(2002) 10 DEL CK 0004

In the Delhi High Court

Case No : Criminal W. No. 1373 of 2001

Ram Gopal APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37, 67
Penal Code, 1860 (IPC) — Section 172, 174
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 3(1)

Citation : (2003) CriLJ 3362 : (2003) 66 DRJ 685

Hon'ble Judges : Usha Mehra, J;Ramesh Chand Jain, J

Bench : Division Bench

Advocate : Sunil Mehta, for the Appellant; K.K. Sud, Addl. Solicitor General, Barkha Babbar, Sanjay Jain and Neeraj Jain for Respondent Nos. 1 and 2 and Mukta Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Usha Mehra, J.—On 30th April, 2001 at about 10.05 A.M. one Ms. Usha was coming to the Railway Crossing from Nand Nagri side when she was apprehended because there was information with the respondent that she was carrying heroin. From her search by the officials of the Narcotic Control Bureau (in shirt NCB) one kg. of Heroin was recovered which was packed in white polythene bag. She was served with legal notice to appear on 30.4.2001 at 1900 hours in the office of the NCB, there her statement u/s 67 of the Narcotic Drugs and Psychotropics Substance Act. (hereinafter referred to as the NDPS Act) was recorded. She admitted the recovery and also the fact that heroin was supplied to her by one Dharam Pal and his wife Premvati. Her residential premises bearing No. A-186, Amit Vihar, Bheta Hazipur, Ghazhiabad, U.P., was also searched where from NCB officials recovered two double transparent polythene bags containing two kg. of heroin beside Indian currency amounting to Rs. 49,000/-. After completing the formalities, she was again summoned on 1.5.2001 on which date again her statement u/s 67 of the NDPS Act was recorded. She identified the photographs of Dharam Pal and his wife as the persons who had supplied heroin to her. On the basis of her statement, raid and search was conducted on 1.5.2001 at the residential premises of Dharam pal. Nothing incriminating was recovered from the said search. Statements of Dharam Pal and his wife u/s 67 of the NDPS Act were also recorded, wherein Dharam Pal admitted having supplied heroin to M.s Usha. He stated that he used to get supply of heroin from the present petitioner Mr. Gopal, son of Ganesh Ram Poewal, Village Balagoda, P.S. Pipliya Mendi, Distt. Mandsaur, M.P. On getting this information regarding involvement of Gopal, a fax message was sent to the Deputy Narcotic Commissioner, CBN, Neemuch, M.P. for taking follow up action against Gopal. Search of the house of the petitioner was conducted on 2.5.2001 but it led to nil recovery. Again his house was searched on 14.5.2001 but nothing incriminating was recovered. However, the petitioner was arrested on the same day. He was asked to appear in the office of the NCB. His statement u/s 67 of the NDPS Act was recorded wherein he stated that his father was also involved in during trafficking. His father was arrested by CBN in 1996 because of drug trafficking. He further stated that by selling heroin he had been charging between Rs. 50,000/- to Rs. 80,000/- per kg. from Ashok Kumar and Dharam Pal of Delhi. After Ashok Kumar was arrested this petitioner started selling heroin to Dharam Pal at his residence at Kalu Sarai, Delhi. Dharam Pal became his contact man in Delhi. The petitioner used to procure from one Ganpat resident of Rajasthan. He knew Dharam Pal and his family and also Ashok Kumar and his family. Dharam pal and his wife Premvati were identified by the petitioner through their photographs. Petitioner had been earning approximately Rs. 1.50 lacs as profit in dealing in this trade which business he was doing since 1996. On the basis of petitioner''s statement, a fax message was sent to Deputy Narcotics Commissioner, CBN, Neemuch to ascertain other details about the petitioner. In response Dy. Narcotics Commissioner, CBN, Neemuch informed that petitioner was involved in a case in which 0.420 kg. of heroin was seized from him on 7.12.1999 at Suwasara railway station. Petitioner was also arrested in seizure case of 0.690 Kg. of morphine on 29.5.97 which was followed by detection of a clandestine laboratory and seizure of 1.100 Kgs. of opium powder and 30.40 kg. of opium solution on 30.5.97. This petitioner''s father Ganesh Ram was earlier arrested in seizure case of 1 kg. of heroin on 15.3.1993.

2. The antecedents activities of the petitioner had proximity in point of time with his indulging in drug trafficking in the present case. This fact emerged from the records produced before the detaining authority. The present petitioner disclosed the identity of Dharam Pal and his family. Petitioner, however, filed his retracted statement on 20.5.2001 which retraction was rejected by the competent authority. On the basis of material brought on record the detaining authority came to the conclusion that Ram Gopal, the petitioner herein, had knowingly engaged himself in the illicit traffic in narcotic drugs as was evident from the material on record and if not prevented he was likely to continue to engage himself in illicit traffic in narcotic drugs.

3. Taking into consideration all the facts available on record, the detaining authority ordered detained of the petitioner u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the PIT NDPS Act). Vide the order of detention dated 24.8.2001 the detaining authority came to the conclusion that in order to prevent him from engaging in the possession and transportation of the narcotic drugs in future, it was also felt necessary to pass the impugned order. Along with the detention order, petitioner was supplied the grounds of detention and the relied upon documents.

4. The said order of detention has been assailed in this writ petition by this petitioner Ram Gopal, inter alia, on the grounds: (1) That impugned order as passed while he was in custody, Therefore, it amounted to double detention which is vocative of his fundamental rights and against the principle of natural justice; (2) Copies of relied upon and referred to documents were not supplied in spite of demand; (3) Documents in ''Hindi'' were not supplied, though demanded; (4) Representation of the petitioner not placed before the detaining authority; and finally (5) Reference to the Advisory Board was not made within five weeks from the date of detention.

5. So far as the question of validity of the detention order is concerned, it is settled proposition of law that order of 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: (1) the detaining authority was aware of the subsisting custody of the detenu, (2) the detaining authority was reasonably satisfied on cogent material that detenu is likely to be released on bail, (3) there were compelling reasons justifying such detention, and finally (4) his antecedents activities were proximate in point of time with the activities he was now indulging and that his detention was necessary in order to prevent him from indulging in those prejudicial activities in future. If these factors were considered by the detaining authority then the order of detention cannot be assailed. Supreme Court in the case of Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, and Vijay Kumar Vs. Union of India (UOI) and Others, held that two facts must appear from the ground of detention namely; (i) awareness of the detaining authority of the fact that detenu is already in detention and (ii) that there must be compelling reason justifying such detention despite the fact that the detenu is already under detention.

6. So far as the question of awareness of the fact that the detenu was in custody, it is so reflected in the ground of detention itself. As regard the compelling reason justifying the detention, the same has been justified by the detaining authority by reference to the antecedents activities which had proximity in point of time. Perusal of the counter affidavit filed by the respondent shows that the petitioner had been indulging in drug trafficking since 1996. He was arrested on 8.12.1999 in a case of seizure of 0.420 Kg. of heroin. He was also involved in drug trafficking when on 29.5.1997, 0.960 kg. of morphine was seized from him.

He was also found in possession of opium powder and opium solution in huge quantity in 1997. His antecedents activities had proximity to the point of time to the present prejudicial activities. These facts have in fact been duly considered by the detaining authority at the time of passing the impugned order as is apparent from the ground of detention and the counter affidavit. Therefore, in facts of this case it cannot be said that detention of the petitioner is invalid.

7. Now, turning to the question of petitioner''s likely to get bail, Mr. Sunil Mehta contended that the petitioner never applied for the same, Therefore, there was no question of likelihood of his being released on bail. This shows non-application of mind of the detaining authority. The bald statement in the ground of detention that he was likely to be released on bail in fact an ipse dixit of the officer. There was no cogent materials for thinking that the detenu might be released. Mere apprehension that if the detenu is enlarged on bail he would indulge in these activities by itself is not sufficient to detain him. To support his contention he placed reliance on the decisions of Supreme Court in the cases of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, , Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others, Dharmendra Suganchand Chelawat and another Vs. Union of India and others, 2 and the judgments of this Court in the cases of Sanjay Rajendra Sharma @ Sunil Chhibber v. Union of India, Crl. W. No. 1204/1999, Jagdish Chander Sharma Vs. Union of India and Others, and Dinesh Kumar Gupta v. Union of India and Ors. Crl. W. No. 1399/2001 decided on 31.05.2002. Intelligence Officer, Narcotics C. Bureau Vs. Sambhu Sonkar and Another, , Union of India (UOI) through Central Bureau of Narcotics Commissioner Vs. Aharwa Deen, State of Madhya Pradesh Vs. Kajad, . Mr. Sunil Mehta further contended that since the petitioner never applied for bail, there was thus, no cogent material available with the detaining authority to draw an inference that he was likely to be released on bail. Moreover, provision of Section 37 of the NDPS Act being stringent makes it almost impossible for an accused to get bail.

8. Mr. K.K. Sud, Addl. Solicitor General, on the other hand contended that the detaining authority took into consideration the antecedents activities of the petitioner which were proximate in point of time to his prejudicial activities coupled with the fact that Smt. Premvati, wife of Dharam Pal, his link person had already been released on bail and Dharam Pal his contact man in Delhi to whom he had been supplying heroin at Delhi had been repeatedly applying for ball. These were the compelling circumstances which satisfied the authority that his detention was necessary and that there was imminent possibility of his being released. Since one of the co-accused got bail and other was trying, this made the detaining authority apprehensive that petitioner too would be released on bail and if released would indulge in these activities. His antecedents activities had proximity in point of time to the activities alleged against him. This was the cogent material before the detaining authority to conclude that the detention of the petitioner was necessary. Mr. K.K. Sud further contended that the Apex Court has observed that the detaining authority could justify the order of detention by

filing its counter affidavit which in this case was filed thereby justifying the detention.

9. After hearing counsel for the parties and carefully considering the record of this case, we are of the view that since Premvati wife of Dharam Pal, the contact man of the petitioner in Delhi had already been released on bail and Dharam Pal was trying for bail, Therefore, the detaining authority keeping these factors in view passed the impugned order of detention. It cannot be said that there was non-application of mind. The judgments relied by the petitioner are of no help to him in the facts of this case. From the perusal of grounds of detention and the counter affidavit a clear picture emerges that the detaining authority was aware that the petitioner was in custody. Detaining Authority was also aware of the antecedents activities of the petitioner and the fact that he had been indulging in drug trafficking since 1996 and that Dharam Pal and his wife Premvati were his contact persons in Delhi through whom he had been selling drugs. They had applied for bail and Premvati got enlarged on bail. His antecedents activities were proximate in point of time with his present prejudicial activities. It is in this backdrop that the detaining authority came to the conclusion that his detention is necessary. This satisfaction is based on cogent material. There were compelling reasons to pass the impugned detention order in order to prevent the petitioner from indulging in drug trafficking in future. On this count, Therefore, we find no merits in the arguments of Mr. Mehta.

10. So far as the challenge that petitioner was not supplied with copies of relied upon or referred documents, we find no merits in this submission. From the representation of the petitioner which is at page 53 of the paper book, it is apparent that most of the documents demanded by the petitioner did not pertain to him. They related to the complaints made by Dharam Pal and his family members. Order passed on the bail application of Dharam Pal and his wife by the Addl. Chief Metropolitan Magistrate, representation made by Sanjeev Verma, son of Dharam Pal, complaint against Dharam Pal and his son, case filed in respect of Ganesh Ram, copy of the information or material on the basis of which the telephone number of the petitioner was obtained, petitioner''s photographs. These did not relate to the petitioner nor relied by the detaining authority in passing the detention order against the petitioner. In fact all the relied upon documents were supplied to the petitioner which fact is apparent from the counter affidavit filed by the detaining authority. We are satisfied that all the relied upon and referred to documents against him and demanded by him had in fact been supplied to him. It is petitioner''s own case that neither he nor his family members made any complaint in this regard. Therefore, there was no question of supplying such a document. Similarly, Sanjeev Kumar whom he had referred to be his son in his representation is in fact not his son. Therefore, there was no question of relying on Sanjeev Kumar''s complaint while passing detention order against the petitioner. Surprisingly he even asked for his own photograph. This shows hollowness of the claim of the petitioner. Without application of mind he verbatim copied the representation of Dharam Pal. Non

supply of those documents as demanded by Dharampal has not prejudiced the petitioner in any manner nor petitioner has pointed out how non supply of those documents has prejudiced him in making effective representation. There was in fact no suppression of facts from the detaining authority. So far as petitioner is concerned, admittedly he moved no bail application nor his wife filed any bail application. There was no question of supplying copies of the same to him. Representation made by Sanjeev Kumar Verma son of Dharampal is not a relied upon document. Complaint u/s 172 and 174 filed by NCB against Ganesh Dass and Sanjeev Kumar Verma were not relied upon documents, Therefore, same had not been supplied. Resist of the documents were supplied to the petitioner. The entire material was placed before the detaining authority, Therefore, there was no question of suppression of material facts by the sponsoring authority from the detaining authority nor any prejudice has been caused to the petitioner. So far as furnishing of the telephone number of the petitioner, he has not been prejudiced even if the note dated 1.5.2001 was not supplied to him. He was given the copy of the fax message sent to the Deputy Narcotic Commissioner, CBN, Neemuch, indicating that Gopal could be identified by Telephone No. 46204. Therefore, on this count also we find no merit in the petition.

11. As regards supply of documents in Hindi, it would not be out of place to mention that petitioner was supplied with ground of detention, detention order and other documents which were read over and explained to him in Hindi. He acknowledged that he had been explained those documents in Hindi. He gave endorsement in this regard dated 1.9.2001 wherein he admitted that a detention order, grounds of detention and relied upon documents had been explained to him in Hindi and he understood the same. Having made that endorsement on 1.9.2001 he now can''t turn around and raise the objection that the documents ought to have been supplied to him in Hindi. It was for the first time on 19.10.2001 that he demanded Hindi translation of those documents which is apparently an after thought plea. Since all relied upon documents, so far as petitioner is concerned were supplied to him and explained to him in Hindi which fact he acknowledged on 1.9.2001, it does not lie in is mouth now to say that his right of making effective representation has been infringed. On this count also we find no merit in the petition.

12. Contention of Mr. Sunil Mehta that representation of the petitioner was not placed before the Advisory Board or that the same was not considered has been refuted by the respondent. It has been stated by the detaining authority that representation of the petitioner was duty placed before the Advisory Board which considered his representation and then gave the opinion.

13. Finally the contention of the petitioner that reference was not made to the Advisory Board within five weeks from the date of detention has also been denied. According to the respondent the petitioner was detained on 1.9.2001 and the reference was made to the Advisory Board on 3.10.2001. This makes it clear that he reference was within five weeks. The Advisory Board in fact submitted its

report on 8.11.2001 i.e. within 11 weeks from the date of detention. On this count also we find no substance in the petitioner. No other ground was urged nor argued.

For the reasons stated above we find no merit in the petition. Dismissed.

