

**(2003) 03 DEL CK 0073**

**In the Delhi High Court**

**Case No : Criminal Writ Petition No. 509 of 2003**

Sumita @ Manto

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision : 24-03-2003**

**Acts Referred:**

**Citation :** (2003) 2 ALT(Cri) 9 : (2003) CriLJ 2928 : (2003) 104 DLT 366 :  
(2003) 68 DRJ 253 : (2003) 87 ECC 828 : (2003) 4 RCR(Criminal) 276

**Hon'ble Judges :** R.S. Sodhi, J;B.A. Khan, J

**Bench :** Division Bench

**Advocate :** Sunil Mehta, for the Appellant; Jayant Bhushan, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Khan, J.—Though petitioner had served her detention period, but her counsel still wants a verdict on the validity of her detention order, perhaps to come out of its fall-out.

2. Petitioner was first arrested under Sections 21 of NDPS Act on 17.9.2001 after having been allegedly found in possession of 500 gms. of smack. He was eventually detained by order dated 4.1.2002 u/s 3(1) of PIT-NDPS Act to prevent her from engaging in possession and transportation of narcotics drugs in future. The detention order was served on her on 31.1.2002 Along with grounds of detention. She made representation against it to the Advisory Board and the detaining authority which was rejected by order dated 21.3.2002. Her detention was lastly confirmed by order dated 9.4.2002 which is now under challenge in this petition.

3. Though petitioner has challenged the order on several grounds, her counsel has pressed in service only one ground, i.e., that there was not cogent material before the detaining authority on the basis of which any inference or satisfaction could be drawn that there was a likelihood of her being released on bail and of her engaging in prejudicial activity. As such there was no compelling necessity

for her detention as she was already in jail and that the Detaining Authority's decision to detain her all the same suffered from non-application of mind to that extent.

4. Buttressing this petitioner's counsel Mr. Sunil Mehta pointed out that since petitioner had not moved any bail application for her release, the question of any likelihood of her being released on bail did not arise. And even if she had filed any such bail application, it could not have readily granted in the face of stringent requirements of Section 37 of the Act. Naturally, Therefore, there was no material before the detaining authority on the basis of which inference or satisfaction could be drawn that there was a likelihood of her being released on bail and a necessity for her detention.

5. Despite this the Authority had proceeded mechanically in the matter and had passed the detention order on a wrong premise and without any application of mind which was vitiated on this count alone. He supported this by several Judgments of the Supreme Court including Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, , Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others, and three DB Judgments of this court in Sanjay Rajender Sharma Vs. Union of India CrI.W.1204/99 and Jagdish Chander Sharma Vs. Union of India 2000 CrI. L.J. 3162 and lastly a judgment authorised by one of us (Khan J)in Dinesh Kumar Gupta Vs. Union of India 2002 (2) JCC 1186 quashing the detention in similar circumstances on this ground alone.

6. This petition could have been disposed of on the analogy of our judgment in Dinesh Kumar's case but for the valiant effort of Respondent's counsel Mr. Jayant Bhushan to distinguish it from the present case. According to him non-filing of a bail application by petitioner by itself sufficient to lead to conclusion that there was no likelihood of her being released, if there was other material before the Detaining Authority to suggest so. He asserted that there was the requisite material available to the Authority and referred to para three of the grounds of detention in this regard which stated that petitioner was an habitual drug peddler and was arrested earlier in as many as 17 cases of IPC, NDPS and Excise Act. This according to him constituted good enough material on the basis of which detention authority had drawn satisfaction that there was a likelihood of petitioner being released on bail and thus compelling necessity to detain her. He submitted that detention authority was conscious and aware of the petitioner's past record which showed that she was arrested earlier also for offences under the NDPS Act and other Acts and was a habitual offender who had remained in and out of jail and who was aware of the legal remedies available to her. It could not be Therefore said that there was no material before the Authority or its satisfaction was without any basis. He referred to three Supreme Court Judgments in this regard:- Kamarunnissa and Others Vs. Union of India and another, , Abdul Sathar Ibrahim Manik Vs. Union of India and others, and Ahamed Nassar Vs. The State of Tamil Nadu and Others, which according to him provided that detaining authority could reach subjective satisfaction to detain a

person even though such person may not have filed a bail application or even when his bail application may have been rejected, provided the compelling necessity for his detention was based on some material and was reflected in the grounds of detention.

7. After surveying the legal position on the issue in reference to Supreme Court Judgments, it was held by us in Dinesh Kumar Gupta's case:-

" Though there was no bar in ordering detention of a person, even when he was in custody, but for this it was obligatory for the Detaining Authority to show awareness of this and also the compelling necessity to detain such person despite this, be that on the ground of likelihood of his being released on bail or otherwise. If such necessity and awareness was not reflected in the detention order, it would be vitiated for non-application of mind by the Detaining Authority. The Detaining Authority thus had to show and reflect in its order that (i) he had knowledge of detenu being in custody (ii) that there was a likelihood of his being released on bail or otherwise, (iii) that there was a likelihood of his engaging in prejudicial activity given regard to his inclination and propensity and (iv) there was a compelling necessity to detain him despite his being in custody."

8. We had also held on the strength of Supreme Court Judgment in Amritlal's case that there must be a cogent material before the detaining authority on the basis of which he could infer or draw satisfaction that the detenu was likely to be released on bail. Such material could be in the shape and nature of bail applications moved by the detenu in the past or present or record showing grant or rejection of his bail pleas, his implication in an offence of type indicating the prospect of his being released on bail and so on. If there was no such material existing or available, there could be no compelling necessity to detain a person who was already in jail. We had drawn sustenance for all this from the Supreme Court Judgment in Amritlal's case, holding thus:-

"There must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail."

9. Proceeding on this well established legal position that Detaining Authority's satisfaction in respect of there being a compelling necessity to detain a person who was already in jail had to be founded on some cogent available material all that remained to be seen in the present case was whether there was any such material available before the authority on the basis of which an inference or satisfaction could be drawn that there was a likelihood of petitioner being released on bail.

10. The only material pressed in service in this regard is para 3 of grounds of

detention which read thus:-

"3. Sumita @ Manto is a habitual drug peddler arrested earlier in 17 cases of IPC, NDPS and Excise Act."

11. We are called upon to hold on this that it constituted the requisite material on the basis of which detaining Authority had reached the satisfaction that there was likelihood of petitioner being released on bail. Before we take any view on the issue, it would be appropriate to refer to relevant portion of the order recording the Detaining Authority's satisfaction in this regard. It reads: -

"From the facts mentioned herein above and the material placed before, I have no hesitation in holding that Sumita @ Manto has knowingly engaged herself in the illicit traffic in narcotic drugs as is evident from the statements and material on record, and if not prevented, she is likely to continue indulging in illicit traffic in narcotic drugs on her release on bail. Even though she continues to be in judicial custody, I am satisfied that there is every likelihood of her filing bail application, and also the likelihood of her being released on bail by the Court, and on such release, she is likely to engage herself in illicit traffic in narcotic drugs as is evident from material on record."

12. Given regard to the admitted position that there was no material before Detaining Authority other than the one contained in para III of grounds of detention, we are convinced that contents of this para do not fit the bill. Because this only talks of petitioner being a habitual drug peddler arrested earlier in 17 cases under various Acts and stops short of indicating whether she was ever released on bail in these cases or was otherwise out on her discharge, acquittal or whatever. Her arrest by itself could not be the sole index or proof of her having been released otherwise on bail. She could have earned her release otherwise also in situations ranging from dropping of investigation to discharge or to acquittal etc. Therefore, the fact of petitioners arrest in the past in some cases was not sufficient to give rise to inference or satisfaction that she was earlier released on bail and that there was likelihood of her being released on bail again. It would have been a different matter if Detaining Authority had gone a little further to record that she had obtained bail in some of these cases more particularly involving offences under the NDPS or that there was some other material to suggest so. It would have been inconsequential in that case whether or not she had filed any bail application in the current complaint. We had required Mr. Jayant Bhushan to produce any record showing such material but he failed, leaving us with no option but to presume that there was no material other than contents of para III before the Detaining Authority to suggest or indicate that petitioner was released earlier on bail in cases under NDPS and there was a likelihood of her being released on bail again. In other words there was no cogent material before the Authority on the basis of which he could have inferred or reached satisfaction that there was a likelihood of petitioner being released on bail and thus a compelling necessity to detain her under the PITNDPS Act to prevent her from indulging in the prejudicial activity.

13. None of the judgments cited by Mr. Bhushan are of any help to support his stand on the issue. In Abdul Sattar's case Supreme Court had noticed that the detenu had applied for bail which was rejected, which by itself constituted material reflecting the detenu's attempts to seek release on bail and on the basis of which the Detaining Authority could be said to have drawn the requisite satisfaction that there was a likelihood of her being released on bail. In Abdul Sattar's case also detenu's bail application was rejected which could have formed the basis for detaining Authority to derive the requisite satisfaction. But in the present case, petitioner had not filed any bail application at all. Nor was there any other material before the Detaining Authority to suggest that there was likelihood of her being released on bail. The only available material was that she was allegedly a habitual drug peddler arrested in 17 cases and in some under NDPS Act also in the past. This by itself, in our view, was not good enough to form the requisite basis for drawing satisfaction that there was a likelihood of her being released on bail in the current case also. This is apart from whether or not she would have been able to obtain it in the face of stringent conditions imposed by Section 37 of the Act. Therefore, unless there was some other material before the Detaining Authority to indicate that she was released on bail in the past, the authority's satisfaction that there was a likelihood of her being released on bail had no basis. As no material least of all cogent material existed to suggest that there was a no compelling necessity to detain petitioner who was already in jail. Her detention was not Therefore warranted and was required to be struck down.

14. We accordingly hold that there was no cogent material before the Detaining Authority on the basis of which he could have drawn inference and satisfaction that there was a likelihood of petitioner's release on bail and thus a compelling necessity to detain her. The contents of para III of the grounds of detention fall short of the requirement and do not constitute the requisite material in this regard.

15. We, Therefore, find no scope to take any different view in the matter from the one taken by us in Dinesh Kumar Gupta's case.

16. Petition is resultantly allowed and the detention order dated 4.1.2002 quashed.