

(1987) 09 DEL CK 0037

In the Delhi High Court

Case No : Criminal Writ Appeal No. 415 of 1987

Pravesh Kumar Ahluwalia

APPELLANT

Vs

The Suprintendent, Central Jail and Others

RESPONDENT

Date of Decision : 21-09-1987

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22

Citation : (1987) 3 Crimes 863 : (1987) 33 DLT 171

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : R.N. Mittal, Dharmendra, P.S. Baijal and R.P. Lao, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) We have heard counsel for the parties today. We proceed to judgment.

(2) It is averred in the petition that the petitioner was taken from his residence on 2nd August, 1987 by the officials of the Narcotics Control Bureau, New Delhi and the West Bengal Police for investigating a case which had been registered u/s 22/29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter called the "Act") but was formally produced before the Metropolitan Magistrate on 4th August, 1987 at her residence in the evening at about 8.00 P.M. when he was remanded to Police custody of West Bengal Police up to 14th August, 1987. It is not necessary to notice the details of the prosecution case which was registered by the West Bengal Police. It appears that after 14th August, 1987 the petitioner was remanded to judicial custody in the cases against him from time to time till 7th September, 1987. It further appears that while in Police custody of West Bengal Police, the petitioner was taken to Calcutta for investigations but was however, brought back to Delhi on 14th August, 1987 and produced before the Acmm, New Delhi as that was the day on which the Police remand was expiring. Before the Acmm on the date of hearing, i.e., 14th August, 1987, a warrant issued by the Chief Judicial Magistrate, Alipur (Calcutta) dated the 12th

August, 1987 was produced seeking that the petitioner be produced before that Court on 28th August, 1987. The grievance of the petitioner is that he was not taken to Calcutta on 28th August, 1987 despite directions by the Acmm, New Delhi that the petitioner be taken to Calcutta under the said warrant by 7th September, 1987. On 25th August, 1987 the Additional Sessions Judge, New Delhi released the petitioner on bail for the offence u/s 22/29 of the said Act in a case registered in Delhi on the asking of the Narcotics Control Bureau.

(3) The petitioner, however, was not produced before the. Chief Judicial Magistrate, Alipur (Calcutta) on 7th September, 1987 or on any day earlier to that, instead he was produced before the Acmm, New Delhi on 7th September, 1987. On the date, it is averred on Oath that no official of the West Bengal. Cid appeared before the Acmm asking for further judicial remand or for the transfer of the petitioner from Delhi to Calcutta. In that view of the matter, it is averred, the Acmm, New Delhi directed that the petitioner was not required in any case registered in Delhi and he (the petitioner) be produced before the Calcutta Court. Since then the petitioner is languishing in Tihar Jail, New Delhi.

(4) In the statements made before us by the counsel for the parties, it is apparent that the West Bengal Cid has neither taken further steps to have the petitioner transferred to Calcutta nor has filed any application seeking further judicial remand of the petitioner. This is a case of no return. The averments of the petitioner are unrebutted and have to be accepted as correct.

(5) We gave opportunity to Mr. Lao to satisfy us about the legality of the detention by showing us any warrant order. We adjourned the case on his request from 2 p.m. to 3 p.m. today. Mr. Lao says that inspire of his best efforts, he has not been able to get instructions. The facts speak for themselves. As we have noticed, the averments of the petitioner have to be taken to be true. The detention of the petitioner in Central Jail, Tihar from 7th September, 1987 onwards is not shown to be legal or justified. We, Therefore, direct that the petitioner be released forthwith. The other points raised to challenge the statements recorded by the officials of the Narcotics Control Bureau or the questions regarding the very initiation of the proceedings do not arise for consideration at this stage in view of the orders which we have passed. We give liberty to the petitioner to raise those questions as and when the necessity arises in appropriate proceedings. The petition to the extent it challenges the illegal detention from 7th September, 1987 is allowed and we are not deciding one way or the other the further contentions raised therein. The questions are left open.

(6) A copy of this order be handed over to Mr. Lao for its onward transmission to the Jail Superintendent, Tihar, New Delhi.