

(2002) 05 DEL CK 0078

In the Delhi High Court

Case No : Criminal Writ Petition No. 135 of 2002

Sandeep Johar @ Bhuri @ Deepak

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-05-2002

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Criminal Procedure Code, 1973 (CrPC) — Section 161
National Security Act, 1980 — Section 3(2)

Citation : (2002) 99 DLT 586

Hon'ble Judges : Vinod Sagar Aggarwal, J; B.A. Khan, J

Bench : Division Bench

Advocate : Herjinder Singh, for the Appellant; Mukta Gupta, for State and Nishakant Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Khan, J.—Petitioner is said to be a desperate and hardened criminal operating a gang called "Bhoori Gang". He was first detained on 23.4.1999 which was quashed by this court in CrI.W. 370/99 vide order dated 14.12.1999. He was thereafter again detained for one year vide order dated 31.10.2001 passed by Police Commissioner u/s 3(2) of National Security Act to prevent him from indulging in any activity prejudicial to public order which is under challenge in the present petition. He made representation against his detention on 19.11.2001 which was, however, rejected by respondents. His detention order was later confirmed which he is questioning now on all conceivable grounds.

2. Petitioner's first plea is that there was no compelling necessity and no cogent material for his detention. He was already in custody and there was no prospect of his being let off on bail and thus no need for his detention. The detention order also suffered from non-application of mind as Detaining Authority had relied upon FIR Nos. 289 and 266/97 which figure in cases from Sr. Nos. 1 to 17 which otherwise are projected as narration of his past criminal history. The

detaining authority had in this manner relied upon the grounds which formed the subject matter of his first detention thus vitiating the detention. He claims that no material/grounds prior to 14.12.1999 when his first detention was quashed by the court could be taken into consideration and involvement in cases shown against him thereafter was false and concocted.

3. Petitioner also asserts that incidents mentioned by the detaining authority in the grounds of detention related to maintenance of law and order and not public order which was evident from the allegations contained in FIR Nos. 645, 442 and 433/01 and, as such his detention had no nexus with the stated object. He also submits that the acquittal in about 10 cases could not have been taken into consideration for his detention. There was a long delay in disposal of his representation and that he was not supplied certain documents which were otherwise supplied to some others detained with him and involved in similar cases. The sponsoring authority had suppressed some material like 161 Cr.P.C. statements in FIR No. 162/2000 and the evidence recorded in the court of ACMM which was not placed before the detaining authority and which could have influenced his decision either way.

4. Petitioner's counsel Mr. Herjinder Singh supported all this by some Supreme Court judgments in Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, ; Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, ; Jahangir Khan Fazalkhan Pathan Vs. Police Commissioner, Ahmedabad and Another, ; Bimla Dewan Vs. Lieutenant-Governor of Delhi, .

5. R1 & 2 have filed their counter through Mr. T.M. Mohan, DCP (HQ) refuting all the averments and allegations made by the petitioner and justifying the detention order. It is claimed that detention order was passed after taking into consideration all facts, documents and circumstances of the case and on due application of mind and proper satisfaction reached by the detaining authority to prevent him from indulging in criminal activities prejudicial to maintenance of public order. He had committed offences after his release from hail and it was apprehended that he would repeat the same story again. Though various criminal cases were registered against him and he was taken in custody but there was an eminent possibility of his again being bailed out warranting his fresh detention and which fact was reflected in the detention order.

6. It is explained that cases at Serial Nos. 1 to 17 in the grounds of detention were mentioned to narrate petitioner's past criminal history but were not relied upon by the detaining authority for passing the detention order. Nor had this influenced the authority's mind anyway and as a matter of fact the Authority had derived subjective satisfaction from record of criminal cases mentioned from Serial No. 18 onwards. It is denied that grounds of first detention order were taken in consideration for passing the second order. It is also refuted that cases registered against him related to maintenance of law and order and not public order and in this regard reference is made to several FIRs (Nos. 162, 94/2000, 231, 645/2001 under various Sections of IPC and Arms Act) containing

allegations to show that these had the ramifications of prejudicing the public order. It is again denied that any delay had occurred in disposal of his representation. The representation was received in Police Headquarters on 20.11.2001 and on the same day comments were sought from the sponsoring authority and were received on 21.11.2001. The manner was put up before the detaining authority on 22.11.2001 and excluding the holidays from 23 to 25.11.2001 it was rejected on 27.11.2001 and conveyed to petitioner on 30.11.2001.

7. The Government's Explanation in this regard also proceeds by and large on the same lines, the representation being received on 20.11.2001 and rejected by the Lt. Governor on 27.11.2001 inclusive of intervening holidays. Non-supply of any relevant documents is also refuted, so is the suppression of any relevant material. It is pointed out in this regard that relevant copies of all confessions, bail applications, dismissal orders, etc. were placed before the Authority to enable him to draw the appropriate satisfaction.

8. State counsel Ms. Mukta Gupta, adverted to the legal position on all these issues and relied upon several Supreme Court judgments including *Ashok Kumar Vs. Delhi Administration and Others*, , *Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat* (1991) 5 SCC 613, *Dhananjay Das Vs. District Magistrate, Darrang and Another*, and *Jagmohan @ Mohan Singh v. Union of India* 2001 (2) JCC 296 to justify the detention order.

9. Several issues have arisen for consideration in this conspectus viz. (i) whether there was no compelling necessity for petitioner's detention; (ii) whether the detention order suffered from non-application of mind; (iii) whether it was passed on the strength of grounds of first detention order; (iv) whether grounds had no nexus with the object - maintenance of public order; (v) whether there was any unexplained and unreasonable delay in disposal of petitioner's representation; (vi) whether any relevant material was suppressed by sponsoring authority; (vii) whether any cases in which detenu had earned acquittal formed the basis of detention order and (viii) whether some relevant documents were not supplied to petitioner.

10. We are conscious of the position that preventive detention infringes and curtails the life and liberty of a person and, Therefore, it becomes imperative that all constitutional and statutory safeguards and strictly observed and enforced to ensure that the power to detain was exercised by the detaining authority fairly and within the legal parameters. Article 22(5) embodies these constitutional guarantees and casts and obligation on the detaining authority to inform the detenu all the grounds of detention within the prescribed time which also includes the supply of all relevant and relied upon documents to enable him to make an effective representation against his detention at the earliest. It is also well settled that breach of any one of these guarantees vitiates the detention order. If the grounds and the relied upon documents are not supplied to the detenu within the prescribed time or if any hindrance is caused to disable him

from making an effective representation, his detention is invalidated. Similarly, if there is any unexplained and unreasonable delay in disposal of the representation, the same consequences flow.

11. With this preface it becomes easy to test the petitioner's case. His first plea is that there was no compelling necessity nor any cogent material for his detention. According to him, since he was already in jail and there was no chance of his being let off, his detention was not warranted in the circumstances. Respondent's reply to this is that petitioner was granted bail in all cases in the past and that there was a strong possibility of his being bailed out again and that is why it was deemed necessary to detain him. Moreover, the detention order was passed on the basis of relevant material reflecting his criminal activity from 14.12.1999 when his first detention was quashed.

12. Whether or not there was any compelling necessity to detain a person under the preventive detention squarely falls within the domain of detaining authority. The detenu had no say in the matter. Nor was it for him to adjudged whether such necessity existed or prevailed. He may indeed question his detention on the grounds of having been passed on no material or irrelevant material or lacking in basis on some other ground but he can't sit in judgment over the existence or otherwise necessity of passing an order. In any case, it was for the court to feel satisfied whether such necessity existed, as and when challenged in the facts and circumstances of the case. In the present case, we find no scope to doubt the detaining authority's Explanation in this regard resulting in rejection of petitioner's first plea.

13. Petitioner's second contention that while cases figuring at Serial Nos. 1 to 17 in the grounds of detention are shown as narration of events, detaining authority had, in fact, relied upon FIR Nos. 289/97 and 266/97 mentioned therein which exposed his non-application of mind and shows that satisfaction reached by him was unreal. The authority had also taken the grounds of first detention order into consideration vitiating the detention in the process.

14. The case of respondents on this is that the authority had referred to cases from Serial Nos. 1 to 17 and the two FIRs by way of narration and had passed the order on the basis of material related to petitioner's criminal activity after 14.12.1999 when his first detention order was quashed.

15. There is no dispute with the proposition that grounds of detention of a quashed order could not be relied upon for passing a fresh or second order. It is a forbidden zone and its violation leads to vitiating the second detention. The same holds true where the detention order exposes or depicts non-application of mind by the authority. The Supreme Court had this to say on the issue is Chhagan Bhagwan Kahar's case :-

"Even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high

prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule it nullifies the entire order."

16. It is to be noted that in this case Supreme Court had found it as a fact that detaining authority had relied upon the previous grounds. But that was not so in the present case because the detaining authority here had categorically denied to have relied upon on any case from Serial Nos. 1 to 17, some of which formed the subject matter of previous grounds also and had asserted that the order was passed on consideration of cases registered after 14.12.1999 when petitioner's first detention was quashed.

A perusal of the grounds of detention also substantiate this and clarifies that cases from Serial Nos. 1 to 17 were being mentioned as narration of the petitioner's past criminal activity. FIR Nos. 289 and 266/97 are also referred in that context. These grounds also detailed out various criminal cases registered and pending against petitioner after his first detention was quashed. Therefore, regard being and to the position that the detaining authority was not barred or precluded from narrating the past offending activities of the detenu and that detention order was based on fresh material, it becomes difficult to uphold the petitioner's plea in this regard.

17. Petitioner's next submission that cases mentioned against him in the grounds of detention related to maintenance of law and order and not public order also does not bear scrutiny. It must be borne in mind that the distinction between the two is a thin one. The act may constitute a law and order or a public order problem at the same time. It all depends on the degree of its impact and extent on the tempo of life and the society.

18. The issue has received much attention in several Supreme Court judgments. It was first considered in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, holding thus:-

"What was meant by the maintenance of public order was the prevention of disorder of a grave nature. A disorder which authority thought was necessary to prevent in view of the emergent situation created by external aggression. Whereas expression maintenance of law and order may mean prevention of disorder of comparatively lesser gravity and of local significance only."

19. The court later focussed this in *Ashok Kumar Vs. Delhi Administration and Others*, holding as under:-

"The true distinction between the areas of "public order" and "law and order" lies not in the nature of quality of the act, but in the degree and extent of its reach upon society. The distinction between two concepts is a fine one but this does not mean that there can no overlapping. Acts similar in nature but committed in

different contexts and circumstances might cause different reactions. In one case it might affect specific individual only and, Therefore, touch the problem of law and order, while in another it might affect public order. The act by itself, Therefore, is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of life of community which makes it prejudicial to the maintenance of public order."

20. In one of its latest judgments in Amanulla Khan Kudeatalla Khan Pathan's case, the court went to the extent of holding:-

"Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to be maintenance of public order or the same amounted to breach of law and order. The fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society."

21. All this makes it clear that a particular act could involve both maintenance of law and order and public order and there could be an overlapping between the two also. It may as well be that some FIR's against petitioner relate to law and order problem but there are others too which show that his criminal activity was bordering maintenance of public order. Reference in this regard can be made to FIR Nos. 162, 94/2000, 231 and 654/2001 alleging that he was running tender mafia and was terrorising people and witnesses were not coming forward to depose against him. Notwithstanding the merit of these allegations, it can't be said that these do not touch maintenance of public order within the meaning this expression has received in several court verdicts so far.

22. Petitioner's next submission that his detention was vitiated because detaining authority had taken those cases also in consideration in which he had earned acquittal is also belied by the record. It is true that a detention order gets vitiated if the grounds of detention are based on cases in which the detenu had earned acquittal. But that is not the case here. A perusal of he grounds of detention would show that the detention was not based or dependent upon cases in which petitioner was acquitted. However, if any reference was made to such cases by way of narration of his past activity, it could not be treated fatal for the detention order.

23. Petitioner's grievance about the delay in disposal of the representation and alleged failure of sponsoring authority to withhold some material from the detaining authority are by the large routine pleas which also do not merit any acceptance. Respondents have satisfactorily explained the time taken in dealing with his representation and, in our view, no unreasonable delay could be attributed to them in this regard. Needless to point out that mere delay does not

vitiates a detention order unless it is found unreasonable and goes unexplained.

24. Now a last word about allegation of suppression of material by the sponsoring authority. It is alleged by petitioner that sponsoring authority had withheld statement recorded u/s 161 Cr.P.C. and some other material which vitiated the order. It requires to be made clear that detention was liable to be invalidated only when sponsoring authority was found to withhold the relevant material, which had the consequence of affecting the authority's satisfaction and decision. It is not withholding or suppression of every type of material even if it was irrelevant that leads to this consequence. The material must be relevant and likely to affect the detaining authority's satisfaction and decision if it was placed before him.

25. This position is made clear by the recent Supreme Court judgment in *A. Sowkath Ali v. Union of India* (2002) 7 SCC 148:-

"The sponsoring authority should place all the relevant documents before the detaining authority. It should not withhold any such document based on its own opinion. All documents, which are relevant, which have bearing on the issue, which are likely to affect the mind of the detaining authority should be placed before it. Of course a document which has no link with the issue cannot be construed as relevant."

26. Given regard to the respondent's case that Detaining Authority had not relied upon statements recorded u/s 161 Cr.P.C. and other referred to material and had drawn satisfaction on the basis of available relevant material, it can't be said or held that sponsoring authority had withheld any relevant material which was likely to affect the satisfaction and decision of the detaining authority in passing the detention order.

This petition accordingly fails and is dismissed.