
(2003) 01 BOM CK 0083
In the Bombay High Court
Case No : Criminal W.P. No. 130 of 2002

Yakub Ebrahim Patel @ Yakub

APPELLANT

Vs

S.H. Shool and Others

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)

Citation : (2003) BomCR(Cri) 839 : (2003) CriLJ 1167 : (2003) 3 MhLj 27 :
(2003) 2 RCR(Civil) 519

Hon'ble Judges : V.K. Tahilramani, J;S.S. Parkar, J

Bench : Division Bench

Advocate : Prakash Naik, for the Appellant; P.H. Kantharia, APP for Respondent
Nos. 1 to 4, None of Respondent No. 5, for the Respondent

Judgement

S.S. Parkar, J.—By this petition the petitioner-detenu has challenged the order of detention passed against him under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

2. The petitioner was arrested on 19-2-2000 under the provisions of NDPS Act. The petitioner had preferred two bail applications for his release from custody, both on medical grounds as well as on merits. Both the applications were rejected by the court. Thereafter the impugned order dated 18th July 2000 was issued by the respondent No. 1, pursuant to which the petitioner was detained on 19th July 2000. The petitioner had moved writ petition earlier being Criminal Writ Petition No. 1377 of 2000 challenging the order of detention. As the said writ petition came up for hearing on 20th July 2001 i.e. after the expiry of the period of detention, the same came to be dismissed as being infructuous. While dismissing the said Cri. Writ Petition on 20th July 2001 this Court (Coram : T. K. C. Das and Dr. Pratibha Upasani, JJ.) granted liberty to the petitioner to move another writ petition for the same reliefs in case subsequent proceeding on the basis of the detention order was initiated against him. Since the respondents-Authorities have initiated the proceeding u/s 68-H of the NDPS Act, the present

petition was filed pursuant to the liberty granted as aforesaid.

3. Though several grounds are urged in the petition, the learned Advocate for the petitioner pressed some of the grounds. But the present petition can be disposed of on the ground that detaining authority had not considered the imminent possibility of the detenu being released on bail.

4. In para 7(D) of the petition it is stated that the petitioner had applied for bail firstly on medical grounds and thereafter on merits and both the applications were rejected. The second application for bail was rejected by the order dated 26th June 2000 and though the impugned order of detention was passed subsequently on 18th July 2000 the detaining authority had not considered the order dated 26-6-2000 though he was aware of the fact that the application was made for bail by the petitioner-detenu and was kept for hearing on 22nd June 2000 as stated in para 69 of the grounds of detention. In reply to the said point Shri R.D. Shinde, the Deputy Secretary to the Government of Maharashtra (Preventive Detention), Home Department (Special), Mantralaya, Mumbai in para 10 of his affidavit dated 15th April 2002 has stated that the detaining authority has not relied upon the order rejecting the bail application and it does not form the basis of the detention order but the bail application was merely referred to as passing reference to the facts in the grounds of detention pertaining to the bail orders dated 31-3-2000 and 26-6-2000 to complete the narration of facts in the grounds of detention. It is pertinent to note that in para 69 of the grounds of detention the detaining authority has made reference to the bail application having been listed for hearing before the NDPS Special Court on 22-6-2000 and in para 71 of the grounds of detention it is mentioned that in view of the likelihood of the detenu filing bail application and attempt to come out on bail and again indulge in illicit traffic in narcotic drugs in future he was satisfied that the petitioner was likely to continue to engage in similar prejudicial activities in future also and therefore it was necessary to pass the detention order. The said paras may be quoted here for ready reference :

"69. You, Yakub Ibrahim Patel @ You Yakub has filed another Bail Application (39 of 2000) before the Honourable NDPS Special Court on merits as well as on medical grounds. The said application is listed for hearing before the Honourable NDPS Special Court on 22-06-2000.

70.

71. I am aware that prosecution proceedings in the matter have been initiated against you, Yakub Ibrahim Patel @ Yakub and others under the Narcotic Drugs and Psychotropic Substances Act, 1985. I am also aware that you are presently in judicial custody. However, I am satisfied that there is a compelling necessity to detain you, Yakub Ibrahim Patel @ Yakub in view of the likelihood of your filing bail application and attempt to come out on bail and again indulge in illicit traffic in narcotic drugs, even in future. I am satisfied that unless detained, you, Yakub Ibrahim Patel @ Yakub is likely to continue to engage in similar prejudicial

activities in future also and, therefore, it is necessary to detain you, Yakub Ibrahim Patel @ Yakub under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 with a view to preventing you in future from engaging in illicit traffic in narcotic drugs."

5. Mr. Naik contended that though the detaining authority was aware of the pendency of the bail application which was kept for hearing on 22-6-2000 and though it was rejected on 26-6-2000 the detaining authority has not shown awareness in the grounds of detention which were issued much subsequently i.e. on 18th July 2000, which is vital. Secondly, he contended that when the bail application was already filed and rejected before issue of the impugned order, the detaining authority observing in the grounds of detention about the likelihood of the petitioner-detenu filing bail application and making attempt to come out on bail is non-application of mind and, therefore, the impugned order is vitiated and ought to be quashed and set aside. He placed reliance on the judgment of the Supreme Court in the case of *Amritlal and Ors., v. Union Government and Ors.*, reported in (2001) 1 SCC 341 . He also placed reliance on the judgment of the Division Bench of this court in the case of *Riyaz Ahmed Kashmiri Vs. Union of India (UOI) and Others*, , in which one of us (Parkar, J.) was party. In both the judgments reliance was placed on the earlier judgment of the Supreme Court in the case of *Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others*, .

6. In *Amritlal's* case the Supreme Court was considering the grounds of detention in which the Detaining Authority had considered only the likelihood of the detenu moving an application for bail but not the likelihood of the detenu being released on bail as held by the Supreme Court in *Binod Singh's* case (*supra*). The relevant portion of the grounds of detention in *Amritlal's* case as quoted by the Supreme Court is as follows :

"Even though prosecution proceedings under the Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

In that case the High Court had upheld the detention order on the ground that the detaining authority had considered the likelihood of the detenu moving an application for bail and in the event of his being granted bail the likelihood of his indulging in illicit traffic in narcotic drugs. The Supreme Court, reversing the High Court's order had held that the reasoning is not sufficient compliance with the requirements as laid down in *Binod Singh's* case observing in para 6 as follows :

"6. The requirement as noticed above in *Binod Singh* case that there is "likelihood of the petitioners being released on bail" however is not available in the reasoning as provided by the officer concerned. The reasoning available is

the "likelihood of his moving an application for bail" which is different from "likelihood to be released on bail". This reasoning, in our view, is not sufficient compliance with the requirements as laid down."

7. In the present case it is evident from the paragraphs 69 and 71 of the grounds of detention, which are quoted above, that detaining authority has only considered the likelihood of the petitioner-detenu filing bail application but not the likelihood of his being released on bail. It is different thing that in the present case the bail application was already rejected about three weeks before passing of the impugned order of detention which was also not considered by the Detaining Authority. The Apex Court has clearly held that the likelihood of the detenu being released on bail is different from the likelihood of moving an application for bail and the detaining authority has to consider the likelihood of the detenu being released on bail, which was not done in this case. Thus, the present case is squarely covered by the ratio of the decision of the Supreme Court laid down in Amritlal's case, consequently, the continued detention of the petitioner - detent is vitiated and has to be quashed and set aside.

8. In the result, we allow this petition and quash and set aside the impugned order of detention dated 18th July 2000 bearing No. PND 1000/9/SPL-3(A) issued by the respondent No. 1 and direct that the petitioner-detenu be released from his detention forthwith unless required in any other case. Rule is made absolute accordingly.