MANU/SC/0500/1991

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IN THE SUPREME COURT OF INDIA

Special Leave Petition (Criminal) No. 2531 of 1989

Decided On: 12.07.1990

Appellants: **Azra Fatima**
Vs.
Respondent: **Union of India (UOI) and Ors.**

Hon'ble Judges/Coram:
B.C. Ray and N.M. Kasliwal, JJ.

Case Note:

Criminal - preventive detention - Sections 3 and 10 of Narcotics Drugs and Psychotropic Substances Act, 1988 - petitioner contended mere possibility of release of detenue from custody not enough for preventive detention and declaration issued under Section 10 (1) served on detenue after unexplained delay of 21 days sufficient enough for quashing of detention order - order of detention is not illegal on ground of being passed while detenue being in custody if facts and circumstances otherwise justifies order - principle of five days and fifteen days as provided in Sub-section 3 of Section 3 relating to communication of grounds of detention cannot be applied in respect of declaration issued under Section 10 (1) - held, detention order legal.

JUDGMENT

N.M. Kasliwal, J.

1. This Special Leave Petition is directed against the Judgment of the Bombay High Court dated 29th September, 1989 dismissing Criminal Writ Petition No. 87 of 1989.

2. Syed Ali Raza Shafiq Mohammed was detained by an order of detection passed under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the Act) dated 19.12.88 by the Secretary (II) to the Government of Maharashtra, Home Department. The detention order and the grounds of detention were given to the detenu on 20th December, 1988. It may be mentioned that on 19.12.99 the detenu was already in jail as his bail application had been rejected. The wife of the detenu filed a writ petition before the Bombay High Court challenging the detention of her husband Syed Ali Raza Shafiq Mohammed. The Division Bench of the High Court dismissed the writ petition by order dated 29th September, 1989. The wife of the detenu has now filed the present Special Leave Petition aggrieved against the Judgment of the Bombay High Court. Learned counsel for the petitioner raised the following submissions before us:

(1) There were no prospects ,of the detenu being enlarged on bail as he was

involved in a case under the Act where the offence was punishable with minimum sentence of ten years. The bail application filed on behalf of the detenu was rejected by the Metropolitan Magistrate and the detenu had not filed any application for bail either in the Sessions Court or in the High Court.

(2) That detention orders of Rai Chand Shah and Jai Lal Vora had already been struck down by the High Court on the ground that the medical report in respect of the injury sustained by Rai Chand Shah was placed in a truncated form before the detaining authority. The detention order of the present detenu also suffers from the same vice and as such his order of detention should also be set aside.

(3) That a declaration was issued under Section 10(1) of the Act on 20th January, 1989 and the said declaration was served on the detenu after an unexplained delay of 21 days.

(4) The detenu submitted a representation on 31.1.89 which was jointly addressed to the Government of Maharashtra and the government of India and the Hon'ble Advisory Board for revocation of the impugned order of detention. The State Government rejected the representation by its reply dated 21.2.89 and the Central Government by its reply dated 3.3.89. Thus there was an inordinate and unexplained delay in considering the said representations of the detenu and this violated the right of the detenu under Article 22(5) of the Constitution of India. The order of detention , is illegal on this count also.

3 . We shall deal with the above contentions seriatem. With regard to the first contention it was submitted by the learned counsel that the detenu was already in custody and his bail application had also been rejected and there was no likelihood of the detenu being released on bail in respect of the alleged offence under the Act where the minimum sentence of imprisonment was ten years. It was submitted that the mere possibility of his release oh bail was not enough for preventive detention unless there was material to justify the apprehension that the detention would be necessary in order to prevent him from engaging in illicit traffic in narcotic drugs and psychotropic substances, in case of his release on bail. A mere possibility of release on bail and a bald statement that the detenu would repeat his criminal activities was alone not sufficient to sustain the order of detention. It was further contended that the detaining authority did not apply its mind to this aspect of the matter, that the detenu was already in custody and his bail application having been rejected there was no possibility of his being released on bail in a serious offence under the Act. Reliance in support of the above contention was placed on recent decisions of this Court in N. Meera Rani v. Government of Tamil Nadu & Anr. JT MANU/SC/0381/1989 : 1989 (3) SC 478 and Dharmendra Sugan Chand Chelwat v. Union of India & Ors. MANU/SC/0226/1990 : 1990CriLJ1232.

4. On the other hand Learned Solicitor General contended that it would depend on the facts and circumstances of each case whether a detention order is to be passed or not in case of a person who was already in custody. An order of detention can be validly passed against a person in custody where the detaining authority was already aware of such facts and it is satisfied that the detenu is likely to be released from custody in the near future. The detaining authority can take into account the nature of the antecedent activities of the detenu in order to arrive to the conclusion that it is likely that after his release from custody he would indulge in criminal activities and it

was necessary to detain him in order to prevent him from engaging in such activities in the present case there was complete 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 criminal activities. 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 criminal activities. It was submitted that the High Court has considered this aspect of the case and has given detailed reasons for upholding the order of detention and there is no ground or justification for interfering in the order of the High Court. Reliance in support of the above contention was placed on Sanjeev Kumar Aggarwal v. Union of India & Ors. MANU/SC/0461/1990JT 1990 (2) SC 62.

5. We have given our thoughtful consideration to the arguments advanced by Learned counsel for the parties on the above point. The latest decision of this Court on the above point is Sanjeev Kumar Aggarwal v. Union of India & Ors. (supra) decided on 4th April, 1990 in which all the earlier cases decided by this Court have been considered including the cases of N. Meera Rani & Dharmendra Sugan Chand Chelwat (supra) on which reliance has been placed by the Learned counsel for the petitioner. It was observed in Sanjeev Kumar Aggarwal's case 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 in the case of a detenu who is already in jail. The counsel for the detenu in the above case strongly relied on Smt. Shashi Aggarwal v. State of U.P.& Ors. MANU/SC/0457/1988 JT 1988 (1) SC 88 and Ramesh Yadav v. District Magistrate, Etah & Ors. MANU/SC/0098/1985 : 1986CriLJ312 and contended that 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. The Court negatived the above contention by observing that in N. Meera 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 was said that they were made on the facts of those particular cases. The court further held in the above case that on material relied upon by the detaining authority it could not 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.

6 . If we examine the facts of the case before us as stated in the grounds, of detention it would be clear that on the basis of specific information officers of the Narcotics Control Bureau, Bombay searched room No. G-2, Purab Paschim Apartments, Gilbert Hill Road, Munshi Nagar, Andheri (West) Bom-bay-58 and recovered 56 Kgs. 650 gms. of Heroin (33 Kgs. 150 gms. White and 23 kgs. 500 gms. brown) and 4000 Mandrax Tablets (Methaeualone) totally valued at Rs. 1,13,42000/- on 21.10.88.

7 . One Mr. Syed Asgar Ali was found in the room. During the course of the search another person named Abdul Sattar Abdul Samad came on Motorcycle No. BLC 7768 Make Hero Honda and entered into the premises. Thereafter, two more persons came into the premises who gave their names as Ali Raza Shafiq Mohammed (detenu in the present case) and Thakur Singh. The Officers also searched and seized a Bajaj Scooter MAQ 169, the Motorcycle No. BLC 7768 and Fiat Car No. MMH 4348 which were parked in the compound of the said society. According to the present detenu the said three vehicles belonging to him were used for transportation of Narcotic Drugs.

8. Telephone No. 6288769 was found installed in the premises. It was subscribed by one Shirish Parikh K.18 Azad Nagar Society, Juhu Scheme, Road No. 7, Bombay-56. The detenu disclosed that he was living in Flat No. 15, 4th Floor, Chandra Co.op.Housing Society Ltd. Dawood Baug, Andheri, Bombay-58, which was also searched on 21.10.88 but nothing incriminating was found in the flat. Telephone No. 6284105 was found installed there, which is subscribed by the detenu. The detenu also disclosed that he was having two shops (i) M/s. Ali Decorators, G-l, Parag Niketah, 10th Road, juhu, Bombay- 400 049 (ii) M/s. Ali Decorators, Shop No. 9 A-Wing, Twin Tower, Lokhandwala Complex, Andheri (West), Bombay-58 both of which were searched on 21.10.88 and some documents were seized from the former shop. Nothing was seized from the 2nd shop.

9. The statements of the detenu were recorded on 21.10.88, 22.10.88 and 7.11.88 under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985. With regard to the statement given by the detenu on 21.10.88 it was mentioned as under in the grounds of detention.

> In your statement of 21.10.88 you inter-alia, stated that you have a business of Video Libraries and Marriage decorations; that you own the property and vehicles mentioned above; that you were initiated into drug trafficking some time in 1984 by one Anwar, owner of Anwar Star Petrol Pump Crawford Market, that in the beginning you were employed as a delivery boy on a compensation of Rs. 30/- per day; that you used to deliver heroin to customers on the road side; that after sometime you started procuring Heroin from Pathans and repacking it in small packets and you used to store it in public toilets with the help of Municipal Sweepers and sell the same; that you used to buy heroin for Rs. 16,000/- to 20,000/ -and sell it for Rs. 18,000/-to 25,000/-perk.g. that you were making a profit of Rs. 4,000/- to 5,000/- that your main selling points were Colaba and Nariman Point; that there were a number of brokers hovering around the above places who contact the customers; that you gave samples to brokers who showed them to the customers; that if a sample was approved and the price agreeable, then you used to ask the purchaser to meet you at some point in Juhu or Andheri or some other places, that you used to pick up the required quantity of Heroin and deliver it to the customer and collect the money, that initially you were storing the Heroin in your flat and later on you used to store it in the said room No. G/2. Purab Aur Paschim Apartments, Gilbert Hill Road, Andheri (W) Bombay-58. As regards the source of the Heroin and Mandrax tablets you stated that you acquired 29 kgs. of white Heroin in installment from one Mangal Pandey of Benares and the remaining white heroin from one Raichand Chandmal Shah, that 25 kgs. of Brown Heroin was purchased from one Asgar of Phulgalli, Bhendi Bazar who has since died; that you did not know the address of Mangal Pandey, that you purchased the Heroin on Credit; that over the last about 3 1/2 years you must have sold 300 kgs. of Heroin that all the movable and immovable property acquired by you has been purchased from the profits from drug trafficking; that your income form legal business of Video library and decoration is about Rs.2,000/ -per month.

10. The statement recorded on 22.10.88 as mentioned in the grounds of detention is reproduced as under:

> In your next statement of 22.10.88 you stated that because you had to make 3-4 trips to your native place and that was the reason why such a large

quantity of heroin was lying with you; that you were keeping one car and two wheeler because you required them for transporting/selling of Mandrax tablets and it is advisable to use different vehicles in this business; you further stated that Abdul Sattar and your brother Syed Asghar Ali were not involved in this business and that they did not know that you are dealing in heroin; they were present in the room where heroin was seized on 21.10.88; because you had sent them to supervise masonry work.

11. The detaining authority further made the following observations in the grounds of detention:

You were arrested on 22.10.88 and produced before the Additional' Chief Metropolitan Magistrate (Holiday Court) on 23.10.88 who remanded you to Judicial Custody till 4.11.88 which was extended from time to time. You also filed application for bail on 21.11.88 which was rejected by the Addl.Chief Metropolitan Magistrate, 8th Court, Bombay.

12. It may be further important to note that in the grounds of detention the detaining authority had noted that the other detenus Shri Raichand Shah and Sh. Jailal Keshavlal Vora were already released on bail on 18.11.88 on furnishing a bail for an amount of Rs. 1,50,000/- each in cash. After taking note of all the above circumstances the detaining authority made the following observations in respect of the detenu having a likelihood of being released on bail:

It is clear that there is a ring of traffickers in heroin and Mandrax tablets in Bombay and you are a part of the ring and you have been habitually engaging yourself in possession, sale, purchase, transportation and storage of narcotic drugs and Psychotropic substances. I am aware that you are still in judicial custody but I am also aware that under the normal law of the land you may be granted bail and be in a position to continue to pursue your nefarious activities.

I, therefore, consider it necessary to invoke the law of preventive detention and detain you under the PIINDPS Act, 1988 to prevent you from indulging in such prejudicial activities in future.

13. Thus the material placed before the detaining authority and the facts mentioned in the grounds of detention clearly go to show that the detaining authority was fully aware that the bail application filed by the detenu had been rejected by the Additional Chief Metropolitan. Magistrate 8th Court, Bombay. The detaining authority was also conscious of the fact that the two other detenus who were arrested and detained in the same raid had already been released on bail. The antecedents of the detenu which were clear from his own statement went to show that he was initiated in drug trafficking in 1984 and employed as a delivery boy on Rs. 30/- per day and within a short span of four years the detenu himself started buying and selling Narcotic Drugs and amassed huge movable and immovable properties in Bombay. In the present raid itself heroin and Mandrax tablets worth Rs. 1,13,42000/- were seized from the ownership and possession of the detenu. Not only that the detenu was using three vehicles for transportation of these Narcotic drugs. The detaining authority after taking into consideration the above materials placed before him, arrived to the conclusion that the detenu being in "judicial custody may under the normal law of the land be granted bail and be in a position to continue to pursue his nefarious activities. The detaining authority in these circumstances considered it necessary to

invoke the law of preventive detention under the Act to prevent the detenu from indulging in his prejudicial activities in future. In these circumstances it cannot be said that the order of detention was illegal on the ground that it was passed while the detenu was already in custody.

14. It was next contended on behalf of the petitioner that the detention orders of Rai Chand Chandmal Shah and Jai Lal Keshavlal Vora had already been struck down by the High Court on the ground that the medical report in respect of the injury sustained by Rai Chand Shah was placed in a truncated form before the detaining authority. It was thus-argued that the detention order of the present detenu also suffers from the same vice and as such his order of detention should also be set aside.

15. We see no force in this contention. We have perused the orders of the High Court quashing the detention orders of Rai Chand Shah and Jai Lal Vora. A perusal of the orders of the High Court shows that the basis for the detention orders of Rai Chand Shah and Jai Lal Vora were their confessional statements. It was alleged before the High Court that Rai Chand Shah was given a severe beating on account of which he sustained serious injuries and as such his alleged confessional statement should not have been made a ground of detention. The High Court in this regard observed that the confessional statement of Rai Chand Shah being product of threats and injuries sustained by him and his medical report having been placed in truncated form before the detaining authority, the certificate showing injuries in detail not having been placed before the detaining authority by the sponsoring authority, the detention became invalid. Now so far as Jai Lal Keshav Lal Vora is concerned the High Court took the view that the statements of Rai Chand Shah formed integral and vital part of the grounds of detention of Jai Lal Vora and if such important and vital part of the material is obliterated and excluded it is not possible to say that the remaining material is ample and more than sufficient to justify the detention of Jai Lal K. Vora. The detention order of Jai Lal K. Vora was also declared illegal. Now so far as the Case of the present detenu Syed Ali Raza Shafiq Mohd. is concerned as already mentioned above his detention is based on entirely distinct and separate materials including his own confessional statements. The basis of the grounds of detention of the present detenu is not founded on the truncated form of medical report of injuries sustained by Rai Chand Shah. At the most it can be considered as a supplementary kind of material for the detention order of the present detenu. Thus the present detenu cannot take advantage of any orders of Rai Chand Shah and Jai Lal K. Vora as illegal.

16. It was next contended On behalf of the petitioner that though a declaration was issued under Section 10(1) of the Act on 20th January, 1989 but the same was served on the detenu on 10.2.89 after an unexplained delay of 21 days. It was vehemently contended on behalf of the detenu that the detenu ought to have been served with the declaration as soon as may be after the issue of such declaration, but ordinarily not later than 5 days and in case it was not done within five days then reasons ought to have been recorded in writing for explaining the delay and that also could not have been later than 15 days in any case. Learned Counsel in this regard submitted that under clause (5) of Article 22 of the Constitution of right is guaranteed to the detenu to afford an earliest opportunity of making a representation against the order of detention. It was contended that when the liberty of a citizen is taken away he ought to be afforded an opportunity of making representation at the earliest and the provisions contained in Sub-section (3) of Section 3 of the Act should in terms also Apply in the case of communicating the declaration issued under Section 10(1)

of the Act. 17. We see no force in the above contention. So far as the provisions of Sub- Section (3) of Section 3 of the Act is--concerned it clearly provides that for the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on . which the order has been made shall be made as soon as may be after the detention, 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. This provision thus relates to the communication of the grounds of detention. In the case before us the grounds of detention were admittedly communicated on 20th December, 1988, while the detention order was of 19.12.88. Thus there is full compliance of the above provision and the order of detention cannot be challenged on this ground. Now so far as the guarantee under Clause (5) of Art 22 of the Constitution is concerned there can be no manner of doubt that the person detained under any law of preventive detention ought to be communicated the grounds on which the order has been made so as to afford him the earliest opportunity of making a representation against the order. The detenu was served with the grounds of detention on 20th December, 1988 and the detenu had full and ample opportunity to make a representation against the detention order. Sub-Sec (1) of Section 10 of the Act reads as under:

> Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention it made under this Act at any time before the 31st day of July, 1990, may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) of Article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purposes of this section by that Government, is satisfied that such person engages or is likely to engage in illicit traffic in narcotic drugs and psychotropic substances into, out of, through or within any area highly vulnerable to such illicit traffic and makes a declaration to that effect within five weeks of the detention of such person.

18. In the counter affidavit filed before this Court it has been stated in para (L) as under:

> Regarding the declaration, it may be stated that the same was despatched by the Ministry of Finance on 20.1.1989 to the Home Secretary, Government of Maharashtra, Bombay, Maharashtra Government forwarded it to NCB, Bombay which was received in the, NCS office on 1.2.89 from the State Government. It was then sent for translation 4th and 5th February, being holidays (being Saturday and Sunday) the declaration was despatched on 6,2.89. It was received by the Jail authorities on 10.2.1989 and served on the detenu same day.

Thus the declaration had been made in this case on 20.1.89 by the Ministry of Finance within the statutory periods of five weeks of the detention and the period taken in serving the same on the detenu on 10.2.89 has been sufficiently explained. The detenu was lodged in Central Prison Bombay and the Advisory Board had fixed a

date on 23.2.89 and at such the detenu had ample opportunity to challenge the declaration. The High Court has also gone in detail in dealing with this aspect of the matter, and we agree with the finding recorded by the High Court. The principle of five days and fifteen days as provided in Sub-Section (3) of section 3 relating to communication of grounds of detention cannot be applied in respect of declaration issued under Section 10(1) of the Act. In the facts and circumstances of this case we are fully satisfied that the detenu has not been denied any opportunity of making any effective representation against the declaration issued under Section 10(1) of the Act.

19. The last submission made on behalf of the detenu is that the detenu had submitted a representation on 31.1.89 jointly addressed to the Government of Maharashtra, the Government of India and the Advisory Board. The State Government rejected the representation by its reply dated 21.2.89 and the Central Government by its reply dated 3.3.89. It was thus contended that there was an inordinate and unexplained delay in considering the said representations and this is violative of the right of the detenu conferred under Clause (5) of Article 22 of the Constitution. The point should not detain us any longer as we fully agree with the finding of the High Court, recorded in this regard. The High Court has given adequate and detailed reasons in holding that the delay has been explained by the counter affidavit filed by the respondents. Thus we find no force in this ground of the detenu that his representations were disposed of after an inordinate and unexplained delay.

20. As a result of the above discussion, we find no force in this petition and it is accordingly dismissed.