

(2004) 02 AHC CK 0051
In the Allahabad High Court
Case No : Writ Petition No. 677 of 2003 (HC)

Raj Bahadur Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1), 8

Citation : (2004) CriLJ 2401

Hon'ble Judges : Vishnu Sahai, J;G.K. Gupta, J

Bench : Division Bench

Advocate : V.N. Nag, for the Appellant; Janardhan Singh and B.B. Sexena,
Senior Standing Counsel for Union of India, 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 Raj Bahadur Verma has impugned the order dated 26-6-2003 issued by Mr. C. P. Singh, Deputy Secretary, Home and Confidential Department, Uttar Pradesh Administration on behalf of Government of Uttar Pradesh, detaining him u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

The detention order along with grounds of detention, which are also dated 26 June, 2003 was served on the petitioner-detenu on 30 June, 2003 and their true copies have been annexed as Annexure No. 1 collectively to the writ petition.

(2) The prejudicial activities of the petitioner-detenu prompting the State of Uttar Pradesh to issue the impugned detention order against him are contained in the grounds of detention. In short their perusal shows as under :--

On 21-12-2002 at about 9-30 p.m. a police party of Police Station Jaidpur, district Barabanki reached near culvert in village Shahpur Kareda. It saw two persons coming from the side of Shapur Kareda. When they noticed the vehicle

in which the police party was travelling they tried to run away but the police party apprehended them. From the possession of the petitioner-detenu it recovered 3 kilograms of morphine and from that of his associate Jhabbar 100 grams of morphine. The petitioner disclosed that he used to manufacture morphine. Jhabbar disclosed that the morphine recovered from him had been purchased by him from the petitioner. On the basis of the said recovery the police party arrested the petitioner and Jhabbar for an offence punishable u/s 8/21 of the NDPS Act. It sent the sample of the morphine recovered from the petitioner and Jhabbar to the Chemical Analyst at Lucknow, who reported that the sample contained morphine.

In the grounds of detention it has been mentioned that the detenu had given an application for bail, dated 30th January, 2003 in the Court of Special Judge, N.D.P.S. Act, Barabanki which was rejected on 19th February, 2003. It has also been mentioned therein that since there was every possibility that he would apply again for bail and on being released on bail would commit similar prejudicial activities, it was imperative to preventively detain him.

In the grounds of detention the detenu has also been apprised of his right to prefer a representation to the various authorities.

3. We have heard learned counsel for the parties.

Although in this writ petition Mr. V. P. Nag, the learned counsel for the petitioner has made a number of pleadings and taken a number of grounds but he has pressed before us the pleadings contained in paragraphs 7 to 11 of the writ petition and grounds (D) (E) and (F) of paragraph 17 thereof.

A perusal of the pleadings contained in the aforesaid paragraphs and grounds would make it manifest that the petitioner-detenu has taken offence to the impugned detention order on a dual ground, namely :--

(a) since the petitioner-detenu did not prefer any application for bail after 19-2-2003 (the date on which his bail application had been rejected by the Special Judge, N.D.P.S. Act, Barabanki) there was no likelihood of his being released on bail and indulging in similar prejudicial activities and therefore, the impugned detention order was passed without application of mind; and

(b) the bail of the petitioner-detenu having been rejected on 19-2-2003 the impugned detention order was issued belatedly on 26-6-2003 i.e. after a gap of more than 4 months.

4. Mr. V. P. Nag, the learned counsel for the petitioner-detenu urged that since the petitioner-detenu had not preferred any bail application after 19-2-2003 there was no compelling necessity on the part of the State of Uttar Pradesh to have issued the impugned detention order against him. He further contended that since there was a time gap of more than six months between offending seizure and the date of passing of Impugned detention and that of 4 months between the rejection of the bail application of the petitioner-detenu and the

date on which the detention order was passed the live-link between the prejudicial activities of the petitioner-detenu and the rationale of clamping a detention order on him was snapped, resulting in the impugned detention order losing its preventive purport and acquiring a punitive one,

5. The averments contained in paragraphs 7 to 11 of the writ petition have been replied to in paragraphs 8 and 9 of the return of Mr. R. C. Uttam, Under Secretary, Home and Confidential Department, Government of Uttar Pradesh, Lucknow. In our judgment for a proper disposal of the writ petition it would be appropriate to extract paragraphs 8 and 9 of the return of Mr. R. C. Uttam. They read thus :--

8. "That in reply to the contentions of paras 7 and 8 it is submitted that the bail application was moved by the petitioner on 30-1-2003 before the Special Judge (N.D.P.S.) Act, Barabanki which was rejected on 19-2-2003. The detention order was passed considering the rejection of his bail application as he may move his bail application any time before the Competent Court, and after being released from jail on bail may indulge himself again into the activities of smuggling Heroin.

9. That in reply to the contents of paras 9, 10 and 11 of the writ petition, it is submitted that the sponsoring officer (D. M. Barabanki) gave a proposal on 15-2-2003 to the State Government to detain petitioner/detenu (Raj Bahadur Verma) under PIT NDPS Act 1988. State Government received the said proposal on 19-2-2003. The State Government after examining the same sent a letter on 3-3-2003 to the Sponsoring Officer (District Magistrate, Barabanki) in respect to the removal of some mistakes. Extra information sent by the District Magistrate Barabanki was received by the State Government on 26-4-2003. The matter was considered in the Screening Committee on 4-6-2003. On 7-6-2003 the detention order and the grounds of detention were got prepared and the records were sent to the Law Department for its opinion. The Law Department gave its opinion on 11-6-2003. The records were received by the concerning department of the State Government on 11-6-2003, the concerning department produced the same before the State Government on 13-6-2003 for its approval. On 17-6-2003 the State Government gave its permission to proceed with the detention order and the grounds of detention. After having with full preparation on 26-6-2003 the detention order and the grounds of detention proceeded. The detention order and grounds of detention were signed by the Competent Authority of the State Government. The detention order, grounds of detention along with the relevant material were served and communicated to the petitioner/detenu in District Jail, Barabanki on 30-6-2003. The detention order and grounds of detention (the copies) were sent to the Central Government also on 2-7-2003. As such there is no delay in dealing in handling with the detention order by the State Government. Rest denied."

6. Mr. Janardan Singh, the learned counsel for respondents 1 to 3 strenuously contended that both the grounds on which the impugned detention order is being sought to be assailed are devoid of merit.

In respect of the first ground he contended that although the bail application of the petitioner-detenu had been rejected by the Special Judge, NDPS Act, Barabanki on 19-2-2003 but since there was every possibility that the petitioner-detenu may move for bail before the competent Court at any time and on being released on bail revert to committing similar prejudicial activities, therefore, there was compelling necessity on behalf of the State of Uttar Pradesh to have preventively detained him.

With regard to second ground Mr. Janardan Singh urged that since the averments contained in paragraph 9 of the return of Mr. Uttam would make it manifest that the delay in issuance of the impugned detention order has been satisfactorily explained, the live-link between the prejudicial activities of the petitioner-detenu and the rationale of clamping the impugned detention order was not snapped on the vice of delay in issuance of the impugned detention order.

7. We have considered the averments contained in paragraphs 7 to 11 of the petition, grounds (D), (E) and (F) of para 17 thereof and paragraphs 8 and 9 of the return of Mr. R. C. Uttam. In our view this writ petition deserves to succeed on both the grounds, enumerated earlier.

8. We would first like to take up the first ground, namely, since the petitioner-detenu did not prefer any application for bail after 19-2-2003 (the date on which his bail application had been rejected by the Special Judge. N.D.P.S. Act, Barabanki) there was no likelihood of his being released on bail and indulging in similar prejudicial activities and therefore, the impugned detention order was passed without application of mind.

The Supreme Court in paragraph 19 of the oft-quoted case of Dharmendra Suganchand Chelawat and another Vs. Union of India and others, has laid down the pre-requisites before a detention order can be issued against a person in custody. The said paragraph reads thus :--

"19. 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" 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 aforesaid paragraph would show that one of the pre-conditions which has to be satisfied before a detention order can be issued against a person

in custody is that there should be compelling reasons to detain him and one of the facets, of compelling reasons is, there must be cogent material before the detaining authority on the basis of which it may be satisfied that the detenu is likely to be released from custody in near future.

9. In our judgment in the aforesaid case there were no compelling reasons for the detaining authority to have clamped the impugned detention order against the petitioner because there was no cogent material before it on the basis of which it could be concluded that the petitioner-detenu was likely to be released from custody in near future it should be borne in mind that in his return Mr. R. C. Uttam does not dispute that after 19-2-2003 the petitioner-detenu did not move any application for bail.

10. We wish to emphasize that the expression of "cogent material" means plausible/concrete material and not ipse dixit of the officer filing affidavit on behalf of State. A perusal of paragraph 8 of return of Mr. R. C. Uttam shows that therein he has only made a bald averment that the petitioner-detenu could apply for bail at any time. On the basis of the averment of the type made therein it cannot be said that there was cogent material before the detaining authority on the basis of which it could have concluded that the petitioner-detenu could be granted bail. It should be borne in mind that the offence for which the petitioner-detenu was seeking bail was one u/s 8/21 of the NDPS Act wherein 3 kilograms of morphine was recovered from him and wherein Section 37 of the NDPS Act which virtually makes the grant of bail impossible would be attracted with full vigour.

11. For the aforesaid reasons in our view there is merit in the first ground and the detention order consequently warrants to be quashed on it alone.

12. However, we feel that on the second ground also the impugned detention order deserves to be quashed. The said ground is that the bail of the petitioner-detenu having been rejected on 19-2-2003 the impugned detention order was issued belatedly on 26-6-2003 i.e. after a gap of more than 4 months.

13. It is well-settled that delay simpliciter in the issuance of the detention order does not vitiate it. A detention order is only vitiated on the vice of delay in its issuance if the delay is not satisfactorily explained (See Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another,).

14. In the instant case in our view the delay in the issuance of the detention order has not been satisfactorily explained. We have seen that the offending seizure was made on 21-12-02. A perusal of paragraph 9 of the return of Mr. R. C. Uttam would make it manifest that the sponsoring authority submitted the proposal to the State Government to detain the detenu on 15-2-2003; the said proposal was received by the State Government on 19-2-2003; the State Government vide a letter dated 3-3-2003 to the sponsoring authority (District Magistrate, Barabanki) sought some information, the said information was sent by the District Magistrate, Barabanki and received by the State Government on

26-4-2003; and on 4-6-2003 the matter was again considered by the Screening Committee. Since thereafter there was no delay we are not adverting to it.

15. A perusal of paragraph 9 of the return of Mr. R. C. Uttam would show that there has been an inordinate delay in three pockets, namely;

- (a) between 21-12-2002 and 15-2-2003;
- (b) between 3-3-2003 and 26-4-2003; and
- (c) between 26-4-2003 and 4-6-2003;

16. In our judgment the delay in the aforesaid pockets was certainly inordinate. We feel that there was no justification for a delay of one and a 3 quarter months on the part of the sponsoring authority in submitting the proposal to the State Government. Again in our view there was no justification for a delay of about one and half months, on the part of sponsoring authority furnishing the information to the State Government. Finally we feel that there was no justification, that when the information sought by the State Government from the sponsoring authority was received by it on 26-4-2003, the meeting of the Screening committee took place as late as 4-6-2003.

17. In our judgment the cavalier liesurely and casual manner in which the authorities have proceeded with the exercise of claiming the impugned detention order against the petitioner-detenu has brought upon a three fold result namely :--

- (a) the nexus or the live link between the prejudicial activities of the petitioner-detenu and the need/rationale of claiming the impugned detention order on him has been snapped;
- (b) the genuineness of the subjective satisfaction of the detaining authority to preventively detain the petitioner-detenu vide the impugned detention order has been rendered suspect; and
- (c) the impugned detention order has lost its preventive purport (as intended by law) and instead has acquired a punitive character.

18. For the aforesaid reasons in our view the second ground also succeeds.

19. In the result we allow the writ petition; quash and set aside the impugned detention order; and direct that the petitioner-detenu Raj Bahadur Verma be released forthwith unless wanted in some other case.