

**(2002) 04 DEL CK 0047**

**In the Delhi High Court**

**Case No :** Criminal Writ Petition No. 686 of 2000

Sayed Abu Ala

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 23-04-2002

**Acts Referred:**

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —  
Section 12, 3, 3(1), 3(3), 9

**Citation :** (2002) CriLJ 3519 : (2002) 98 DLT 122 : (2002) 63 DRJ 552

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

**Bench :** Division Bench

**Advocate :** Herjinder Singh, Yogesh K. Saxena and N.S. Brar, for the Appellant;  
K.K. Sud, ASG, Neeraj Jain, Nishakant Pandey and K. Kiran, for the Respondent

**Final Decision :** Dismissed

## Judgement

Khan, J.—Petitioner is challenging detention order dated 15.2.2000 passed by R-2 u/s 3(1) of PITNDPS Act, 1988 on the ground that R1-2 had unjustifiably rejected his second representation for reconvening of the Advisory Board and had caused undue delay in disposal of his representation and that both these factors had vitiated his detention.

2. Petitioner was first arrested on 29.11.1999 by Officers of NCB, Bangalore. He was later ordered to be detained by order dated 15.2.2000 which was served on him on 24.4.2000. He made a representation against his detention and his case was referred to the Advisory Board which was convened for 22.4.2000. The Board reported for his detention which was later confirmed on 25.4.2000.

3. Petitioner made a second representation on 26.5.2000 to the detaining authority for reconstitution of Advisory Board as according to him he was deprived of his right of appear before it on 22.4.2000. His representation was but rejected by order dated 25.7.2000. Hence this petition.

4. Though petitioner has attacked his detention order on a variety of grounds, his

counsel Mr. Herjinder Singh has confined his challenge to only few grounds viz. that as petitioner was deprived of opportunity to appear before the Advisory Board, his detention was vitiated and R1-2 had caused undue delay in disposal of his representation in this regard and had rejected it unjustifiably which had also the same consequence. He submitted that petitioner had a right to be produced before the Board and respondents' failure to do so had violated his rights under Article 22(5) and Section 9(c) of PITNDPS Act. He referred to inters correspondence between various authorities of R1-2 to show that petitioner was neither informed about the date of Board meeting nor had declined to appear before it. Reliance in this regard is placed on affidavit of petitioner's advocate Sh. S.C. Puri whom petitioner had allegedly appointed to appear before the Board refuting that he was informed about the date of Board meeting on phone by one Mangal Dass, IO.

5. Mr. Singh asserted that since petitioner's representation contained new material and ground, respondents were under an obligation to allow it and to reconvene the Board and their failure to do so had vitiated the detention. He cited two Supreme Court judgments in *Makhan Lal Gokul Chand Vs. The Administrator Union Territory of Delhi and Another*, and *Ram Bali Rajbhar Vs. The State of West Bengal and Others*, to underscore that detenu could ask for reconstitution of Advisory Board on fresh material, new grounds and subsequent events.

6. Ld. counsel also pointed out that respondents had also unduly delayed the disposal of petitioner's second representation dated 26.5.2000 which was again fatal for his detention because second representation was also a right comprehended u/s 3(3) and 12 of PITNDPS Act read with Article 22(5) of the Constitution and, Therefore, required to be disposed of at the earliest and without any delay. He alleged that there was 10 days delay from 30.5.2000 to 9.6.2000 in sending this representation to PITNDPS Cell and 22 days delay from 9.6.2000 to 30.6.2000 when comments were sought from the Sponsoring Authority for which no worthwhile Explanation was forthcoming. He referred to judgments in *Mahesh Kumar Chauhan alias Banti Vs. Union of India and others*, , *Harish Pahwa Vs. State of U. P. and Others*, , *Union of India and Others Vs. Diljeet Singh and Another*, to suggest that time taken in obtaining comments of the Sponsoring Authority would not constitute a good ground for justifying the delay. He also alleged that there was a further 8 days delay in communicating the rejection of his representation to petitioner and that there was no compelling necessity for detaining authority to detain him as he was charged of a serious offence under PITNDPS Act in which there was no prospect of grant of bail.

7. Reply affidavit/counter has been filed by Sh. G.L. Sahni, Deputy Secretary, Revenue justifying petitioner's detention order. It is disclosed that petitioner was a dangerous drug trafficker and was clandestinely manufacturing heroine at his residence where 30.250 Kgs were seized on 29.11.1999 by NCB Officers. He was questioned and his voluntary statement recorded and was arrested thereafter.

Keeping all this in view and considering that there was a likelihood of his being released on bail and that he was likely to engage himself in illicit traffic in narcotic drugs, he was ordered to be detained to prevent him from indulging in such activities. It is denied that detention order was passed in any malafide exercise of power or was based on any irrelevant material. All constitutional safeguards were observed and petitioner was informed at the earliest to make representation which was referred to the Advisory Board which was convened for 22.4.2000. It is also claimed that petitioner was informed well in advance about the Advisory Board meeting fixed for 22.4.2000 on 7.4.2000. He, however, cited his ill-health and pleaded his inability to appear before the Board. He then addressed a communication to his counsel on 7.4.2000 asking him to appear for him and informing him about the date, time and place for the meeting which was faxed by Jail Supdt, Bangalore on 18.4.2000 and contents whereof were duly communicated to his Advocate Mr. Puri on 18.4.2000 itself, by Mangal Dass, Intelligence Officer, NCB Delhi Unit. An affidavit by Mangal Dass has been brought on record stating that he had contacted Advocate Puri on his telephone No. 3388564 through his official phone on 18.4.2000 and informed him about the contents of petitioner's letter dated 7.4.2000. All told, it is projected that petitioner had declined to appear before Board on his own and that there was no failure on the part of respondents 1 & 2 to inform him about the date of Board meeting or to appear before it.

8. It is explained that petitioner's second representation was forwarded by Jail Supdt, Bangalore on 30.5.2000 and was received at PITNDPS Cell on 9.6.2000. Comments were called on this on 12.6.2000 which were received on 30.6.2000. The matter was put before the detaining authority and Finance Secretary on 3.7.2000 as 1st and 2nd July were holidays and ultimately petitioner's representation was rejected on 4.7.2000 and this communicated to him by memo dated 4.7.2000 which was received by him on 12.7.2000. The Finance Secretary also rejected his representation on 5.7.2000 which was communicated to him on 7.7.2000 and in this manner even the second representation was dealt with as expeditiously as practicable and that no unreasonable delay was caused in its disposal. It is also submitted that there was compelling necessity to detain petitioner as he had applied for bail which was liable to be granted.

9. Article 22(5) of the Constitution guarantees certain rights of a citizen who is detained under preventive detention. It enjoins upon the Detaining Authority to communicate grounds of such detention to him and to inform him of his right to make a representation against his detention and afford him the earliest opportunity of making such representation. Communication of grounds also includes the material/documents on which said such grounds are based. It also mandates that his case was to be referred to the Advisory Board for continuation or otherwise of his detention.

10. The PITNDPS Act also provides these safeguards in tune with Article 22(5). Section 3 empowers the Central Government or the State Government or any

officer of the two Governments not below certain ranks to detain a person with a view to preventing him from engaging in illicitly traffic of Narcotic Drugs and Psychotropic Substances. Such person was to be communicated the grounds of detention within 5 days and in exceptional circumstances and for reasons to be recorded in not later than 15 days. Section 9 provides for constitution of an Advisory Board to which a reference was to be made within 5 weeks from the date of detention of a person for making its report. Clause (c) of this Section empowers the Board to consider the reference and the material placed before it and call for such information as it may deem necessary from the Government or any person or from the person concerned. It may also in a particular case where it considers essential to do so or where the person concerned desires grant of hearing to that person before submitting its report within 11 weeks from the date of detention. It becomes unnecessary to dilate on the nature of a detenu's right to appear before the Advisory Board or the hearing to be granted to him. Because the dispute here is not whether or not he had a right to appear but whether he was informed to appear and whether he had declined the offer. Therefore, three issues that fall for determination are whether petitioner was informed to appear before the Board on 22.4.2000 and whether he had cited ill-health for not appearing and whether his Advocate was informed of the date and lastly whether his second representation was wrongly and belatedly rejected so as to vitiate the detention. Official correspondence on the subject matter starts from letter dated 29.3.2000 addressed by Section Officer, PITNDPS Cell to Supdt, Central Jail informing him that Advisory Board was to meet on 22.4.2000 at Mumbai and asking him to inquire from the detenu whether he desired to be heard in person by the Board. This is followed by letter dated 7.4.2000 addressed by Deputy Secretary to Zonal Director of NCB again impressing upon him to ensure compliance of Ministry's letter dated 29.3.2000 and also pointing it out to him that Ministry had received a letter from the Jail Supdt saying that detenu was sent to Delhi on 31.3.2000 for production before Special Court on 3.4.2000. This is followed by another letter dated 11.4.2000 by Zonal Director, NCB to Jail Supdt asking him to arrange for production of the detenu before Advisory Board on 22.4.2000. Then there is one more letter by the Deputy Secretary dated 18.4.2000 addressed to Jail Supdt giving reference of pending correspondence and asking him to ascertain whether detenu was being produced before the Advisory Board. In response, Jail Supdt. seems to have come out with detenu's letter dated 7.4.2000 addressed to his Advocate Sh. S.C. Puri acknowledging information received from Jail Supdt for his appearance before Advisory Board on 22.4.2000. This letter also says that he would not be able to appear because of sudden blood pressure and pain and as he was traveling asking Shri Puri Advocate to appear on his behalf. Endorsement on this letter of Jail Supdt is dated 21.6.2000 which makes a reference to the original letter having been faxed to PITNDPS Cell on 18.4.2000.

11. It is in this conspectus that it requires to be examined whether petitioner was informed to appear in the Board meeting and whether he had declined to appear

on health grounds.

12. There is no reason for us to disbelieve the official correspondence on the issue which shows that R1-2 were all keen and earnest to inform petitioner about his appearance before Board on 22.4.2000 and ascertain from him about his appearance. Though there were conflicting version projected by the rival affidavits filed by petitioner's advocate Mr. Puri and IO Mangal Dass, but contents of petitioner's communication dated 7.4.2000 addressed to his advocate and expressing his unwillingness to appear before the Board due to his ill-health goes unrebutted. Whether this communication had reached his advocate in time or not is another matter and even if official affidavit was disbelieved on this, it could still not be said or held that R1-2 had failed to discharge their duty or had deprived the petitioner of his opportunity to appear before the Board.

13. It requires to be made clear at this stage that there was no obligation on the Government to reconstitute an Advisory Board every time a detenu asked for it. It was only when a representation containing fresh facts, grounds, material or subsequent events satisfied the Government of the need to reconvene the Board that it was required to do so. In any case, it was its prerogative to examine the request in the facts and circumstances of the case and to pass appropriate orders in the matter. As such, there was no constitutional or statutory obligation to reconvene the Board necessarily on fresh representation made by the detenu. It all depended upon the facts and circumstances of the case and on the objective satisfaction of the Government. It's decision rejecting the request could be called in question only if it was shown to have suffered from some non-application of mind or was tainted or afflicted by any malafides.

14. Even the Supreme Court judgment in Makhanlal Gokulchand's case does not lay down any proposition of universal application that the Government was bound to reconvene the Board as and when the detenu asked for it. All that this judgment laid down was that the Government could reconvene the Board on detenu's representation if it contained fresh facts or grounds, material or subsequent events. The court said:-

"Since there was no "fresh grounds" nor any "fresh material" or "subsequent events" brought out in the representation dated 7th May 1983, there was no obligation on the State to get that representation considered by a "fresh Advisory Board" and, Therefore, the exercise of discretion by the State in rejecting the representation and not Constituting a "fresh" Advisory Board cannot be faulted. The detenu had, as already noticed, unsuccessfully challenged the same order of detention thrice. Making of the representation on 7th May, 1983, without any fresh cause being available to him was apparently designed to file yet another writ petition. We, cannot but disapprove this attitude of the detenu. There is no merit in this writ petition, which fails and is hereby dismissed."

15. The judgment in Ram Bali Rajbhar's case was also not any authority on the

point. Even though it was observed in this case by the Supreme Court that it would be reasonable and judicious exercise of power u/s 14 of MISA to refer a case once again to Advisory Board for its opinion before a subsequent representation made on fresh material by the detenu was rejected, the court later construed it to be a "wide observation" in Makhanlal Gokulchand's case.

16. Tested thus, it could not be said or held in the present case that Government had wrongly or unjustifiably rejected petitioner's representation seeking reconvening of the Board for his appearance in the facts and circumstances of the case. Because it is not that R-1 had failed to inform him or had deliberately kept him away from the Board or had deprived him of an opportunity to appear before it. If he had shown his unwillingness to appear which was reflected in his communication dated 7.4.2000, the Government was not bound to reconvene the Board to afford him second chance, nor could it's decision to reject his representation be faulted.

17. We also don't find any substance in petitioner's allegation that R1-2 has cause unreasonable delay in disposal of his second representation even if it was assumed that all successive representations containing fresh material and grounds were as good as the first representation, attracting obligation of expeditious disposal. Mere delay in the disposal of representation howsoever long would not necessarily invalidate the detention unless it was established to be unreasonable and explained. In the present case, respondents had satisfactorily explained the position to shown that petitioner's representation was attended to with promptitude. It is not, Therefore, possible to hold that it was hit by any undue or explained delay.

18. The last submission seems to be made in despair. It is a matter of record that petitioner had sought bail which could or could not granted to him. It is not that PITNDPS Act imposed any bar on the grant of bail and once a person was charged of offence under it, he was to remain in custody for all times to come. Therefore, it can't be said that there was no compelling necessity to detain the petitioner.

19. For all this, we find no merit in this petition which is dismissed.