
(1999) 09 DEL CK 0071
In the Delhi High Court
Case No : Criminal W. 603 of 1999

Sanjay @ Dinesh @ Kala

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Citation : (1999) 6 AD 225 : (1999) 82 DLT 217 : (1999) 51 DRJ 644 : (2000) 1 RCR(Criminal) 446

Hon'ble Judges : Surinder Kumar Aggarwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. R.K. Jain, Mr. Harjinder Singh, Mr. Jitender Sethi and Mr. H.S. Ahluwalia, for the Appellant;

Judgement

S.K. Agarwal, J.—The petitioner by this petition has challenged the detention order dated 23rd April, 1999 passed by the Commissioner of Police under subsection (2) of Section 3 of the National Security Act, 1980 (for short the Act) with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

2. We have heard learned counsel for the parties.

3. Mr. R.K. Jain, Sr. Advocate appearing on behalf of the petitioner argued that the impugned order is liable to be quashed on the ground that on 23.4.1999 the petitioner was in jail when the order of detention was passed; that there was no material before the detaining authority to show that there was an imminent possibility of the petitioner being released on bail; and that in the grounds of detention a case FIR No. 680 dated 23.12.1997 u/s 324/307/34 IPC PS Subzi Mandi, Delhi was shown to be pending trial, whereas the petitioner had already been acquitted in the said case on 9th April, 1999. Mr. H.J.S. Ahluwalia, learned counsel for the respondents, in reply argued that though the petitioner was in jail even then he was terrorising and deterring people to come forward to give evidence against him while conceding that the petitioner was already acquitted in the said case on the date of passing of detention order but the information

regarding the acquittal was received later on and that it would not have affected the subjective satisfaction of the detaining authority.

4. Admittedly on the date of passing of the detention order the petitioner was in jail and that in the grounds of detention one of the case against the petitioner was shown to be still pending trial, whereas in fact, he was already acquitted in that case.

5. Law regarding the passing of the detention order against the persons who are already in jail, is well settled by several authoritative pronouncements. Supreme Court in the case of Dharmendra Suganchand Chelawat and another Vs. Union of India and others, , after considering several earlier decisions culled out the following principles:-

"The decisions referred to above led 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 the 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."

6. It must be clearly understood that the law of preventive detention is not punitive. As an abstract proposition of law there is on manner of doubt that Section 3 of the Act does not preclude the authority from passing an order of detention against a person while he is in jail. But the relevant facts in connection with the making of the order may differ and that would make difference in the application of the principle that the detention order can be passed against a person while he is in jail. It is obvious that before an authority can legitimately come to the conclusion that the detention of the person is necessary, it must record compelling reasons. There should be some material that the detenu was likely to be released in near future. In this case the detaining authority has not cared to enquire into as to in how many cases the petitioner was already granted bail and in how many cases the bail was refused and reasons for the same. In such like cases, before passing the detention order the first and the foremost condition that is required to be satisfied was that is there imminent possibility of the detenu being released on bail, which is missing in this case. Further in the grounds of detention one of the cases against the petitioner was wrongly shown as pending trial whereas he was admittedly acquitted in the same 14 days prior to the passing of the detention order. It is no excuse that the Information regarding his acquittal in that case was not made available to the detaining

authority during this period. Thus the impugned order was passed on non existent ground.

7. In view of the above the petition is allowed. The impugned order of detention is quashed. The petitioner is directed to be released forthwith if not required to be detained in any other case. No order as to costs.