
(2002) 10 DEL CK 0113
In the Delhi High Court
Case No : Criminal W.No. 1381 of 2001

Usha	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 172, 174
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)

Citation : (2003) CriLJ 2229 : (2002) 101 DLT 286 : (2003) 66 DRJ 477 :
(2003) 85 ECC 603

Hon'ble Judges : Usha Mehra, J;Ramesh Chand Jain, J

Bench : Division Bench

Advocate : Sunil Mehta, for the Appellant; K.K. Sud, Addl. Solicitor General, Jain and Neeraj Jain for Barkha Babbar and Sanjay, Respondents No. 1 and 2 and Mukta Gupta, for the Respondent

Final Decision : Dismissed

Judgement

USHA MEHRA, J.—Petitioner Ms. Usha wife of Shri Ram Vijay Singh, resident of A-186, Amit Vihar, Bheta Hazipur, Ghaziabad, U.P. was apprehended on 30.4.2001 and from her search one kg. of heroin was recovered. Pursuance to that seizure of one kg. of heroin her statement u/s 67 of the Narcotic Drugs and Psychotropic Substances Act (in short NDPS Act) was recorded on 30.4.2001. On the basis of her statement her residential premises was also searched where from 2 Kgs. of heroin was recovered beside a sum of Rs. 49,000/-. Her statement u/s 67 of the NDPS Act was again recorded on 1.5.2001 wherein she admitted the recovery of three Kg. of heroin from her. She stated that Dharam Pal, co-detenu and his wife Premvati had supplied to her two, half-half Kg. packets on 30.4.2001. She was to deliver the same to one Suresh who had paid her the amount of Rs. 49,000/- so recovered from her residence. She identified photographs of Dharam Pal and his wife Premvati and subsequently personally identified them. She was arrested on 1.5.2001 under the UDPS Act and remanded

to judicial custody. She retracted her statement through an application dated 16.5.2001 filed before the Special Judge, Delhi.

2. The Competent Authority after considering the role played by the petitioner and also taking into account the statements made by her u/s 67 of the NDPS Act dated 30.4.2001 and 1.5.2001 respectively as well as the retraction made by her on 16.5.2001, rejected her retraction.

3. Chemical analysis of the heroin recovered from Usha, the petitioner, were got done which confirmed that the article seized was heroin. The detaining authority on the basis of the facts and material placed before him passed the detention order u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short PIT-NDPS Act) against the petitioner on 24.8.2001. The said order was passed by the detaining authority on the basis of material placed before it. The detaining authority came to the conclusion that petitioner had knowingly engaged herself in the illicit traffic in narcotic drugs as was evident from the statement and material on record and if not prevented she was likely to continue indulging in illicit traffic in narcotic drugs on her release on bail. Therefore, the detaining authority considered that with a view to prevent her from engaging in the possession and transportation of narcotic drugs in future it was necessary to pass the detention order. She was accordingly detained and kept in custody in Central Jail, Tihar. The detaining authority was also satisfied that there was compelling necessity to detain her under the PIT-NDPS Act in order to prevent her from engaging in such activities in future. Along with the detention order the grounds of detention as well as relied upon documents were supplied to her.

4. The impugned order of detention has been assailed by the petitioner, inter alia, on the ground: (1) Since she was already in custody the detention order passed under the PIT-NDPS Act could not have been passed, (2) that there was no likelihood of her being released on bail nor any possibility to indulge in such activities in future particularly when she was confined in Tihar Jail; (3) that the documents relied upon and referred to inspire of demand had not been supplied; (4) continued detention of the petitioner is vitiated because she was not supplied Hindi translation of the order of detention, grounds of detention and the relied upon documents; (5) that her representation was not placed before the Advisory Board by the respondent in time with the result she has been prejudiced.

5. We have learned Mr. Sunil Mehta, counsel for the petitioner and Mr. K.K. Sud, Addl. Solicitor General with Ms. Barkha Babbar for the Union of India.

6. The main thrust of Mr. Sunil Mehta's contention is that the detaining authority was aware that the petitioner was in custody and there was no chance of her being released because of the bar created u/s 37 of the NDPS Act coupled with the fact that the petitioner had not applied for the bail. Hence there was no cogent material available on record on the basis of which the detaining authority could form the opinion that the petitioner was likely to be released on bail. That

without application of mind the detaining authority passed the impugned detention order which was passed mechanically. Hence the detention of the petitioner stood vitiated.

7. Countering these arguments Mr. K.K. Sud, Addl. Solicitor General contended that the petitioner was arrested on 1.5.2001 as an under trial. Her co-detenu Premvati and Dharam Pal had been applying for bail on one pretext or the other, Therefore, there was apprehension in the mind of the detaining authority that petitioner would also get released on bail. This apprehension stood fortified when Premvati, wife of Dharam Pal was granted bail and she was released. Therefore the likelihood of the petitioner getting the bail could not be ruled out. Moreover, there was sufficient material on record to show the nexus between Premvati, Dharam Pal and Usha. On the basis of her voluntary statements, (though subsequently retracted), as well as from the statements of Dharam Pal and Premvati wherein Dharam Pal and Premvati admitted that they had been delivering heroin to Ms. Usha for Suresh, Therefore there was every likelihood that she would get released on bail by the Court and after being released would indulge in illicit trafficking in narcotic drugs. Even though the petitioner had not applied for the bail, but there was possibility that if applied she would be released on bail.

8. After considering the rival contentions of counsel of the parties, we at the outset must state that the passing of the detention order despite the fact that the petitioner was already arrested and was lodged in Tihar Jail was not against law. It is well settled principle of law that subsisting custody of the detenu by itself does not invalidate the order of preventive detention, but the decision to detain must depend on the facts of each case. Preventive detention being necessary to prevent the detenu acting in any manner prejudicial to the security of the State or to the maintenance of the public order, if necessary, has been held to be valid. Ordinarily it is not necessary that detenu who is already in custody should be detained. Therefore, the detaining authority when passes such an order must depict; Firstly that it was aware that the detenu was in judicial custody. Therefore, the awareness of the detenu being in judicial custody is one of the relevant factors to be considered by the detaining authority; Secondly the detaining authority has to be reasonably satisfied from the cogent material that there is a likelihood of the release of the detenu in bail in view of the antecedents activities which are proximate in point of time it is necessary to pass a detention order; Thirdly there are compelling necessity to detain the detenu under PIT-NDPS Act with a view to prevent the detenu from engaging in prejudicial activities in future.

9. If there is a cogent material then the satisfaction arrived at by the detaining authority is final. The sufficiency of the material cannot be questioned in Court. But the pre-condition is that there has to be a material on the basis of which the detaining authority could arrive at that satisfaction and to that extent it must be reflected in the ground of detention or the counter affidavit filed by the

respondent. In the present case from the perusal of the grounds of detention it is apparent that the detaining authority was aware that the detenu was in custody and lodged in Tihar Jail.

10. So far as the question of awareness of the fact that the detenu was in custody, it is so reflected in the ground of detention itself. As regard the compelling reason justifying the detention, the same has been justified by the detaining authority by reference to the antecedents activities which had proximity in point of time. From the perusal of the grounds of detention the fact which emerges is that the petitioner had been receiving the consignment of heroin from Dharam Pal for the purpose for delivering the same to Suresh and this fact is fortified from the fact that when her house was searched a sum of Rs. 49,000/-, i.e. the price of the consignment which she was to deliver to Suresh, was recovered. This shows her involvement in drug trafficking. These facts had in fact been considered duly by the detaining authority at the time of passing the impugned order on 24.8.2001. Therefore, it cannot be said that the detaining authority passed the impugned order without any satisfaction or on account of non-application of mind.

11. Now, turning to the question of petitioner's likely to get bail, Mr. Sunil Mehta contended that the petitioner never applied for the same, Therefore, there was no question of likelihood of her being released on bail. This shows non-application of mind of the detaining authority. The bald statement in the ground of detention that she was likely to be released on bail is in fact an ipse dixit of the officer. There was no cogent materials for thinking that the detenu might be released. Mere apprehension that if the detenu is enlarged on bail she would indulge in these activities by itself is not sufficient to detain her. To support his contention he placed reliance on the decisions of Supreme Court and High Courts in the cases of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others, , Dharmendra Suganchand Chelawat and another Vs. Union of India and others, and the judgments of this Court in the cases of Sanjay Rajendra Sharma @ Sunil Chhibber v. Union of India., CrI. W.No. 1204/1999, Jagdish Chander Sharma Vs. Union of India and Others, and Dinesh Kumar Gupta v. Union of India and Ors., CrI. W.No. 1399/2001 decided on 31.5.2002. Intelligence Officer, Narcotics C. Bureau Vs. Sambhu Sonkar and Another, Union of India (UOI) through Central Bureau of Narcotics Commissioner Vs. Aharwa Deen, State of Madhya Pradesh Vs. Kajad, Mr. Sunil Mehta further contended that since the petitioner never applied for bail, there was thus, no cogent material available with the detaining authority to draw an inference that she was likely to be released on bail. Moreover, provision of Section 37 of the NDPS Act being very stringent makes it almost impossible for an accused to get bail.

12. Mr. K.K. Sud, Addl. Solicitor General, on the other hand contended that the detaining authority took into consideration the antecedents activities of the petitioner which were proximate in point of time to her prejudicial activities

coupled with the fact that Smt. Premvati, wife of Dharam Pal, had been released on bail and Dharam Pal who had been supplying heroin to her had been repeatedly applying for bail. These were the compelling circumstances which satisfied the authority that her detention was necessary and that there was imminent possibility of her being released. Since one of the co-accused got bail and other was trying, this made the detaining authority apprehensive that petitioner too would be released on bail and if released would indulge in these activities. Her antecedents activities had proximity in point of time to the activities alleged against her. This was the cogent material before the detaining authority to conclude that the detention of the petitioner was necessary. Mr. K.K. Sud further contended that the Apex Court has observed that the detaining authority could justify the order of detention by filing its counter affidavit which in this case was filed thereby justifying the detention.

13. After hearing counsel for the parties and carefully considering the record of this case, we are of the view that since Premvati wife of Dharam Pal, the contact man of the petitioner in Delhi had already been released on bail and Dharam Pal was trying for bail, Therefore, the detaining authority keeping these factors in view passed the impugned order of detention. It cannot be said that there was non-application of mind. The judgments relied by the petitioner are of no help to her in the facts of this case. From the perusal of grounds of detention and the counter affidavit a clear picture emerges that the detaining authority was aware that the petitioner was in custody. Detaining Authority was also aware of the antecedents activities of the petitioner and the fact that she had been indulging in drug trafficking since long and that Dharam Pal and his wife Premvati were her contact persons in Delhi through whom she had been selling drugs. They had applied for bail and Premvati got enlarged on bail. Her antecedents activities were proximate in point of time with her present prejudicial activities. It is in this backdrop that the detaining authority came to conclusion that her detention was necessary. This satisfaction is based on cogent material. There were compelling reasons to pass the impugned detention order in order to prevent the petitioner from indulging in drug trafficking in future. On this count, Therefore, we find no merits in the arguments of Mr. Mehta.

14. So far as the challenge that petitioner was not supplied with copies of relied upon or referred documents, we find no merits in this submission. From the representation of the petitioner which is at page 52 of the paper book, it is apparent that most of the documents demanded by the petitioner did not pertain to her. They related to the complaints made by Dharam Pal and his family members. Order passed on the bail application of Dharam Pal and of his wife by the Add. Chief Metropolitan Magistrate, representation made by Sanjeev Verma, son of Dharam Pal, complaint against Dharam Pal and his son, case filed in respect of Ganesh Ram, copy of the information or material on the basis of which the telephone number of the Ram Gopal was obtained. These did not relate to the petitioner nor relied by the detaining authority in passing the detention order against the petitioner. In fact all the relied upon documents were supplied to the

petitioner which fact is apparent from the counter affidavit filed by the detaining authority. We are satisfied that all the relied upon and referred to documents against her and demanded by her had in fact been supplied to her. It is petitioner's own case that neither she nor her family members made any complaint in this regard. Therefore, there was no question of supplying such a document. Without application of mind she verbatim copied the representation of Dharam Pal. Non supply of those documents as demanded by Dharam Pal has not prejudiced the petitioner in any manner nor petitioner has pointed out how non supply of those documents has prejudiced her in making effective representation. There was in fact no suppression of facts from the detaining authority. Representation made by Sanjeev Kumar Verma son of Dharam Pal is not a relied upon document. Complaints u/s 172 and 174 IPC filed by NCB against Ganesh Dass and Sanjeev Kumar Verma were not relied upon documents, Therefore, same had not been supplied. Rest of the documents were supplied to the petitioner. The entire material was placed before the detaining authority, Therefore, there was no question of suppression of material facts by the sponsoring authority from the detaining authority nor any prejudice has been caused to the petitioner.

15. As regards supply of documents in Hindi, it would not be out of place to mention that petitioner was supplied with ground of detention, detention order and other documents which were read over the explained to her in Hindi. She acknowledgment the same vide endorsement dated 31.8.2001 that these documents have been explained to her in Hindi. She put her thumb impression on the acknowledgment acknowledgment that these documents have been read over and explained to her in Hindi. It was for the first time in her. representation dated 19.10.2001 that she requested for Hindi translation which is apparently an after thought on the legal advise. Moreover, the petitioner being an illiterate it was immaterial for her whether documents were in English or in Hindi. Since those were read over and explained to her in Hindi which, to our mind, was a sufficient compliance.

16. Contention of Mr. Sunil Mehta that representation of the petitioner was not placed before the Advisory Board or that the same was not considered by has been refuted by the respondent. It has been stated by the detaining authority that representation of the petitioner was placed before the Advisory Board on 6.11.2001 and was rejected on 15.11.2001. All relied upon and referred to documents along with detention order and ground of detention were supplied to the petitioner. As per the counter affidavit petitioner was present in person before the Advisory Board and was also represented by a counsel, Therefore, she now cannot contend that she has been deprived of reasonable opportunity.

17. For the reasons stated above we find no merit in the petition. Dismissed.