Sanjay Kumar Aggarwal vs Union Of India (Uoi) And Ors. on 4 April, 1990

Equivalent citations: AIR1990SC1202, 1990CRILJ1238, (1990)3SCC309, [1990]2SCR318

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Bench: S.R. Pandian

JUDGMENT

K. Jayachandra Reddy, J.

1. This is a petition under Article 136 of the Constitution of India against the judgment and order of the High Court of Delhi dismissing the writ petition filed on behalf of the detenu challenging the detention. Notice was given and after hearing counsel for both the parties at length the matter is being disposed of at the admission stage.

2. The detenu was detained under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as 'the Act') by an order dated 13-7-89. On 7-6-89 Officers of Directorate of Revenue Intelligence, New Delhi intercepted a Maruti Car in which one Mahesh Kumar Chauhan and three others were present but no recovery was effected on the spot. But later on the Car was thoroughly rummaged in presence of two independent witnesses and the occupants of the car and 206 foreign marked gold biscuits of ten tolas each were recovered from the cavities of the car meant for fitting speakers in the rear portion of the car. The occupants did not give any explanation for the possession of gold biscuits. On personal search of Mahesh, a slip was recovered which contained a telephone number and Mahesh Kumar in his statement admitted that he was to hand over the smuggled goods to one Vijay Kumar. The premises of these two peoples were searched and a receipt of token tax in respect of the car was recovered. Mahesh Kumar admitted that he was visiting Dubai frequently to bring consumer goods and gold ornaments for being sold in the local market. One Avtar Singh who was engaged in smuggling of foreign gold biscuits, agreed to sell the gold biscuits to Mahesh Kumar on commission. He also gave some more details about Avtar Singh. Similarly Vijay Kumar also made a statement. From these statements it is also revealed that petitioner herein Sanjeev Kumar Aggarwal had made arrangements for selling the gold biscuits. The residential premises of the petitioner was searched and he was taken into custody. The officers of the Directorate of Revenue Intelligence questioned the petitioner and he gave a statement. On the basis of this material the detaining authority passed an order of detention on 13-7-89 and the same was served on 24-7-89. The grounds were also served in time.

3. The learned Counsel submitted that there is a total non-application of mind by the detaining authority inasmuch as he has failed to note that the detenu was in jail and that there is no possibility of his being released and the failure on the part of the detaining authority to consider the same renders the detention invalid. It is true that the petitioner was in judicial custody in connection with criminal proceedings. An application was filed in the Court of A.C.M.M, Delhi for extending the remand and the remand was granted up to 6-7-89. However, two detenus who figured as co-accused in that criminal proceedings were also in the judicial custody and on their behalf an application for bail was filed. As mentioned in the grounds of detention the detaining authority has noted these circumstances. In paragraph No. 16 it is mentioned that:

> I am aware that all of you are under judicial custody and possibility of your release on bail in near future cannot be ruled out. Also nothing prevents Mahesh Kumar Chauhan, Vijay Kumar Dharne and you from moving bail application and getting release on bail.
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> Then in paragraph No. 24 it is mentioned thus:
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> From the foregoing facts and circumstances and statements recorded in this connection as disclosed hereinabove, it is evident that you have engaged yourself in abetting the smuggling of goods unless prevented you will continue to do so in similar manner or otherwise in future when released on bail.
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> The further submission of the learned Counsel is that the petitioner along wah two others were in judicial custody and they were further remanded up to 20-7-1989 and no bail application was filed or pending as on the date of passing orders of detention. Therefore it must necessarily be inferred that there is no aware-. ness on the detaining authority of this aspect. Reliance is placed on some of the decisions of Supreme Court of India in this context.

4. In Abdul Razak Abdul Wahab Sheikh v. S. N. Sinha, Commr. of Police, Ahmedabad , it is held that there must be awareness in the mind of the detaining authority that the detenu is in custody at the time of service of order of detention and that cogent and relevant material and fresh facts have been disclosed necessitating making of an order of detention. In the course of the judgment it is noted that the detaining authority also was not aware that application for bail filed on behalf of the detenu was rejected by the designated Court and, therefore, there was no application of mind.

5. In Binod Singh v. District Magistrate, Dhanbad , it is laid down "If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order."

6. In Vijay Kumar v. State of Jammu and Kashmir , the detention order was quashed because it did not give the slightest indication that the detaining authority was aware that the detenu was already in jail. But in the case before us the detaining authority has noted in the grounds that the petitioner along with other two accused have been remanded to judicial custody and the bail application was filed on behalf of the other two detenus and there is every likelihood of the petitioner also being released on bail and as such the possibility cannot be ruled out. The other material relied upon by the detaining authority in apprehending that the detenus are likely to be released on bail is that their remand to the judicial custody was up to 20-7-89 and that the other two co-accused have also filed bail applications and they were pending and that this material is sufficient to indicate that petitioner also may file bail application and is likely to be released on bail.

7. We have carefully examined the material relied upon by the detaining authority in this regard and we are of the opinion that it cannot be said that there was no awareness in the mind of the detaining authority about the detenu being in custody and that if he is released on bail he is likely to indulge in the prejudicial activities. At this juncture we may also notice another decision of the Supreme Court. In Ramakrishna Rawat v. District Magistrate, Jabalpur , the detention order was upheld since the custody was obviously of a short duration and on the basis of the antecedent activities of the detenu in the proximate past, the detaining authority could reasonably reach its subjective satisfaction in respect of the detenu that he was in custody.

8. The learned Counsel, however, submitted that in case the bail application is filed, the same can be opposed or even if enlarged the same can be questioned in a higher Court and that a mere bald statement that the person would repeat his criminal activities after release would not be enough. In Smt. Shashi Aggarwal v. State of U. P. , it is observed (para 11 of AIR):

> The possibility of the Court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order.
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> This is a case of detention on the ground of likelihood of disruption of public order by the detenu. The detention order shows that the order had been made only on the sole ground that the detenu was trying to come out on bail.

9. Learned Counsel also relied upon the decision in Ramesh Yadav v. District Magistrate, Etah , wherein it is observed:

> Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail, an order of detention under the National Security Act should not ordinarily be passed. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised.

> But as already held in the instant case the detaining authority was not only aware that the detenu was in jail but also noted the circumstances on the basis of which he was satisfied that the detenu was likely to come out on bail and continue to engage himself in the smuggling of goods. Therefore the detention was not ordered on the mere ground that he is likely to be released on bail but on the ground that the detaining authority was satisfied that the detenu was likely to indulge in the same activities if released on bail. At this stage it is useful to refer to another important decision rendered by the Constitution Bench in Rameshwar Shaw v. District Magistrate, Burdwan , wherein the detention order was served while the detenu was in custody. The detenu was in jail by virtue of a remand order. The Constitution Bench considered the effect of the detenu's subsisting detention and it was indicated that the detenu's subsisting detention did not by itself invalidate the detention order but facts and circumstances justifying the order of preventive detention notwithstanding his custody were necessary to sustain such an order. It is observed in the said case that (para 12):
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> Whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released. The antecedent history and the past conduct on which the order of detention would be based would, in such a case, be proximate in point of time and would have a rational connection with the conclusion drawn by the authority that the detention of the person after his release is necessary....
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> It was further observed that:
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> There is no indication that this factor or the question that the said detenu might be-released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent.
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> The principles laid down by the Constitution Bench are followed in a number of subsequent decisions.

10. In Alijan Mian v. District Magistrate, Dhanbad , the detention order was upheld even though the detenu was in jail custody on the date of passing of the detention order because the detention order should that the detaining authority was alive to the fact yet it was satisfied that if the detenu was enlarged on bail, which was quite likely, he could create problems of public order.

11. In N. Meera Rani v. Govt. of Tamil Nadu , all these earlier cases have been referred to extensively and the conclusions are deduced as follows (para 22 of AIR):

Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case, preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of the public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position.

In one of the latest judgments of this Court in Shri Dharmendra Suganchand Chelawat v. Union of India , once again all the authoritative pronouncements including that of the Constitution Bench in Rameshwar Shaw's case are referred to and the Bench which consisted of three Judges observed thus (para 19 of AIR):

The decisions referred to above led to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

It could thus be seen that no decision of this Court has gone to the extent of holding that no order of detention can validly be passed against a person in custody under any circumstances. Therefore the facts and circumstances of each case have to be taken into consideration in the context of considering the order of detention passed in the case of a detenu who is already in jail. We have already, in the instant case, referred to the grounds and the various circumstances noted by the detaining authority and we are satisfied that the detention order cannot be quashed on this-ground.

12. Learned Counsel, however, strongly relied on Smt. Shashi Aggarwal's case and Ramesh Yadav's case and contended that in the instant case also the bail application could be opposed if moved or if enlarged the same can be questioned in a higher Court and on that ground the detention order should be held to be invalid. In N. Mee'ra Rani's case , a Bench of three Judges noted the above

observations in Smt. Shashi Aggarwal's case and Ramesh Yadav's case and it is said that they were made on the facts of those particular cases and the Bench also observed thus (para 21 of AIR):

> A review of the above decisions reaffirms the position which was settled by the decision of a Constitution Bench in Rameshwar Shaw case. The conclusion about validity of the detention order in each case was reached on the facts of the particular case and the observations made in each of them have to be read in the context in which they are made. None of the observations made in any subsequent case can be construed at variance with the principle indicated in Rameshwar Shaw case for the obvious reason that all subsequent decisions were by benches comprised of lesser number of judges. We have dealt with this matter at some length because an attempt has been made for some time to construe some of the recent decisions as modifying the principle enunciated by the Constitution Bench in Rameshwar Shaw's case.
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> As a matter of fact, in Shri Dharmendra Suganchand Chelawat's case there is a reference to Smt. Shashi Aggarwal's case , and Ramesh Yadav's case and a Bench of two Judges following the decision of the Constitution Bench in Rameshwar Shaw's case , laid down the above principles which we have already referred to. Therefore we see no force in the submission.

13. The next submission of the learned Counsel is that the detaining authority has not applied his mind properly in rejecting the representation made by the detenu. It is submitted that in Annexure X-3, an application be sent by Vijay Kumar, the co-detenu, it is clearly mentioned that his statement was recorded under torture and duress. Likewise in Annexure X-4, a petition filed in the Court of A.C.M.M., New Delhi, it is complained that the statement was recorded under torture and duress. According to the learned Counsel, this petition as well as the medical reports of the Doctors who examined Vijay Kumar have not been referred to and considered by the authority while rejecting the representation. Reliance is also placed on a judgment of the Delhi High Court in Sat Pal Manchanda v. M. L. Wadhawan and Ors. (Criminal Writ No. 333 of 1986) decided on 30-10-86 (reported in ILR (1986) 1 Delhi 469). In that case it is held that all the relevant material should be taken into consideration by the detaining authority while disposing of the representation. But in the instant case the circumstances are different. As a matter of fact, it is referred in paragraph 15 of the grounds that a telegram dated 8-6-89 was received in the Ministry of Finance alleging that the detenu was picked up by the DRI officers and that the allegations made therein were found false and baseless. In paragraph 17, it is also mentioned that the detenu along with his accomplices retracted from their statement dated 8-6-89. It can therefore be seen that the detaining authority has considered the allegations that the detenu was manhandled etc. At any rate, the detaining authority has clearly noted that the detenu has retracted from the alleged statement, therefore, it cannot be said that there is non-application of mind in this regard, namely, in considering the representation. The same principle applies to the Advisory Board also. According to the submissions of the learned Counsel, these documents were not placed before the Advisory Board in its meeting on 18-9-89. Whatever statement was made by the petitioners on 22-6-89 prior to the detention and the grounds clearly disclose that there was retraction. It must also be noted in this context that in the grounds in paragraph 10 also it is mentioned that a telegram was received on 9-6-89 alleging about the

wrongful arrest and extraction of the statements and the detaining authority has also taken note of the allegations made against the DRI officers which were found to be false and baseless. The same material was there before the Advisory Board. Therefore there is no force in this submission.

14. It is lastly submitted that there was 11 days delay in serving the detention order. It is true that the order of detention was passed on 13-7-89, but the same was served on 24-7-89. According to the learned Counsel, there is a violation of Section 3(3) of the Act. The said provision lays down that for the purpose of Article 25(2) of the Constitution, the order should be served as soon as possible but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention. Learned Counsel for the State submitted that firstly the point of delay was not taken up in the special leave petition, therefore, he had no opportunity to counter the same. However, from the record he submitted that it took quite sometime for translating the documents to Hindi and Gurumukhi. We have seen the documents filed before us and we are satisfied that there are valid and sufficient reasons for delay in serving the detention order.

15. Thus, we find no merit in any one of the submissions. The petition is, therefore, dismissed.