

**Manu Khosla Vs. Union of India**

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**Court :** Delhi

**Decided On :** Dec-08-2014

**Judge :** S.Ravindra Bhat

**Appellant :** Manu Khosla

**Respondent :** Union of India

**Advocate for Def. :** Mr. Rajesh Gogna, Mr. Arnab Naskar

**Advocate for Pet/Ap. :** Mr. R.M. Bagai

**Judgement :**

\$-20 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + % Date of Decision:

08. 12.2014 W.P.(Crl) No.2448/2014 & Crl MA No.18992/2014 MANU KHOSLA  
Through: ..... Petitioner Mr. R.M. Bagai, Advocate versus UNION OF INDIA  
Through: ..... Respondent Mr. Rajesh Gogna, CGSC with Mr. Arnab Naskar,  
Advocate for UOI CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT  
HON'BLE MR. JUSTICE VIPIN SANGHI S. RAVINDRA BHAT, J.

(OPEN COURT) 1. The petitioner seeks for a declaration that the detention order made against him (which has not been produced along with these writ proceedings) is void and unenforceable.

2. The facts necessary to dispose of the petition are that one Anil Kumar was intercepted by Department of Revenue Officers on search on 15.04.2013. He was found to be in possession of 275kgs of narcotics and psychotropic substances; a statement under Section 67 of Narcotic Drugs and Psychotropic Substances Act (NDPS Act) led to the arrest of the petitioner on 16.04.2013. His statement too was recorded on the date of his arrest i.e. 16.04.2013. Another arrest of one Amit Kumar Singh was made on 02.05.2013 and is alleged that some 950 kgs of banned substances were recovered from his car. The petitioner as well as Amit Kumar Singh were enlarged on bail by the Special Judge, NDPS on 20.07.2013. It is the allegation that he fully cooperated with the investigation and appeared before the DRI and other investigative agencies as and when called upon to do so. In these circumstances, the DRI applied for cancellation of his bail on 20.11.2013. The Special Judge, however, rejected the said application. This Court was approached thereafter by the investigating authorities. On 23.09.2014, the move for cancellation of bail succeeded when this Court granted the DRIs request.

3. In these circumstances, it is alleged that the respondents had issued a detention order, which has not yet been executed. The petitioner strongly relied upon the circumstance that the detention orders made on 30.04.2014, in his case as well as in the case of the others i.e. Anil Kumar and Amit Kumar Singh were considered on 15.07.2014. However, pursuant to the report of the Advisory Board, whereby detention order - as far as Anil Kumar and Amit Kumar are concerned, stood revoked. He had approached this Court on an earlier occasion in W.P. (Crl.) No.1460/2014 claiming similar reliefs, but sought liberty to withdraw the petition - which was permitted.

4. It is contended by Mr. Bagai that this Court having regard to the overall circumstances, especially the non-confirmation of the detention order of M/s Anil Kumar and Amit Kumar Singh, should call for the records from the respondents and proceed to quash the unexecuted detention order. It is contended, firstly, that so far as bail cancellation by this Court is concerned, the petitioner has approached the Supreme Court by filing a Special Leave Petition, which is pending - and the matter is subjudice in that case. It is, secondly, urged that this Courts power under Article 226 is not circumscribed as by the fact whether a

preventive detention order otherwise legally unsustainable is served or not. In support of this contention, learned counsel for the petitioner relied upon the judgment of the Supreme Court in *Deepak Bajaj v. State of Maharashtra*, (2008) 16 SCC14. Learned counsel highlighted that the decision in *Deepak Bajaj* (supra) had clarified and explained the previous ruling in *Union of India v. Alka Subhash Gadia*, (1992) Supp. 1 SCC496. In *Alka Gadia* (supra), the Supreme Court has spelt out five circumstances under which even at the pre-execution stage, discretion can be exercised to examine the legality of detention orders.

5. Learned counsel submitted that the sheer untenability of the petitioners proposed detention is palpable from the fact that the co-detenuess arrested in respect of charges (who are faced with serious charges from the NDPS Authorities) were not confirmed. It was submitted that according to DRI, in the case of each co-detenuess, specific quantities have been recovered, whereas the petitioner was sought to be implicated by virtue of a statement.

6. As is apparent from the discussion, the petitioner challenges an unexecuted preventive detention order. The petitioner is aware about the detention order, and that it was made on 30.04.2014. It is also evident that unlike the other two co-accused (in whose cases the detention orders were not confirmed), the order of detention against the petitioner was confirmed.

7. The petitioner had strongly relied on *Malini Mukesh Vora v. Union of India*, 2009 (VIII) AD (Del) 662, where a detention order which had not been executed for eight years, was quashed. As can be seen, the facts of this case afford no parallel with those in *Malini Vora* (supra). Another decision, *Diwakar Gupta v. Union of India*, 2009 (III) DRJ99(DB) was relied upon by Mr. Bagai to say that when co-detainees orders (of detention) are quashed, those in relation to the petitioner too should merit the same consideration. We cannot agree with the argument because here the coaccuseds detention orders were never confirmed; however, that against the petitioner was confirmed.

8. The mainstay of the petitioners argument is that proceedings under Article 226 should be entertained even at pre-detention stage. Invoking the judgments in *Deepak Bajaj* (supra), it was argued that the five situations outlined in *Alka Gadia*

(supra) were considered merely illustrative, enabling Courts to do justice and quash detention orders at any stage, on merits.

9. The petitioners order of detention was apparently confirmed. The Trial Courts order enlarging him on bail was cancelled. He seeks to persuade this Court to set aside the detention order on diverse grounds - all on merits, and commends the Court to entertain this pre-detention challenge proceeding.

10. A three Judge Bench, in Alka Gadia (supra) had outlined certain limited circumstances when Courts could entertain challenges against preventive detention order by actual detention of the individual, stating as follows:

5. . . . That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these timehonoured and well-tested judicial self- restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are concerned if in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no

authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

11. After noticing the above discussion, in Deepak Bajaj (supra), a two Judge Bench decision stated that the five grounds outlined in Alka Gadia (supra) are only illustrative and not exhaustive. The Court in Deepak Bajaj (supra) then proceeded to consider the challenge - on the merits of the detention order. This Court is of the opinion, with due deference that the rather elaborate reasoning in Alka Gadia (supra) preceding the very limited number of exceptions mentioned in that judgment cannot be said to have been expanded in Deepak Bajaj (supra), since in the latter case, firstly, no exceptional feature is discussed, and, secondly - rather more importantly - the judgment was by two Judges. The observations in Deepak Bajaj (supra) with respect, cannot be taken as having changed the rule and principle in Alka Gadia (supra).

12. This Court does not perceive any facts which would fall within the exception spelt out in Alka Gadia (supra) compelling a merits consideration of the impugned detention order that has not been served upon the petitioner. Consequently, this Court declines to entertain this petition, which is dismissed.

13. Moreover, the petitioner is evading the law. His bail was cancelled by this Court on 23.09.2014. In spite of the same, he has not surrendered. Merely because his Special Leave Petition is stated to be pending, he cannot evade arrest. Such conduct of the petitioner, in our view, disentitles him from approaching this Court in the exercise of its discretionary writ jurisdiction. It is not that the only order for the arrest/detention is the impugned order of detention. The arrest warrants pertain to a criminal case under the NDPS Act. That being so, we are - even otherwise, not inclined to exercise our discretionary jurisdiction in the present matter, at this stage.

14. For the above reasons, this Court finds no ground to interfere with the impugned order. The writ petition is, accordingly, dismissed. S. RAVINDRA BHAT,

J VIPIN SANGHI, J.

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