

(1989) 01 DEL CK 0037

In the Delhi High Court

Case No : Criminal Writ Petition No. 489 of 1988

Ravi Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-01-1989

Acts Referred:

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

Citation : (1989) ILR Delhi 100 : (1990) 3 RCR(Criminal) 396

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Ashok Arora, Rajender Dutt, Jayant Bhushan and S. Kohli, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This petition has been brought under Articles 226 & 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, paying for quashing order of detention dated July 6, 1988, passed by Shri K. L. Verma, Joint Secretary to the Government of India, u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988, with a view to prevent the petitioner from abetting and financing the export from India of narcotic drugs.

(2) The facts leading to the passing of the detention order, in brief, are that on August 22, 1987, at 1.30 P.M. Mrs. Amar Song, who was to take flight No. AZ-787 at Indira Gandhi International Airport, New Delhi, for Barcelona (Spain) was apprehended as there was a secret information already available with the officers of Narcotic Control Bureau and her baggage was searched and two packets of heroin weighing approximately 4 kgs. in all were recovered from her suitcase. In the investigation it transpired that this petitioner, Ramesh Kumar, Pooran Singh, one Shafi and Partap had conspired to smuggle out of India the said narcotic drug through the carrier Mrs. Amar Song and it was the petitioner, who had got packed the said heroin in the cardboard boxes with carbon lining

with help of Partap, Vijay and Pooran and the petitioner took Pooran along for handing over the said boxes to the said lady and on; Ramesh was to fly in the same aeroplane without the information of the said carrier and Ramesh was to take over the heroin after the lady was to clear the Custom at Barcelona. It also came out in the grounds of detention that Vijay Kumar had made a statement that he knew the petitioner for the last about 8-9 years and the petitioner has been dealing in heroin for the last about 5 years. Statements of the petitioner and other co-detenus were also recorded.

(3) As first ground of challenge, counsel for the petitioner has urged that this seizure was effected in August 1987 while the detention order has been made in July 1988. So, it is based on a State incident and is liable to be quashed. The learned counsel for the respondents, on the other hand, has urged that the Ordinance in question came into force recently and thus, it was for the detaining authority to be subjectively satisfied with regard to the involvement of the petitioner and for the necessity of detaining him on the basis of the material which was available with the detaining authority and the Court cannot go into the question, whether the said subjective satisfaction is in any manner defective.

(4) Counsel for the petitioner has referred to Lakshman Khatik Vs. The State of West Bengal, , and SK. Abdul Munna Vs. The State of West Bengal, , in support of his contention that if there takes place a delay in passing of the detention order which is not explained, the detention order is liable to be quashed. It was observed in these cases that the authority should explain the delay with a view to show that there was proximity between the prejudicial activity and the detention order. He has also made reference to Sk. Serajul v. State of West Bengal 1975 Cri. L.J. 1328(3). In the cited case, the detention order was passed on certain wagon-breaking incidents and there was undue delay in passing the detention order. On that ground it was held that the court can doubt the genuineness of the alleged subjective satisfaction of the detaining authority as to the necessity of detaining the detenu with a view to prevent the detenu from acting in manner prejudicial to maintenance of supplies and services essential to the community. It was reiterated in this judgment that delay must be satisfactorily explained in order to prove the genuineness of the subjective satisfaction reached by the detaining authority.

(5) On the other hand, the learned counsel for the respondents, has placed reliance on Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, . In this judgment, it was observed that merely on account of delay it cannot be inferred that there was no sufficient material for the subjective satisfaction of the detaining authority. The judgment in the case of Sk. Serajul (supra) has been delivered by a Bench comprising four Hon"ble Judges which has not been noticed in the case of Rajendra kumar (supra) which judgment has been delivered by a Bench comprising of two Judges. A judgment of the Supreme Court delivered by a Bench comprising larger strength has to be considered as the law laid down by the Supreme Court in preference to the judgment taking contrary view

comprising of less number of Judges. Be that as it may, in the present case, the delay is on the face of it explainable inasmuch as the Ordinance in question had come into existence only recently and there was no provision under the Narcotic Drugs and Psychotropic Substances Act for Passing any detention order earlier. The learned counsel for the petitioner has argued that in case the authorities were really concerned with the harmful activities of the petitioner based on the material collected in August 1987 the petitioner could have been detained under the Conservation of foreign Exchange and Prevention of Smuggling Activities Act, 1974. No such plea has been taken in the writ petition. If such a plea had been taken the respondents could have given some good reasons for not taking any action against the petitioner under the provisions of the said Act. It may be that the persons dealing in the smuggling of narcotics were not being earlier dealt with under the provisions of Conservation of Foreign Exchange & Prevention of Smuggling Activities Act as a matter of some policy because it has not been shown that at any time any detention order had been issued under the said Act in respect of persons dealing in narcotics.

(6) Counsel for the respondents has cited Raj Kumar Singh Vs. State of Bihar and Others, . (5) In the cited case the detention order was issued on the basis of the involvement of the petitioner in that case in certain cases of March 1984 while the detention order was issued after one year. A contention was raised that as the incidents had taken place in which detenu was involved one year prior to the date of passing of the order, the satisfaction of the detaining authority is vitiated on account of staleness of the incident. It was held that while adequacy or sufficiency is no ground for challenge but, however, relevancy or proximity is relevant in order to determine whether an order of detention was arrived at irrationally or unreasonably. It was held that on the basis of the material present the detaining authority could arrive at subjective satisfaction that a detenu is one who is habitually doing or abetting the commission of offences and such a conclusion, is neither irrational nor unreasonable. It was observed that anti-social elements creating havoc have to be taken care of by the law. Similarly, in the present case, it has come out in the investigation that this petitioner was involved in dealing of heroin for the last about five years which could show that he is a habitual criminal dealing in said narcotics which activity is hazardous to the health of whole of the human community. So. on the material placed before the detaining authority, the detaining authority could be considered fully justified in passing the detention order against the petitioner in such circumstances. Hence, I hold that the impugned order does not suffer from any defect on this count as the petitioner was found to be involved in smuggling the large quantity of heroin in August 1987 when we find that in fact, he had been dealing in heroin for the last five years prior to the said incident. So, it cannot be said that there is no proximity between the activities of the petitioner and the date of passing of the detention order. I negative this challenge.

(7) The learned counsel for the petitioner has urged that the co-detenus had retracted his confessional statement by filing an application in the court but the

said" retracted statement of the co-detenu co-detenus had not been placed before the detaining authority which shows that there has been no proper application of mind by the detaining authority in passing the detention order. It is true that retracted statement of co-detenus is a material document which could sway the formation of the opinion of the detaining authority but in the present case it is clear that the contents of the said retracted statement were part of the bail application moved by the co-detenus and the said bail application was place before the detaining authority and copy of the same was supplied to the petitioner pari passu the grounds of detention. The learned counsel for the petitioner has argued that there was one more additional fact mentioned in the retracted statement of co-detenus i.e. that he stated that he did not know the petitioner, which fact did not find mention in the bail application. In the bail application the co-detenus had disowned his confessional statement completely. It is in the confessional statement that the co-detenus had mentioned about the role of the petitioner regarding his dealings in heroin and once the co-detenus in the bail application mentioned that the said confessional statement had not been given by him. the detaining authority was well aware of the retraction of the said confessional statement and it cannot be said that any material fact. which could influence the mind of the detaining authority in deciding whether the detention order should or should not be made, had been kept away from the detaining authority.

(8) Counsel for the petitioner has cited *Andrew Simon King Vs. Union of India and Others*, ^{f6}) where a division Bench of this Court held that as that as the retracted statement of the detenu has not been placed before the detaining authority, the same had the effect of vitiating the subjective satisfaction of the detaining authority. There is no dispute about this principle of law, laid down by a Division Bench of this Court. It is settled law as laid down by the Supreme Court in *Sita Ram Somani Vs. State of Rajasthan and Others*, in case some material document which could sway the mind of the detaining authority is not placed before the detaining authority, the order of detention in such a case is liable to be struck down as that would show non- application of mind to the relevant material by the detaining authority. In *Haridas Amarchand Shah of Bombay Vs. K.L. Verma and Others*, contention was raised that the detenu had made application before the court retracting his statement and that application was not placed before the detaining authority. It was found that another document containing the retraction of the detenu was placed before the detaining authority. It was held that the detention order is not vitiated because the detaining authority knew about the retraction of the statement made by the detenu. Similarly in the present case, from the contents of the bail application of the co-detenus it was clear that co-detenus had retracted his confessional statement and this fact was known to the detaining authority at the time of passing of the detention order. At any rate, it has been held in *Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others*, that if there is some other material available before the detaining authority from which the

detaining authority could reach subjective satisfaction for passing the detention order and even if a statement of detenu retracting the confession is not placed before the detaining authority even then the order of detention would not be vitiated because the effect of not placing the retracted statement before the detaining authority is that the confessional statement made by the detenu would have to be ignored. Even if after ignoring the said confessional statement there is some other material placed before the detaining authority the detention order could be based on such material. So, in the present case even if it is held that the confessional statement of co-detenus has to be ignored on the ground that his retracted statement was not placed before the detaining authority even then there was sufficient material available with the detaining authority in the shape of confessional statement of the petitioner himself. Although that confessional statement was also retracted by the petitioner, but that retracted statement was placed before the detaining authority. So, the detaining authority could form subjective satisfaction from the said material for passing the detention order against the petitioner. So, I negate this ground also.

(9) The learned counsel for the petitioner has further urged that the provisions of the Ordinance in question have not been made retrospective and thus, the detention order could not be passed on the basis of the incidents which occurred prior to coming into force of the Ordinance. I may refer to *A.K. Gopalan Vs. The State of Madras*, wherein it has been laid down that the object of the preventive detention is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. However, I do not understand how the order passed under the Ordinance for detaining the petitioner after coming into force of the Ordinance can be considered to be retrospective in nature. There is no bar in the Ordinance for not taking notice of previous illicit activities of the person against whom the preventive detention order is to be made. The preventive detention order is to take effect prospectively after passing of detention order. So, I do not see any illegality in passing the detention order on the basis of prejudicial activities of the petitioner occurring prior to coming into force of the Ordinance. Those activities were already illegal under the existing law. They have not been made illegal on the basis of the provisions of the Ordinance. So, I repel this contention also.

(10) Then, it has been urged that there has occurred undue delay in considering the representation made by the petitioner. To counter this challenge, besides the counter affidavit filed by Shri K. L. Verma, the detaining authority himself, an additional affidavit had been filed of Intelligence Officer of the Narcotic Control Bureau which was also taken on record after copy of the same was delivered to counsel for the petitioner. The additional affidavit is based on the material available on the record of the Department. Facts, as mentioned in the affidavits, show that the representation dated August 18, 1988, was received by the detaining authority on the following day. Then, August 20 and August 21, 1988, were holidays and comments of the sponsoring authority were called on August 22, 1988, and the comments were received on September 6, 1988. The

papers were processed and put up before the Minister of State for Revenue, who was on tour on September 9 & September 12, 1988 and the Finance Minister rejected the representation on September 12, 1988. and the decision was communicated to the petitioner vide memo dated September 14, 1988. The learned counsel for the petitioner has argued that there has occurred undue and unexplained delay in between the period August 22, 1988 to September 6, 1988, at the level of the sponsoring authority in furnishing the comment:,. August 24, 1988, was a holiday. The Intelligence Officer, who was to collect the material for furnishing the comments on the said representation had mentioned in the affidavit that the representation was received by the Deputy Director in his department on August 26, 1988, while the following two days were holidays and he received the representation on August 29, 1988, and he proceeded to collect the material and one of the facts mentioned in the representation was that the detenu's brother had sent a telegram to the Lt. Governor alleging false implication of the petitioner and that telegram was to be searched and he made inquiries about the same for two days but no trace of the telegram could be found and September 2, 1988, to September 4, 1988, were holidays and then there was a request in the representation for supply of documents, some of which were available with the sponsoring authority and some were to be collected from the counsel who was conducting the matter on behalf of the sponsoring authority in court and after making his comments he had sent the file to the Ministry on September 6, 1988. So, on going through these facts it is obvious that no unexplained delay has occurred in considering the representation. After all, perusal of the representation shows that the petitioner was to be supplied copies of some documents and he had also made reference to a telegram allegedly given by his brother. So, the officer concerned had to take some time for furnishing the comments.

(11) In *Frances Coralie Mullin Vs. W.C. Khambra and Others*, while dealing with a question of delay in considering the representation, the Supreme Court found in the said case that the representation required collection of some documents and furnishing copies of the documents and if there appeared to be any delay it was not due to any want of care but because the representation required a thorough examination in consultation with the investigators of facts and advisers of law. In *Smt. Masuma Vs. State of Maharashtra and Another*, it was found that the concerning authority had only about 4 or 5 days for giving comments in regard to various allegations contained in the representation. It was held that the said time taken by the authorities in giving comments cannot be regarded as unreasonable. In *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, a judgment given by a Bench of three Judges, has clearly laid down, while dealing with the question of delay in considering the representation, that the time imperative can never be absolute or obsessive and the occasional observations made by the Supreme Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise, the expedition with which the representation must be considered and net that it is a

magical formula, the slightest breach of which must result in the release of the detenu. It was further laid down that law deals with the facts of life and in law, as in life there are no invariable absolutes and neither life nor law can be reduced to mere but despotic formulae. In the said case, the representation was dispatched on February 5, 1981 and was received in the office of detaining authority on February 13, 1981. It was put up before the detaining authority on February 19, 1981 and it was decided on that very day. It was held that there has not occurred any unaccountable or unreasonable delay in disposal of the representation. The observation made by the Supreme Court in well known case of Harish Pahwa Vs. State of U. P. and Others, are. to be interpreted in the light of the facts of each case keeping in view the law laid down by the Supreme Court in Mst. L. M. S. Ummu Saleema (supra). So, keeping in view the facts mentioned above, I find that there has not occurred any unaccountable and unreasonable delay in considering the representation of the petitioner. Hence, the detention order cannot be quashed on this ground.

(12) The learned counsel for the petitioner has further argued that some of the documents supplied to the petitioner were illegible and thus, the order of detention stands vitiated on that score. Particular reference has been made during the course of arguments with regard to some, pages of bail application of the co-detenus. It is true that a few words on two pages are not legible but if the whole of the document is read, it does not make at all difficult in understanding the contents of the whole of the document. So, it cannot be said that some illegible ununderstandable documents have been supplied to the petitioner which put any obstacle on the right of the petitioner to make an effective and purposeful representation. "The law is, no doubt, settled that the mandate of the Constitution is that the detenu must be supplied the grounds of detention *pari passu* the order of detention but the grounds of detention must include all documents and material relied upon or referred to by the detaining authority for passing the detention order and the said documents must be legible and in the language known to the detenu. But this requirement does not mean that if in a large number of documents supplied to the detenu. some words here or there are illegible that the order of detention must be struck down. It would depend on facts of each case to see whether legible documents have been supplied to the detenu meaning thereby that the detenu should, while reading the documents, understand the contents of the documents. Hence, I hold that in the present case it cannot be held that any illegible documents have been supplied to the detenu.

(13) The learned counsel for the petitioner has then argued that the petitioner was already in custody and had been granted interim bail on the ground of ill-health of his wife and the detention order had been made to set at not the benefit of interim bail. It is mentioned in the grounds of detention itself that the detaining authority was aware of the order granting the interim bail to the petitioner. It was for the detaining authority to formulate its subjective satisfaction. The court is not sit in judgment over the subjective satisfaction arrived at by the detaining authority. The court is only to see that all necessary

material which could help the detaining authority in arriving at its satisfaction should be placed before the detaining authority. So, the order of granting interim bail was very well in the knowledge of the detaining authority and the detaining authority had thought it fit still to pass the detention order and so, it cannot be held that the detention order stands vitiated on the mere ground that the interim bail had been granted to the petitioner.

(14) It has been then pleaded that the petitioner had produced before the court certain blank documents bearing his thumb impression, which according to the petitioner, had been brought into existence by the officers who recorded his confessional statement which could show that the. confessional statement was not voluntary and that the said fact was not brought to the notice of the detaining authority and thus, the order of detention is vitiated. It is to be mentioned that the, bail application of Vijay contained there facts and that application was admittedly brought to the notice of the detaining authority before the detention order against the petitioner was. made. So. it cannot be said that this vital material has not been considered by the detaining authority.

(15) In Poonam Lata Vs. M.L. Wadhawan and Another, an argument was raised that the detention order is vitiated as the detention order is made when the detenu was already in Jail. The contention was negatived. It was held that when the detaining authority was aware of the fact that the detenu was in custody yet he was satisfied that his preventive detention was necessary. The order of detention cannot be considered vitiated. This authority squarely applies to the facts of the present case. Hence, I negative this contention as well.

(16) Another contention raised by the learned counsel for the petitioner is that the detenu has prayed in his representation that he be supplied the grounds of detention served on the. co-detenus but the same having been not supplied had disabled the detenu to make an effective or purposeful representation against the order of detention in order to show that the detention orders have been made in respect of the petitioner as well as his co-detenus in a stereo-type manner without application of mind. The grounds of detention of co-detenus are neither relied upon nor referred to in the grounds of detention of the petitioner. They are not the documents which have been considered by the detaining authority for passing the detention order against the petitioner. In Kuriniyan Saidalikutty v. U.O.I. & Others 1987 (3) Crimes 851,(16) it has been "laid down that the copies of all the documents which are relied upon or which form the basis of the grounds of detention must be supplied *pari passu* and grounds of detention without they being demanded and the documents which are not relied upon do not form the basis of the detention order but which are merely referred to casually or incidentally or by way of narration of facts in the grounds of detention need not be supplied but they must be supplied, if demanded. The grounds of co- detenu have been neither relied upon nor referred to in any manner whatsoever in the grounds of detention of the petitioner. Thus, no duty is cast on the authorities to supply copies of such documents even if the demand is

made by the detenu. It is for the detenu to get other documents by his own sources, if any, which he thinks would be helpful in making a purposeful or effective representation. He cannot make a grievance if he is not supplied the copies of documents which are neither relied upon nor referred to even casually in the grounds of detention. The learned counsel for the petitioner has argued that there is no other way the detenu could show to the authority concerned that the stereo-type orders of detention had been made in respect of the petitioner as well as his co- detenu. In my view, the petitioner could always pray to the Advisory Board to look into the files pertaining to the co- detenus in order to see whether stereo-type orders of detention have been made without application of mind by the detaining authority. So it cannot be said that the petitioner has been denied a reasonable opportunity of making a purposeful representation against the detention order on the sole ground that the petitioner has not been supplied copies of the grounds of detention of the co-detenus.

(17) The learned counsel for the petitioner still has a challenge to the detention order by urging that the detenu had made a prayer in his representation that he be supplied copies of the summons issued to the petitioner while recording his statement but such copies have not been supplied. He has argued that the said documents stand atleast casually referred to in the grounds of detention and also in the copy of the statement of the petitioner. I have gone through the grounds of detention as well as copy of the statement of the petitioner and find that there is no reference at all made to any summons having been issued to the petitioner. So, it cannot be said that a casual reference has been made with regard to issuance of summons in the grounds of detention or in the contents of the statement of the petitioner. It may be that as a fact such summons had been issued but the question is whether any casual reference could be deemed to have been made to the issuance of written summons in the grounds of detention or in the statement of the petitioner served on the petitioner. From the perusal of the said documents, it is not possible to hold that any casual reference has been made to issuance of written summons so that the duty was cast on the respondents to supply copy of the summons to the petitioner on demand being made.

(18) Counsel for the petitioner has made reference to Criminal Writ Nos. 324 & 325186, M. M. Yusuf v. Union of India & Others, decided on March 17, 1987, (17) wherein a prayer had been made by the detenu for supply of copy of search warrants which stand referred to in the panchnamas, copies of which stood supplied to the detenu and on which the reliance has been placed by the detaining authority for passing the detention order. It was held that the panchnama makes reference to issuance of orders authorising the search and thus, as reference stands incidentally made to the search warrants in the panchnama, so the detaining authority was duty bound to supply copies of the said search warrants on demand being made. The case is distinguishable on facts. In the present case, as already mentioned above, no reference has been made even incidentally to any written summons being served on the petitioner

either in the grounds of detention or in any other document relied upon by the detaining authority in passing the detention order. I negative this contention as well.

(19) Lastly, it has been urged by the learned counsel for the petitioner that copies of documents which had been supplied to the petitioner were useless inasmuch as they were supplied after the Advisory Board had held its meeting on September 12, 1988. The petitioner could have valid reason for challenging the detention order if some copies of some documents, which it is the duty of the detaining authority to supply to the detenu, are not supplied in time but where there is no legal duty cast on the detaining authority to supply copies of any documents, then mere fact that copies of such documents have been supplied belatedly would not help the detenu to challenge the detention order. So, I find no merit in this contention as well. No other point has been urged before me.

(20) In view of the discussion above, I find that there is no merit in this writ petition. I dismiss the writ petition but leave the parties to bear their own costs. The rule is discharged.