

(1989) 02 DEL CK 0040

In the Delhi High Court

Case No : Criminal Writ Petition No's. 567 and 561 of 1988

Surinder Mehta

APPELLANT

Vs

K.L. Verma and Others

RESPONDENT

Date of Decision : 23-02-1989

Acts Referred:

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

Citation : (1989) ILR Delhi 231

Hon'ble Judges : M. Sharief-ud-din, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : R.L. Mehta, Sunil Mehta, W. Singh and A.C. Jain, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) This judgment disposes of two writ petitions. Criminal Writ Petition No. 567 of 1988 has been filed by Surinder Mehta and Criminal Writ Petition No. 561 of 1988 by Yudhister Kumar. The challenge in both the petitions is to the order passed u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short the Act) by Shri K. L. Verma, specially empowered officer. The detention orders against both the detainees were passed on 25th October, 1988 with a view to preventing them from abetting in the export from India of narcotic drugs. These are successive orders of detention against the petitioners. The first orders were passed on 6th July, 1988. Those were revoked by orders dated 24th October, 1988 passed by the Government of India in exercise of the powers conferred by Section 12(1) of the Act. The reasons stated in the order revoking the earlier detention of Surinder Mehta are as follows:

"WHEREAS the retraction of Shri Aziz Ahmad was not supplied Along with the grounds of detention on Shri Surinder Mehta; Whereas, the Central Government considered this technical error in the aforesaid matter;"

(2) The order in Yudhister Kumar's case revoking the detention order of 6th July,

1988 gives the following reasons:

"WHEREAS the charges in the detention order and grounds of detention are at variance; Whereas, the Central Government considered this technical error in the aforesaid matter;"

These orders u/s 12(1) of the Act were issued by the Central Government after they had confirmed the detention on 5th October, 1988. The fresh orders, impugned herein, were served on the petitioners while they continued to be in detention. The detenues were also in judicial custody in a criminal case for various offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, which was filed by the Narcotics Control Bureau against them. The allegations in that complaint case were that the accused persons were a party to a criminal conspiracy to sell, possess and export from India 2.4 Kgs of Heroin. It appears that they were in custody w.e.f. 6th July, 1988. The earlier orders of detention had been served on them while they were in judicial custody.

(3) The main argument of Mr. R. L. Mehta, learned counsel for the petitioner in both the cases is that the successive impugned detention orders are invalid as those could not be made after the expiry of three months of the service of earlier orders dated the 6th July, 1988. The plea is that the protection of Article 22(4) of the Constitution of India has been rendered ineffective by making of these orders on 25th October, 1988. His reliance is on Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another, . In the said case, the question for consideration was whether a law can be made providing for successive orders of detention in a manner as to render the protection of Article 22(4) of the Constitution ineffective. The ratio of that case is that although the making of successive orders of detention is permissible, yet a successive order cannot be made in a manner as to render the protection of that Article ineffective.

(4) We may note that in Cr. Writ Petition No. 491/88, Gurbax Bhryani v. Uoi & Others (decided on February 7, 1989) (2), we have attempted to analyze the effect of Abdul Latif's case (supra) in detail. After hearing arguments in that writ petition (No. 491/ 88), we had heard the counsel for the parties in these two petitions at length. The arguments advanced by Mr. S. L. Watel, learned counsel for the respondents in Cr. Writ 567/88 and by Mr. Wazir Singh, learned counsel for the respondents in Cr. Writ 561/88 challenging the correctness of Abdul Latifs case were similar to the arguments advanced by the learned Additional Solicitor General of India in Gurbax Bhiryani's case (supra). The pleas put forth by counsel for the respondents in the present cases have been incorporated in the said judgment which was delivered after the arguments were over in these two cases.

(5) After noticing the view point expressed in very many decisions of the Supreme Court, which view had been noticed in Abdul Latifs case (supra), we held that we are bound to follow this case. We observed that the limitations provided under the statute and the three months period provided under Article

22(4) of the Constitution begin from the date of the detention, i.e., the date of the first detention. That would mean that the limitations start in the present cases from the respective dates of detention of the petitioners.

(6) From the reasons stated in the revocation orders (quoted above), which orders were passed admittedly after the expiry of three months of detention, it is apparent that the Government were of the view that procedural errors affecting the right of the petitioners under Article 22(5) of the Constitution had been committed. Therefore, the necessity to revoke the earlier detention orders by them. The exercise of power u/s 12(1) of the Act is within jurisdiction. The short question Therefore, is, could valid orders of detention against the petitioners be passed on the same grounds after three months of their respective dates of detention while they continued to be in custody/detention.

(7) It is true that Section 12(1) of the Act permits the passing of a successive order of detention against a detenu on the same grounds. However, the manner in which it can be made has been discussed in Abdul Latif's case (supra) by the Supreme Court. To bring a similar provision, i.e., Section 15 of the Gujarat Prevention of Anti-social Activities Act, 1985 in harmony with Article 22(4) of the Constitution, the Supreme Court held that the provision permitting passing of such an order has to be read down as that was the only way to avoid its "collusion" with the Article in question. Thus it was observed therein that if the report of the Advisory Board was not made available within three months of the date of detention, the detention became illegal notwithstanding that it was within three months from the date of the second order of detention. Following that decision, we had held in Gurbax Bhiryani's case (supra) that it is open to the appropriate authority to pass a fresh order but within a period of five weeks from the date of detention. This would enable them to refer the case to the Advisory Board within the stipulated period and also enable the Board to give its report within 11 weeks of the detention. We further held that it is also open to the Government to make "a declaration u/s 10(1) of the Act so that the period of three months for obtaining a report of the Advisory Board is extended but that declaration also has to be made within five weeks of such detention.

(8) In the present cases, the declarations were issued on 24th November, 1988 i.e. during the pendency of the present writ petitions. We are informed that thereafter references were made to the Advisory Board on 16th December, 1988 and the reports were received on 27th December, 1988. We are further informed that by orders dated the 5th January, 1989, the detention of the petitioners with effect from their respective dates of detention has been confirmed by the Government for a period of two years.

(9) Mr. Watel, on behalf of the respondents in Yudhister Kumar's case "and Mr. Wazir Singh on behalf of respondents in Surinder Mehta's case submitted that the reports of the Advisory Board having been received within five months and three weeks of the original dates of detention, are within the limitation as prescribed u/s 10 of the Act and, Therefore, valid. Thus argument loses sight of

the fact that the declarations were not issued within five weeks of the dates of detention. The declarations made on 24th November, 1988 after the expiry of three months period of detention, cannot be held to be in conformity with Article 22 of the Constitution read with the provisions of Section 10(1) of the Act.

(10) We may note that both the petitioners had challenged by separate writ petitions the earlier orders of detention. Prior to the filing of the writ petitions, both of them in their representations seeking revocation of the detention orders had brought to the notice of the detaining authority the respective procedural earlier writ petitions, filed thereafter apart from the other representations dated the 8th August, 1988 were rejected vide orders of 22nd August, 1988 (in the case of Yudhister Kumar) and 23rd August, 1988 (in the case of Surinder Mehta). In the earlier writ petitions, filed thereafter apart from the other procedural errors, these errors had "also been highlighted. During the pendency of those petitions, on 4th November, 1988, the Court was informed that those orders of detention had been revoked on 24th October, 1988 and fresh orders of detention made on 25th October, 1988. In that view of the matter, the petitions having become infructuous, were permitted to be withdrawn. The submission by counsel that the orders were revoked by way of abundant precaution, does not take the case of the respondents any further; whatever the reasons, the earlier orders have been revoked. It is after the revocation of those orders" which were admittedly revoked after three months of the first detention that declarations u/s 10(1) of the Act were issued on 24th November, 1988. The respective declarations were within five weeks of the second detention orders dated 25th October, 1988. However, those were not within the stipulated period from the first detention orders. The argument of the respondents is that the earlier detention order? had been passed under the Prevention of Illicit Traffic in narcotic Drugs and Psychotropic Substances Ordinance, 1988, which did not permit passing of a declaration in a case like the present. It was only after the Act came into force, so goes the argument, that a declaration could be passed under it. The fact remains that the respective declarations were not issued within five weeks of the detention. Thus in our view, the submission is misconceived. The continued detention of the petitioners is invalid.

(11) In the view which we have taken, it is not necessary to deal with the other submissions made on behalf of the parties. Following the law laid by the Supreme Court in Abdul Latif's case (supra) and the ratio of Gurbax Bhiryani's case (supra), we allow the writ petitions and set aside the continued detention of the petitioners under the impugned detention orders. The Rule is. made absolute in both the petitions. We direct that the petitioners be set at liberty forthwith unless required to be detained under any other valid order passed by a Court or any other competent authority.