Delhi High Court
Dharmapal Verma vs Union Of India (Uoi) And Ors. on 11 October, 2002
Equivalent citations: 2003 (66) DRJ 15, 2003 (86) ECC 203
Author: U Mehra
Bench: U Mehra, R Jain
JUDGMENT Usha Mehra, J.

1. Dharampal Verma has assailed the order of his detention dated 24th August, 2001 passed under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter called PIT NDPS Act). The said order was served on the petitioner on 31st August, 2001 while he was confined in Central Jail, Tihar, New Delhi.

2. The impugned order has been assailed, inter-alia, on the grounds that: (1) the copies of the documents were not supplied in Hindi though demanded; (2) it amounts to double detention. (3) there were suppression of material facts and non-supply of documents,

3. In order to appreciate the challenge, we may have a quick glance to the facts of this case. The petitioner was apprehended on 1st May, 2001. Subsequently vide detention order dated 24th August, 2001 he was detained under PIT NDPS Act. The impugned detention order was passed with a view to prevent him from engaging in the possession and transportation of narcotic drugs in future. The case of the respondent is that on information being received, the Narcotics Control Bureau (hereinafter called NCB), conducted search of the person of Ms. Usha on 30th April, 2001. From her person one Kg. of herein was recovered. She was accordingly apprehended. From the search conducted at her residence two Kg. of herein was recovered. She made a statement on 30th April, 2001 under Section 67 of the PIT NDPS Act wherein she stated that Dharampal, the present petitioner and his wife Premvati had supplied two half-half Kg. packets of heroins to her on 30th April, 2001. She was to supply the same to Suresh. Money paid by Suresh amounting to Rs. 49,000/- was recovered from her residence. She identified the photograph of the petitioner Dharampal and his wife. She further identified from the photographs the petitioner and his wife as the persons who supplied her two half-half Kg. of heroin. On the basis of the statement of Ms. Usha dated 30th April, 2001 and 1st May, 2001, search was conducted at the residential premises of the petitioner. The same was conducted after obtaining search warrant dated 1st May, 2001, nothing recovered from his residence.

4. Statement of the petitioner under Section 67 of the PIT NDPS Act was recorded on 1st May, 2001 wherein he admitted his involvement in narcotic drugs business since 1973. In 1994 he met Gopal who was doing business of selling smack. He came in contract with Suresh and Girish through Gopal. Gopal used to supply one Kg. of smack at the rate of Rs. 30,000/- per Kg. which in turn he used to sell to Suresh and Girish for Rs. 50,000/- per Kg. He furnished the address of Gopal who was resident of Village Balagoda, Tehsil Pipliya, Mandsaur, M.P. He also gave physical description of said Gopal. In his statement this petitioner admitted that he had earned Rs. 20.00 lacs in dealing in drug trafficking. Out of this amount he bought movable and immovable properties. He further stated that on 30th April, 2001 he along with his wife Premvati went in car to the house of Usha at Amit Vihar, Bheta Hazipur, U.P. along with two packets of heroin of 1/2 Kg. each. He had given one

Kg. of heroin to Usha on instructions from Suresh and received a sum of Rs. 1,20,000/- from Suresh i.e. the cost of heroin. Gopal used to sell him 1/2 Kgs. two packets or sometime 500 or 400 gms. heroin packets. He used to pay the value after selling those packets. Petitioner had been delivering the heroin to Suresh at his residential address at Shahdara. On instructions from Suresh, he started delivering the same at the residence of Ms. Usha at Ghaziabad. Petitioner identified Usha to whom he had delivered heroin on 30th April, 2001. In 1987 also police had recovered heroin from him but in that case he was acquitted. On the basis of the information supplied by Dharampal search of Gopal at his village in M.P. was made.

5. As regards the non supply of Hindi translation of the ground of detention and other documents, Mr. K.K. Sud, Additional Solicitor General contended that petitioner knew English which fact is apparent from his hand written note in English wherein he wrote that he had received all the documents and the same were legible and he understood the same. In view of this endorsement and acknowledgment it cannot be assumed that petitioner did not know English. Moreover, the detention order was duly explained to him. He made an endorsement that he had received the same and understood the contents. Therefore, it would not be right on his part now to contend that Hindi translated copies of English documents were not supplied to him. Rather from the endorsement made by him that the copies were clear and he understood the same which endorsement he made in his own hand-writing in English, the plea now taken appears to be afterthought. Acknowledgment was given on 31st August, 2001 and at that time he did not ask for Hindi translation. After more than one month of the receipt of ground of detention he demanded Hindi translation. We find force in the submission of Mr. K.K. Sud because had the petitioner been ignorant of English language he would not have made endorsement in English that copies were clear and he understood it. He would have asked for Hindi translation immediately and not waited for more than one month to ask for Hindi translation. The order of detention cannot be set aside on this ground nor we find any right of the petitioner having been violated.

6. Main thrust of Mr. Sunil Mehta's argument was against his double detention. Admittedly, petitioner was lodged in Tihar Jail when detention order was served on him. Mr. Sunil Mehta contended that as the petitioner was arrested under PIT NDPS Act, therefore, there was no likelihood of his getting bail. Provisions of Section 37 of the said Act are very stringent. Question of getting bail is almost impossible. There could not have been apprehension to the authority that he would indulge in this trade in future. To support his arguments he placed reliance on the following decisions

(i) Binod Singh v. District Magistrate, Dhanbad, Bihar, (ii) Amritlal and Ors. v. Union Government through Secretary, Ministry of Finance and Ors., , (iii) Dharmendra Suganchand Chelawat and Anr. v. Union of India and Ors., , (iv) N. Meera Rani v. Govt. of Tamil Nadu and Anr., (v) Intelligence Officer, Narcotics C. Bureau v. Sambhu Sonkar 2001 Crl. L.J. 1082, (vi) Union of India v. Merajuddin, (vii) Gurminder Singh @ Lalli v. UOI and Ors., 1999 II AD (Delhi) 118, (viii) Union of India through Central Bureau of Narcotics Commissioner, Lucknow v. Aharwa Deen, 2000 Cr.L.J. 3526, (ix) State of Madhya Pradesh v. Kajad, 2001 Crl. L.J. 4240, (x) Rameshwar Shaw v. District Magistrate, Burdwar and Anr., (xi) Mr. Naresh Kakar v. Administrator of Delhi and Ors., Crl.W. 482/88 decided on 8.8.1989 (xii) The division Bench's Judgment of this Court in Sanjay Rajender

Sharma v. Union of India in Crl.W. No. 1204/99, (xiii) Jagdish Chander Sharma v. Union of India 2000 Crl.L.J. 3162 (xiv) Dinesh Kumar Gupta v. Union of India and Ors. in Crl.W. No. 1399/2001 decided n 31st May, 2002.

7. From the catena of decision cited above clear picture which emerges is that in the case of a person in custody a detention order can validly be passed if following conditions exists:-

(i) where the authority passing the detention order is aware of the fact that he is in actual physical custody;

(ii) said authority has reason to believe on the basis of reliable material placed before him;

(a) that there is likelihood of his being released on bail; and

(b) that after being so released he would in all probability indulge in prejudicial activities; and

(iii) It is felt essential by the detaining authority to detain him in order to prevent him from indulging in such activities in future.

8. If the detaining authority passes the detention order keeping all these factors into consideration and after recording its satisfaction in this behalf, then such an order cannot be struck down merely on the ground of double detention. There is no denying the fact that detention order should not be passed in order to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. However, in the facts of this case what we have to see whether the circumstances of the case so demand that the detaining authority had to resort to the law of preventive detention in spite of the fact that the petitioner was in custody. From the perusal of the grounds of detention it is clear that the detaining authority was aware that the petitioner was in custody. This fact find mention in the grounds of detention. As far as the question of his likelihood or possibility of being released, this fact has also been considered by the detaining authority which is apparent from Para 29 of the ground of detention order that the detaining authority felt that there was every likelihood of the petitioner filing another bail application. The detaining authority knew that his first bail application was rejected and that he was likely to file another application and there was every likelihood or possibility of his being released on bail by the court. To arrive at this satisfaction Mr. K.K. Sud, Additional Solicitor General appearing for the UOI, contended that the wife of the petitioner Smt. Premvati had applied for the bail on medical ground which was granted in her favor. Similarly, the petitioner also applied for the bail on medical ground and, therefore, the apprehension of the detaining authority that there was possibility and likelihood of his getting bail on this count could not be said to be presumptuous or imaginary. Therefore, it cannot be said there was non-application of mind on the part of the detaining authority. The detaining authority took into consideration the contents of the bail application filed by the petitioner which was before him and after going through the same passed the impugned order. Mr. K.K. Sud says this was the cogent material before the detaining authority for drawing the requisite satisfaction of the likelihood of detenu being released on bail. In the case of Binod Singh v. District Magistrate, Dhanbad, Bihar (Supra) the Apex Court observed that where the

question that the detenu might be released or 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, then that detention is not invalid. It is only merely a statement is made by the detaining authority that there was a likelihood of his being released which statement can be called ipse-dixi of the officer that such detention is bad. But in view of the cogent material existing before the authority the detention order was held to be justified. Mr. Sud further contended that in view of the circumstances that the wife of the petitioner Smt. Premvati was released on bail on medical ground and the petitioner had been applying again and again and also on medical grounds, there was every likelihood of his being released on bail in similar way as his wife was released could not be over-ruled. The detaining authority's conclusion was not merely based on the fact that the detenu might move an application for bail second time, but on the fact that even though his earlier bail application for bail second time, but on the fact that even though his earlier bail application was rejected yet he sought bail on medical ground thinking that on medical ground his wife Smt. Premvati was granted bail he would also get the same. Learned ASG submitted that there was cogent material before the detaining authority when he passed the order. It is not a case where there was only a likelihood of his moving an application for bail but a case where there was likelihood of his being released on bail. In this view of the matter, the decisions relied by the learned counsel for the petitioner are of no help to the petitioner. While passing the impugned order, the detaining authority also had before it the retraction of his statement. Since he had retracted his statement under Section 67 of the PIT NDPS Act, it cannot be said the possibility of his being released were remote. Moreover, he was earlier also involved in trafficking of narcotics drugs acquitted. The fact that he has been indulging earlier also, shows that his detention was necessary in order to prevent him from indulging in trafficking in narcotics drugs. The mere fact that the petitioner was in custody by itself does not invalidate the order of his preventive detention. Moreover, the satisfaction of the detaining authority cannot be questioned in writ petition, nor the sufficiency of the material on the basis of which the detaining authority formed its satisfaction can be assailed in the writ petition. His illegal activities which are proximate in point of time made the detaining authority to arrive at the conclusion that his detention in order to prevent him from indulging in such prejudicial activities was essential and thus passed the impugned order which cannot be called invalid. Therefore, the detaining authority was not oblivious of the fact that Smt. Premvati, the wife of the petitioner connected with the occurrence had been released on bail and, therefore, likelihood of petitioner being also released on bail in such an eventuality could be brushed aside. This would in turn show that the detaining authority did not pass the order mechanically or without application of mind. Facts do justify the detention. The statement of the co-accused or co-detenu in this case, namely, Usha and Gopal also involve the petitioner in the sale of heroin for the last several years. This shows that if released, he would again indulge in drug trafficking. The petitioner had applied for the bail on 28th May, 2001 which was rejected on 1st June, 2001. He again applied for bail in the High Court on 6th June, 2001 which was rejected on 16th June, 2001. Though when the detention order was passed on 24th August, 2001 both the bail applications had been rejected, yet the fact that his wife Premvati got interim bail on medical ground justified the detaining authority's conclusion that there was likelihood of his getting bail. In fact, the applications for grant of bail at p.168 and the interim bail application at p. 178 and the documents supplied to the petitioner were before the detaining authority at the time of passing the detention order. This itself was sufficient material for the detaining authority to form an opinion that there was likelihood of his being released and if released

he would indulge in drug trafficking. In view of the same we find that the order passed by the detaining authority while he was in actual custody is not vitiated nor it infringes the right of the petitioner enshrined under Article 22(5) of the Constitution of India.

9. Mr. Sunil Mehta, Advocate appearing for the petitioner contended that the alleged statement made by the petitioner under Section 67 of the NDPS Act cannot be relied upon because at the first available opportunity he retracted the same. Moreover he never made any voluntary statement. The officials of the NCB by torturing him forced him to writ a statement purported to be his. Secondly even if it is presumed without admitting that that statement was made by him in that case he nowhere mentioned the telephone number of Gopal. The note dated 1st May, 2001 prepared by the officials of the NCB interpolated subsequently by inserting the telephone number of Gopal. Telephone number of Gopal was not supplied by the petitioner. Had he supplied, it would have find mention in his statement under Section 67 of the NDPS Act. The petitioner had in fact demanded copy of this note but despite his demand the same was not supplied to him. In the ground of detention and, in particular, Para 7 of the same which is reproduced as under, this document i.e. note dated 1st May, 2001 has been relied upon. In spite of its reliance this document was not supplied to the petitioner thus his valuable right of making effective representation has been violated.

PARA-7 of the ground of detention:

"On the basis of information given by Dharampal in his voluntary statement under Section 67 of NDPS Act dated 01.05.2001, a fax was sent to Deputy Narcotics Commissioner CBN Neemuch on 01.05.2001 for taking follow up action against Gopal R/o Village Balagoda near Pipliya-Mandir, Mandsaur along with telephone number as disclosed by Dharampal.

10. According to the petitioner, he never supplied the telephone number of Gopal which fact stand corroborated from the perusal of his statement under Section 67 of NDPS Act. Even in its counter-affidavit, the respondent has not been able to explain how the telephone number of Gopal was incorporated in the note dated 1st May, 2001. Furnishing of telephone number of Gopal has been attributed to the petitioner in order to cover the act of the officials. The telephone number 46204 appears to be in the knowledge of the official much earlier than the date on which statement of the petitioner was recorded which the respondent are now attributing to the petitioner or alternatively this telephone number came to the knowledge of the respondent subsequently by someone whose name the respondent is concealing in order to save the person and falsely implicating the petitioner. In any case, this document has material bearing on the facts of this case and the same having not been supplied to him in spite of demand has caused prejudice in his making effective representation, thereby infringing his valuable right as enshrined under Article 22(5) of the Constitution. Even perusal of his statement would show that telephone number of Gopal had been interpolated by inserting the same subsequently. This rather proves that the alleged statement of his was not voluntarily made. That the respondent knew the address and all particulars of Gopal including his telephone number. Since the petitioner had not given the telephone number of Gopal, then how that telephone number came to be incorporated in the note dated 1.5.2001. Through the telephone number, Gopal was identified. The same note having not been supplied,

valuable right of the petitioner has been taken away. Documents referred to in the ground of detention but not relied upon by detaining authority while arriving at subjective satisfaction to detain need not be supplied to the detenu but once a document is relied and has a material bearing then such a document must be supplied to the detenu as held by the Supreme Court in the case of Kirti Kumar Chamanlal Kundaliya v. State of Gujarat and Ors. and Vinod Kumar Arora v. The Administrator, Union Territory of Delhi and Ors. 1984 Crl. L.J. 1344.

11. Perusal of the record produced by the respondent show that in his statement under Section 67 of the NDPS Act mention of telephone number of Gopal does not figure. But the note dated 1st May, 2001 indicates telephone number of Gopal. How in the note telephone number of Gopal appeared if the same was not furnished by the petitioner herein? This document therefore assumes relevance and importance moreover for the non-supply of the same, no cogent reason has been assigned except to say that non supply of all the documents mentioned in the representation has not caused any prejudice to the petitioner. This note dated 1st May, 2001 is an important piece of evidence coupled with the fact it was relied upon, this document ought to have been supplied to the petitioner. On the basis of this note, fax message was sent to CBN Neemuch, M.P. indicating seizure of three Kg. heroin on 30th April, 2001 near Delhi-U.P. Border and further indicated that on the disclosure of the petitioner name of Gopal r/o Village Balagoda near Pipliya-Mandi District Mandsaur, M.P. whose telephone number was 46204 came to knowledge of the authorities. And for identification purposes Gopal's telephone number was given in the fax message. CBN Neemuch, M.P. in reply intimated that telephone number 46204 was installed in the name of Ramgopal alias Gopal. Mr. Sunil Mehta, to our mind, rightly contended that in view of the fact that Gopal was identified on the basis of the telephone number alleged to have been furnished by the petitioner and so inserted in the note dated 1st May, 2001, hence the said note dated 1st May, 2001 ought to have been supplied to him. Having not done so, his detention is invalid. We are supported in arriving at this conclusion by the following decisions (1) Ramchandra A. Kamat v. Union of India and Ors., ; (2) Tushar Thakker v. UOI and Ors., ; (3) Vinod Kumar Arora v. The Administrator, Union Territory of Delhi and Ors., 1984 Crl. L.J. 1344; and (4) Rajesh Gulati v. Lt. Governor of NCT of Delhi 99 (2000) Delhi Law Times 124 (DB) wherein it is held that non-supply of relied upon documents vitiates detention. Even referred to documents the authority has to supply if demanded. In this case the petitioner in his representation demanded this document which request was summarily turned down. Hence the detention, to our mind, stood vitiated. Supreme Court in the case of Kirti Kumar Chamanlal Kundaliya (Supra) has gone to the extent of saying that High Court is not competent to determine relevance of the document nor it should through the confidential files of the department and reject the plea of the detenu. Since this document was not supplied, to our mind, the right to make effective representation had been denied. Hence, the detention cannot be said to be according to the procedure prescribed by Law. Apex Court has repeatedly held that the detenu has a Constitutional right under Article 22(5) to be furnished with copies of all the materials relied upon or referred to in the ground of detention. Having not done so shows non-application of mind. Hence, the detention stood vitiated.

For the reasons stated above, we allow this petition, the order of detention dated 24th August, 2001 is quashed and the rule is made absolute. If the petitioner is not required to be detained in any other case, he be released forthwith.