

(2006) 01 AHC CK 0143

In the Allahabad High Court

Case No : Writ Petition Nos. 457 (HC) with 456 (HC) and 404 (HC) of 2005

Thanesur and Ors.

APPELLANT

Vs

Superintendent, District Jail, Lucknow & Ors.

RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3

Citation : (2006) 01 AHC CK 0143

Hon'ble Judges : Bhanwar Singh, J and Abdul Mateen, J

Final Decision : Dismissed

Judgement

1. These three petitions have been filed by the petitioners for a Writ in the nature of Habeas Corpus challenging the impugned Detention Orders dated 18th February, 2005 issued under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and further for seeking their release from detention. According to the petitioners, the Detention Orders are illegal, without jurisdiction and unconstitutional. They have, therefore, prayed for quashing of the Detention Orders and for then immediate release from jail.

2. It is alleged by the first two petitioners that the allegations of their being found in possession of 5 Kgs. Morphine and 700 bottles of Acetyl Chloride, each with contents of 500 milliliter, besides a sum of Rs. 25,000/allegedly recovered from the pocket of Ram Avtar Gupta, while travelling in Tata Sumo No. HR 38 E 3720 at 4 p.m. on 14th April, 2004 were absolutely baseless. Even their arrest has been disputed and the allegation that they confessed to the commission of crime was nothing but a concocted version of the authorities.

3. As regards the third petitioner Mohd. Tayyab, it was alleged in the Detention Order that on receipt of the information from the first two petitioners, the former's house in the Village Tikra Usma, Police Station Jaidpur, District Barabanki was raided and on search, a sum of Rs,. 7,92,000/was recovered from an almirah. In addition, Heroine weighing 3.5 kgs. 5.5 kgs, Morphine, 50 kgs.

Sodium Salt and 30 lts. Acetic Anhydride were also recovered. Tayyab, has, however denied the entire recovery and stated that it was only a concocted story of the authorities.

4. Pointing out lacunas of the impugned Detention Orders, the petitioners have alleged that there was no substantive material to justify issuance of the Detention Orders nor the sponsoring authority had given cogent reasons for justifying his recommendations for detaining the petitioners. The relevant documents on the basis of which the Detention Orders were issued were not furnished to the petitioners, despite their repeated demands. The representations moved by them to the State and Central Governments were not decided in time as a result of which the Detention Orders stand vitiated.

5. As a matter of fact, the petitioners were not arrested in the way and manner as recited in the First Information Report. As alleged, the petitioner Tayyab was arrested at 1.30 p.m. on 13th April, 2004 from his house. A telegram in this context was dispatched to all the relevant authorities including Lucknow Bench of this Court. Copy of the said telegram was not furnished to the petitioners nor the same was placed before the competent authority, who issued the Detention Orders. It was also controverted that Tayyab was arrested from his house on 14th April, 2004 after his house was raided. It was also termed to be as wrong that 30 lts. Acetic Anhydride used for preparing heroine, 5.500 Kgs. Morphine and 3,500 Kgs. Heroine were recovered from his house. A sum of Rs. 7,92,000/ was also recovered which was allegedly earned by him while indulging in drug trafficking. However, Tayyab has denied such recovery.

6. All the petitioners have denied that they agreed to their search and that of their movable and immovable properties by the raiding/arresting parties. They have also stated that such recoveries were fake and imaginary. The petitioners have no criminal history and never before any contraband was recovered from their possession. It has also been alleged on behalf of all the petitioners that the sponsoring and competent authorities got the orders issued without applying their mind to any material. As a matter of fact, they have acted like a rubber stamp. The Advisory Board was not furnished with the representations of the petitioners. In these circumstances, as pleaded by them, they have prayed for quashing of the Detention Orders and for their immediate release from jail.

7. Shri Babu Lal has filed counteraffidavits in all the three petitions on behalf of the State of U.P. and denied the accusations levelled by the petitioners. According to him, the Deputy Narcotics Commissioner sponsored for the detention of all the three petitioners under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 as all of them were found indulging in drug trafficking. Huge recovery of Heroine and Morphine was made from the house of Tayyab. Similarly, the other two petitioners were found travelling in a Tata Sumo vehicle and when they were intercepted by the authorities of the Narcotics Department, a recovery of 5.50 Kgs. Morphine was made from the vehicle. Whereas Thanesur was driving the vehicle, Ram Avtar

Gupta was sitting on the rear seat. Morphine weighing 5 Kgs. was recovered and Chemical Acetyl Chloride in 700 bottles each weighing 500 m.lts. was recovered from the vehicle. The recovery memos were got signed by the authorities present and the petitioners as well.

8. After the Screening Committee approved the proposal of the Sponsoring Authority, the State Government permitted for the Detention Orders being issued. It was held that the petitioners if released on bail would indulge in drug trafficking an act prejudicial to the interest of general public and State at large. The proposal was then sent to the Judicial Department of the Government and after the requisite advice, the Detention Orders were issued on 18th February, 2005. A report alongwith the entire material was sent to the Central Government on 21st February, 2005 and the Detention Orders were also got served on the petitioners in jail. Whereas the bail applications of Ram Avtar Gupta and Thanesur were rejected on 1282004, the bail application of Tayyab was rejected on 862004. It was then contemplated that the petitioners might move bail applications to the higher Court and pray for their release. The representations of the petitioners were disposed of in time and an intimation was duly sent.

9. Mr. S.H.M. Rizvi, Superannuation, District Jail, Lucknow filed his separate counteraffidavits in all the petitions and asserted that the petitioners were in jail on 18th February, 2005, i.e. the date on which the Detention Orders were issued and such orders were served upon them on 22nd February, 2005. The representations of the petitioners were promptly sent to the District Magistrate. The petitioners were produced before the Advisory Board on 26th April, 2005. The Rejection Orders of the petitioners' representations issued by the Central Government on 21st May, 2005 were duly communicated to the petitioners on the same day. Similarly, the orders issued by the State Government regarding rejection of their representations were communicated to them well in time.

10. On behalf of Union of India, Mr. K.S. Sharma, Deputy Secretary filed his counteraffidavit in Writ Petition No. 404 (HC) of 2005 and asserted that the representation of Mohd. Tayyab was decided on 19th May, 2005, i.e. soonafter the report of the Deputy Narcotics Commissioner was received on 17th May, 2005.

11. In Writ Petition no. 456 and 457 both of (HC) 2005, Mr. B.R. Sharma, filed his separate counteraffidavits and asserted that the representations of the petitioners were decided on 19th May, 2005, i.e. soonafter the report of the Deputy Narcotics Commissioner was received on 17th May, 2005.

12. The Joint Secretary, Central Government, decided the representations and rejected them on 19th May, 2005 and sent the information regarding rejection of the representations of the petitioners on 20th May, 2005.

13. In this way, there was no delay in disposal of the representations of the petitioners on behalf of the Central Government.

14. Mr. Daya Shankar Misra, learned Counsel appearing on behalf of the petitioners submitted in the first instance that there was long gap between the date of arrest of the accused and the Detention Orders being issued and throughout the period of about ten months, there was no live link so as to create an impression in the mind of the competent authority to arrive at a conclusion that the petitioners in case of release would conduct in prejudicial way to the interest of society or public at large. In support of his contention, learned Counsel relied upon a short decision of the apex Court delivered in "Ravindra Kumar Ghosel alias Buli v. The State of West Bengal, 1975 Supreme Court Cases (Cri.) 365". As a matter of fact, the detenu in that case was detained because of his being involved in two criminal cases which ended in his discharge on December 5, 1973 and December 20, 1973 respectively. The Detention Order was passed long after the said two dates and, therefore, it was held that the purpose and object of the Maintenance Internal Security Act could not be said to have been achieved. The chain of connection between the dangerous activities and the Detention Order passed was found to be snapped by the long and unexplained delay and since there was no tenable explanation for this long gap, the detenu was set at liberty. In the case in hand, the gap of about ten months has not encroached upon the significance of the Detention Order for the simple reason that the Sponsoring Authority had initiated the proceedings for Detention Order in the month of November, 2004 itself.

15. Mr. Babu Lal, the Under Secretary working in the Confidential Department of the Home Secretaries has disclosed in his affidavit the detailed facts of the case. As a matter of fact, the petitioners moved their bail applications which were rejected in June, 2004 (Tayyab) and August, 2004 (Ram Avtar Gupta and Thanesur). The proposal regarding preventive detention of Mohd. Tayyab was received by the Government of 23rd November, 2004, while that of the other two on 6th December, 2004. The Government scanned the proposals and asked the Sponsoring Authority to furnish necessary details of the drug activities of the petitioners, their criminal history and the relevant evidence, etc. The Deputy Commissioner of Narcotics dispatched the requisite details, which were received by the Government on February 1, 2005. The matter was placed before the Screening Committee on 3rd February, 2005. Then grounds for detention were prepared on 7th February, 2005 and the permission of the Government was sought on 9th February, 2005. After obtaining the approval, the file was sent to the Judicial Department on 10th February, 2005 and after the file being received back on 15th February, 2005 the Detention Order were received on 18th February, 2005. In this way, it took about 34 months to complete the entire exercise and thus the rule of live link cannot be said to have lost its efficacy. The authorities were vigilant throughout. They kept watch over the efforts of all the three petitioners while seeking their release on bail. As stated earlier, Mohd. Tayyab has moved his bail application barely 1 1/2 months after i.e., June, 2004 and the other two petitioners filed their bail applications in the relevant Court in August, 2004. The authorities opposed their bail application and consistently

pleaded, while opposing the bail applications, that the three petitioners were indulged in drug trafficking and if released on bail, their acts would certainly be prejudiced to the interest of the public. Learned Counsel for the petitioners did not dispute the fact that in December, 2004, notice for bail applications to be moved before the High Court had been sent to the Government. It appears that the Sponsoring Authority having become alert of this development initiated proposal for the petitioners' preventive detention.

16. Mr. Janardan Singh, learned Public Prosecutor submitted with reference to a decision in "*Usman Gani Yakubali v. State of Maharashtra*, 2003 Cri. L.J. 1884 (Bombay High Court)", that the delay has not resulted in snapping the live link between the activities of the detainee and the Detention Order. It was held in that case that delay simpliciter in the issuance of a Detention Order does not vitiate the same. The general rule is that it would be vitiated if there is no explanation for such inordinate delay. In the case in hand, Mr. Babu Lal has in his counteraffidavit given a plausible explanation clearly reciting therein that it took sometime to clamp the Detention Order. Stating the relevant facts about it, Shri Babu Lal asserted that initially some lacunas were noticed in the proposal of the Sponsoring Authority, as a consequence, a letter was sent to him calling for relevant material and details as also the criminal history and the prejudicial activities of the petitioners. Naturally, the Sponsoring Authority being responsible and accountable must have collected requisite information and certainly sometime was bound to be consumed in gathering the relevant details. Therefore, we would uphold the contention of the learned Counsel for the State that the principle of live link subsisted between the two relevant dates, i.e. the one on which the petitioners were arrested and the other the Detention Orders were issued. Moreover, the delay of nine months in issuing the Detention order was held not to be fatal in the case of *Usman Gani Yakubali* (supra). Further, it was held in that case that no hard and fixed criteria can be applied that a particular gap may or may not result in snapping of the proximity rules; nor any rigid or mechanical test can be formulated. However, an unexplained delay can certainly lead to a disastrous result but since in the case in hand, the delay has been satisfactorily explained and there still existed a proximate temporal nexus between the period of detention and the date of claiming the Detention Order, we are of the view that the Detention Orders cannot be said to have been vitiated on that score.

17. The next argument pressed into service on behalf of the petitioners is that there was no material before the Detaining Authority to arrive at his subjective satisfaction and thus it appears that the Detention Orders had been issued without application of mind. In support of his contention, learned Counsel for the Petitioners referred to the citation of "*Dharmendra Sugganchand Chelawat & Anr. v. Union of India & Ors.*, 1990(1) JIC 396 (SC) : 1990 SCC (Cri.) 249", and an unreported Judgment of this Court in "*Gajendra Singh v. Adhishak, Janpad Karagar, Janpad Ghaziabad & Ors.*, Habeas Corpus Writ Petition no. 55702 of 2004 [since reported in 2005(2) JIC 919 (All)], a copy whereof has been placed

on record for out perusal. In the former decision, the apex Court on having scrutinized the entire case, came to the conclusion that there was no material in the grounds of detention showing that the Detaining Authority apprehended that the further remand would not be granted by the Magistrate and the appellants would be released from custody. In other words, the Detaining Authority had not expressed any apprehension of the appellants' release from custody. Also there was no material referred to in the grounds of detention, which might lend support to such an apprehension.

18. It is not so here in the case in hand. We have carefully gone through the grounds of detention and we find that the Detaining Authority specifically referred to the possibility of the petitioners being released on bail by the Court of competent jurisdiction. Such an apprehension was based on the material that the petitioners had already moved bail applications which were rejected, but an apprehension was expressed that the petitioners might move to the higher Court for their bail and on being released, they could again indulge in the drug, trafficking and the prejudicial activity. These expressions were recorded after receipt of the reports of Drug Analyst wherein it was mentioned that the seized articles were Morphine, Heroine and Acetyl Chloride. The notice for moving bail strengthened the apprehension of the authorities.

19. Similarly, in the unreported decisions of this Court, it was held that the Detaining Authority had nowhere recorded his satisfaction about the imminent possibility of being released on bail, which vitiated the impugned Order.

20. It thus seems to be beyond any doubt that if an apprehension regarding possibility of the detainee's release has not been expressed in the grounds of detention by the Detaining Authority and the detenu is already in jail, the Detention Order can be said to be vitiated. However, such a situation has not arisen in the case of the three petitioners.

21. Mr. Janardan Singh, learned Counsel appearing on behalf of the State with reference to the decision of the Apex Court in "Abdul Sathar Ibrahim Manik v. Union of India & Ors., 1992 Supreme Court Cases (Cri) 1, contended that apprehension of mere possibility of the detainee's release on bail in the near future is sufficient for the Detaining Authority to have arrived at his subjective satisfaction while passing the Detention Order. As a matter of fact, it is entirely, within the subjective satisfaction of the Detaining Authority to express his apprehension under the prevailing circumstances and what would be compelling reasons in the prevailing circumstances, would depend upon the facts of each case.

22. In the case in hand, Mohd. Tayyab had disclosed sale of contrabands like Morphine and Heroine to his associates; and substances like Acetic Anhydride and Sodium Salt used for manufacturing Heroine and Morphine were recovered from his house. Similarly, Acetyl Chloride in large quantity besides Morphine and Heroine was recovered from the vehicle in occupation of the remaining two

petitioners. Thus the activities could very well establish in the mind of the Detaining Authority that after release of the three petitioners, there was likelihood of their being engaged in the unlawful trading of prohibited drugs.

23. It is not necessary as argued on behalf of the petitioners that the contents of the bail application or order must have been taken into notice by the Detaining Authority, unless such contents were vital. As held in "K. Varadharaj v. State of Tamil Nadu & Anr., 2002 Supreme Court Cases (Cri.) 1514", the vital fact to be taken note of by the authority was that the detenuepetitioners were in custody at the time of the Detention Orders being issued. In that case, since the bail was not opposed as mentioned in the Court's Order, it was considered to be a vital fact which should have been taken into consideration by the Detaining Authority and since it was not taken note of, the Detention Order was said to have been vitiated. There is no such similarity in the cases in hand.

24. We are, therefore, of the considered opinion that the Detaining Authority had applied his mind to the facts and circumstances of these cases and he had sufficient and cogent reasons for issuing the Detention Orders. It is borne out from the record particularly the Detention Orders themselves that he had fully satisfied himself for the necessity of issuing the Detention Orders and all the basic facts and materials were taken into consideration as required in "Khudiram Das v. The State of West Bengal & Ors., 1975 Supreme Court Cases (Crl.) 435", it is also established from the record that all the facts and materials were furnished to the detenus.

25. It was then submitted on behalf of the petitioners that nonsupply of the documents would certainly vitiate, the Detention Orders in question. In support of his contention, Mr. Daya Shankar Misra, learned Counsel for the petitioners cited the following decisions:

(1) Dharam Pal Yadav v. Union of India & Ors., 1992 JIC 192 (All) : 1992 AWC 307;

(2) Daya Shanker Singh v. Union of India & Ors., 1990(1) JIC 33 (All) : 1990 (27) ACC 235;

(3) S. Gurdip Singh v. Union of India & Ors., 1981 SCC (Cri.) 168.

26. Supplementing his point, Mr. Misra contended that the copies of the telegram which were despatched to the High Court and other concerned authorities on 15th April, 2004 and copies of the bail applications and bail orders were not furnished to the petitioners, as a consequence, the Detention Orders having suffering from serious lacunas would stand situated.

27. We have carefully examined the argument of the learned Counsel. However, on having perused the list of the documents enclosed with the Detention Orders, we find that not only the orders passed by the Special Judge (NDPS Act) rejecting the applications for bail moved on behalf of the petitioners were furnished to the detenus, but their own bail applications and the reply filed on

behalf of the State opposing the bail applications had also been supplied to them. Therefore, it is baseless to submit that copies of the bail orders were not furnished to them as a result of which their cause had suffered in one way or the other. As regards the copies of the telegram etc., it may be mentioned that such a material was neither relied upon by the Detaining Authority nor it was made a basis for issuing the Detention Orders.

28. The fact that telegram was despatched on 15/4/2005, does not significantly prove that the petitioner Mohd. Tayyab was arrested on 13/4/2005 as in case of his arrest on 13/4/2005 at 1.30 p.m., his brother should have transmitted the telegram on the same date, i.e. 13/4/2005. Why he waited for two days to despatch the telegram has not been explained and, therefore, we are of the view that the said telegram was not at all a vital material for being either considered by the Detaining Authority or a copy thereof being supplied to the petitioners.

29. Similarly, the report of the Sponsoring Authority was not required to be furnished to the petitioners. This point of view finds assurance from an Apex Court's decision in the "State of U.P. v. Shakeel Ahmed, (1996) SCC (Cri.) 108". It was held by the Hon'ble Supreme Court in this case that supply of the report of the Sponsoring Authority to the detenu is not mandatory.

30. Coming to the citations referred to by the learned Counsel for the petitioners, it may be observed in respect of Dharam Pal's case at Sl. No. 1 that copies of as many as thirty two documents were asked for by the detenu/petitioner of that case so as to make an effective representation but these documents could not be furnished to him; instead he was directed to contact some authority to fetch copies of all those documents. Similarly in the citation at Sl. No. 2 (Daya Shankar Singh) documents asked for were not supplied to the petitioner. Even information was not conveyed about such documents and since the significant documents like the proposal/recommendation of the Custom Department, copy of the statement of the petitioner's mother, copy of the letter of the Custom Commissioner, copy of the memo of arrest, copy of the original order passed by the Detaining Authority, copy of the bail application and information regarding identity of the Detaining Authority had not been furnished, it was held that for want of supply of such documents, Detention Order could not be sustained. In the case in hand, copies of all the important and vital documents have been furnished and, therefore, we can hold that there is no similarity between the two cases. In the case at Sl. No. 3 (S. Gurdip Singh), the documents which were formed the basis of the Detention order were not furnished and the lapse on the part of the authority was held to have vitiated his detention making it void ab initio.

31. We, therefore, find from the above analysis of the facts and law on the point that all important documents containing vital materials for consideration had been supplied to the petitioner. As is evident from the long list of documents enclosed with the individual Detention Orders issued against the petitioners, the impugned orders of their detention cannot be said to have been vitiated.

32. The last argument pressed into service on behalf of the petitioners is that there was delay in disposal of their representations by the respective Governments and since such delay violated the principle of personal liberty as guaranteed under Article 21 and 22 (5) of the Constitution, their Detention Orders are bad in law. In support of his contention, learned Counsel for the petitioners referred to a decision of the apex Court in "Mahesh Kumar Chauhan alias Banti v. Union of India & Ors., (1990) SCC (Cri) 434. In this context, it may be relevant to note that each petitioner moved double representations one by the petitioner himself and the other by his Counsel. The relevant details can be furnished in the chart below for at a glance study:

to the competent authority, i.e. Joint Secretary (PITNDPS) on 2942005 and 1952005 who considered the representations on behalf of the Central Government and rejected all of them on 2942005 and 1952005. Communication regarding rejection of their orders were immediately despatched on 252005 and 2052005, receipt of which were acknowledged by the detenu's on 552005 and 2552005. In the decision of Mahesh Kumar Chauhan alias Banti (supra) relied upon by the learned Counsel for the petitioners, it was held that unexplained delay would be fatal to the Detention Order irrespective of enormity and gravity of allegations made against the detenu. However, if the delay has been satisfactory explained as is the case in the matter of all the three petitioners, it will not have any disastrous effect. It was held in the State of U.P. v. Shakeel Ahmed, (supra) that delay in disposed of the representation of about twenty three days is not fatal if it is properly explained.

36. In all the three cases, the petitioners were produced before the Advisory Board which had considered their representations and decided them on merit. There is nothing on record to prove that the grounds of detention and other material were not placed before the Advisory Board, therefore, the contention that their case was prejudiced and they were deprived of an effective representation before the Advisory Board is misconceived and baseless.

37. The long and short of the discussions made above would be that all these petitions are devoid of merit and deserve to be dismissed.

38. Accordingly, all the three petitions are dismissed.