
(1991) 05 DEL CK 0001

In the Delhi High Court

Case No : Criminal Writ Appeal No. 437 of 1990

Sayed Nizamuddin Mohamad

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-05-1991

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 3(1)

Citation : (1991) 45 DLT 175

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : Trilok Kumar, M.D. Taneja and Kamal Nijhawan, for the Appellant;

Judgement

V.B. Bansal, J.

(1) On 20th December, 1989 Ms. Nisha Sahai Achuthan, Joint Secretary to the Govt. of India, Department of Revenue, Ministry of Finance while exercising the powers under Sec. 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the Act) passed an order for the detention of Sayed Farooq Mohd. @ Farooq @ Sayyed Farooq Isamuddin @ Anand with a view to preventing him from engaging in abetting and transportation of Narcotic Drugs. This order of detention was served upon Sayed Farooq Mohd. on 15th February, 1990 when the grounds of detention along with the documents relied upon in support of the detention were also served upon him. Declaration order dated 1st March, 1990 was issued by K. Prakash Anand, Addl. Secretary to the Government of India, specially empowered officer in exercise of the powers conferred under Sec. 10(1) of the Act.

(2) A reference was made to the Advisory Board for opinion and after the receipt of the opinion of the Advisory Board order dated 14th June, 1990 was issued by the Central Government exercising the powers under Sec. 9(f) read with Sec. 10(2) of the Act with a direction that the detenu be detained for a period of two years with effect from 15th February, 1990.

(3) Sayed Nizamuddin Mohamed, brother of the detenu has filed this writ petition under Articles 226 and 227 of the Constitution of India praying for the release of the detenu after setting aside the aforesaid order of detention, declaration and order of confirmation.

(4) I have heard Shri Trilok Kumar learned Counsel for the petitioner and Shri Kamal Nijhawan learned Counsel for the respondent. I have also gone through the records.

(5) It is the admitted case of the parties that earlier Sayed Farooq Mohd. had filed a Criminal Writ Petition No. 247 of 1990 in the Supreme Court which was dismissed on 14th May 1990.

(6) Learned Counsel for the petitioner has submitted that at the time of service of the declaration on the detenu he was not made aware of his right of making a representation against the said declaration on account of which the detenu has been deprived of his right of making a representation. He has, thus, submitted that the detenu in this way was unable to get relief by way of moving a representation on account of which there is a violation of the provisions contained in Article 22(5) of the Constitution of India. He has also submitted that this ground was not taken by the detenu in the writ petition earlier filed in the Supreme Court.

(7) Learned Counsel for the respondent has not controverted the claim of the detenu about his having not taken up this plea in the earlier writ petition. He has also not controverted the submission of the learned Counsel for the petitioner that no representation was made by the detenu against the order of declaration.

(8) Now, a question for consideration is as to what is the effect of the detenu being not made aware of his right of making a representation against the order of declaration. Case *Jagprit Singh v. Union of India and Others* 1990(3) SC 293, is a clear authority on this point. It has specifically been held in this case that the detention of the detenu beyond a period of one year would not be justified because of a lapse on the part of the appropriate authority to inform the detenu of his right of making a representation against the order of declaration. This judgment has been followed by this Court in numerous cases including *Madon Lal Anand v. Union of India and Others* 1990(3) DL 147, *Puran Singh v. Union of India and Ors.* 1990(3) DL 165 *Veer Singh (c) Veeru v. Union of India and Others* 43 (1991) Dlt (SN) 2, *Balvinder Singh v. Union of India and Ors* 1991 Jcc 6, *Ahmed Faleel Mohamed v. Union of India and Ors* 1991 Jcc 109 and *Gurmeet Singh v. Union of India and Others* 1990 (3) DI 221.

(9) In view of the settled law it is clear that the order of declaration dated 1st March, 1990 cannot be sustained.

(10) The next question now for consideration is as to what is the effect of the declaration being not of any assistance to the respondent to claim the detention of the detenu for a period of beyond one year.

(11) Learned Counsel for the petitioner has submitted that the order of confirmation has been passed beyond a period of three months from the date of detention and on this account the continued detention of the detenus cannot be said to be legal and authorised.

(12) As already stated the order of detention dated 20th December, 1989 served on the detenu on 15th February, 1990 and the order of confirmation was passed on 14th June, 1990. It is, thus, apparent that even the period of one year of detention is over. The question, however, to be seen is as to whether the whole of this period of detention was authorised under the law or not.

(13) Submission of the learned counsel for the petitioner has been that this order could not be effective for a period beyond three months.

(14) I have given my thoughtful consideration to this submission in the light of the provisions of the Act and I am inclined to agree with this submission. It is not disputed that once an order of detention is passed and executed thereby taking the person in custody the order shall remain effective for a period of three months. It is required of the detaining authority to make a reference to the Advisory Board and the report is required to be submitted by the said Board within 11 weeks to the date of detention.

(15) In the instant case the date on which the Advisory Board had submitted its report is not available. However, I may presume that the Advisory Board gave its report within the prescribed period. However, the fact remains that the order of confirmation is dated 14th June, 1990. It is not disputed that even if no report is submitted within the prescribed period and even if no further order is passed by the competent authority in respect of the detention of the detenu the initial period of detention of three months would be legal, valid and permissible. Beyond this period of three months the detention would not be as per the authority of law in the absence of the order of confirmation being passed by the appropriate authority before the expiry of this period. I find support for this view from the case *Nirmal Kumar Khandelwal v. The Union of India and Others* Air 1970 SC 1155.

(16) In these circumstances, I am clearly of the view that the initial detention of the detenu for a period of three months was with the authority of law in pursuance of the detention order dated 20th December, 1989. The order of declaration being ineffective and order of confirmation having been passed beyond three months from the date of detention, the detention beyond three months is not authorised.

(17) As a result, the declaration dated 1st March, 1990 and order of confirmation dated 14th June, 1990 are set aside. The detenu has already been in custody for the period for which he could be detained in pursuance of detention order dated 20th December, 1989. I Therefore, order for the release of the detenu forthwith, if not required in any other case.