has not vitiated the subjective satisfaction of the Detaining Authority. Such were the submissions made by Mr. Page, learned Public Prosecutor, appearing on behalf of the respondents.

5. We are not able to persuade ourselves to agree with the submissions made by Mr. Page as in our opinion, the bail orders passed by the learned Additional Sessions Judge granting bail to the petitioner were vital and material documents. The learned Additional Sessions Judge had given detailed reasons as to why he was inclined to grant bail to the petitioner. Among other reasons, the learned Additional Sessions Judge while dealing with Special Case No. 767 of 1990 was of the opinion that there was enough material on record which indicated that the two vehicles alleged to be found in possession of the petitioner and over which it was alleged that he had control prior to February 9, 1990 would not have been used in transporting the narcotic drug with his knowledge. In Special Case No. 759 of 1990 the learned Sessions Judge opined that there was no evidence to indicate that it was the petitioner who had constructed the trench in question or who had concealed narcotic drugs alleged to have been recovered from the said trench and that it could not be said that the petitioner was personally responsible for or connected with concealment of narcotic drugs recovered from the said trench and further that there were some other persons who know the location of the trench and concealment of the narcotic drugs in it. In addition to the above said two reasons, there are many number of reasons pointed out by the learned Additional Sessions Judge which persuaded him to grant bail to the petitioner. Under the circumstances, in our opinion, the bail orders passed in favour of the petitioner were very vital and material documents and if they were not placed

before the Detaining Authority, for all that we know, perhaps the Detaining Authority would not have passed the impugned detention order. But that apart, non-placing and non-consideration of such vital and material documents before the Detaining Authority is bound to vitiate the detention order on account of which the further continued detention of the petitioner would be bad in law. The impugned detention order, therefore, has to be quashed and set aside and the petitioner is to be set at liberty forthwith unless required in some other case.

6. In the result, the writ petition succeeds. The impugned detention order is quashed and set aside. The petitioner shall be set at liberty forthwith unless required in some other case or cases. Rule is accordingly made absolute.