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Court : Delhi

Decided On : Oct-12-1990

Reported in : 42(1990)DLT629; 1991(20)DRJ356

Judge : C.L. Choudhary, J.

Acts : National Security Act, 1980 - Sections 3(2)

Appeal No. : Criminal Writ No. 183 of 1990

Appellant : Kuldip Singh and ;bittu

Respondent : State

Advocate for Pet/Ap. : J.L. Bhanot,; R.P. Lao and; Kamini Lao, Advs

Judgement :

C.L. Chaudhry, J.

(1) By this writ petition the petitioner has challenged the detention order dated 7-12-1989 passed by Commissioner of Police, Delhi under Section 3(2) of the National Security Act. 1980. By the said order it was directed chat the petitioner be kept in Central Jail, Tihar, Delhi. It is mentioned in the detention order that the petitioner is an active criminal of the area of Police Station Saraswati Vihar. Delhi, who has indulged in acts of violence, murder attempt to murder, riots, robbery, wrongful confinement, abduction, .Mack on public servant, criminal intimidation.

house trespass and offence punishable under the Arms Act. It is also mentioned in the detention order that the petitioner was involved in many criminal cases in the area of Union Territory of Delhi The following cases were referred therein us background to show the criminality of the petitioner :

(1) P.S. Punjabi Bagh, Fir No. 250 dated 21-6-1982 under Section 302/34 Indian Penal Code, in which case the petitioner was acquitted;

(2) PS. Saraswati Vihar, Fir No. 65 dated 233-1986 under Sections 147/148/149/324/452 IPC. this case is pending trial :

(3) P S Connaught. Place, Fir No. 490 dated 5-9-1988 under Section 394/398/342/34 Indian Penal Code and 25/27/54/59 Arms Act In this case the petitioner armed with 'Desi Katta' and a knife compelled a person and his friend to take off their clothes and took nude photographs in a room in York Hotel, New-Delhi He also snatched a gold chain and thereafter locked both the persons in the bathroom. The petitioner was apprehended and his disclosure statement admitting his involvement in the above case was recorded. He was arrested in this case but later on was discharged as he was not identified by the witnesses;

(4) P.S. Saraswati Vihar, Fir No. 98/9-3-1983 under.Section 323/34 Indian Penal Code In this case the allegation against the petitioner is that he along with one unknown person stabbed one Ashok Kumar on the back and left hip because to inimical relations. The case is pending investigation ;

(5) P.S. Partap Nagar, Fir No. 79 dated 4 8 1989 under Section 307/365/511/720 B Indian Penal Code This case against the petitioner relates to kidnapping and attempt to murder of one Parveen Sethi The case is pending trial against the petitioner;

(6) P.S. Shalimar Bagh, Fir No. 238/26-11-1989 under Section 506 Indian Penal Code and 25/27/54/ 59 Arms Act. In this case petitioner along with other persons is alleged to have threatened one Raja Sareen showing a sword and a revolver. The petitioner was arrested and the case is pending investigation.

(2) It is further stated in the detention order that from the activities of the petitioner it is evident that he is a desperate and dangerous criminal and his activities have proved himself to be a menace to the public at large. It is also evident that be hires himself out to persons who wish to intimidate other people His arrest/prosecution in a number of cases have not deterred him from his criminal/violent activities which arc prejudicial to the maintenance of public order Keeping in view his activities it has been felt necessary to detain him under Section 3(2) of the National Security Act, 1980 so that his criminal/violent activities which are prejudicial to the maintenance of public order can be stopped. It is this order which is under challenge.

(3) I have heard the learned counsel for the parties at length. At this stage it is necessary to state that the petitioner moved application for bail and was enlarged on bail in all the cases. But on 13-12-1989 he surrendered himself in the Court of the Metropolitan Magistrate alter getting his bail bond cancelled and was remanded to judicial custody. The detention order was communicated to the petitioner on 14-12-1989 while he was already in Central Jail, Tihar.

(4) The first ground of attack is that the petitioner moved applications for bail and was enlarged on bail in all the cases and the detaining authority was not made aware of the fact that the detenu was enlarged on bail in the pending cases and the detention order is silent about this fact, hence there was a clear case of non-application of mind on the part to the detaining authority As such the order of detention of the petitioner was liable to bequashed. In support of his contention the learned counsel for the petitioner relied upon a judgment of the Supreme Court in Anand Sakharam Raul v. State of Maharashtra and another ; : 1987 CriLJ323 wherein it was held that the detaining authority if not made aware of the fact that detenu had moved application for bail and that be was enlarged on bail and the detention order was silent about those facts, it amounts to total absence of application of mind on the part of detaining authority while passing the order of detention. In my opinion the petitioner cannot derive any assistance from this authority. In this case in the detention order it is mentioned that 'his arrest/prosecution in number of cases have not deterred him from criminal/violent activities which are prejudicial to the maintenance of public order, thereforee, his

being at large is hazardous to the maintenance of public order.' From this it is clear that the detaining authority was conscious of the fact that the petitioner was at large. Moreover the Deputy 'Commissioner of Police has filed an affidavit in this court wherein it is stated that the fact that the detenu was enlarged on bail in pending cases were duly placed before the detaining authority, who passed the detention order after full application of mind. There was no illegality in not mentioning this fact in clear words in the grounds of detention.

(5) I have also perused the records which were placed before the detaining authority wherein it was clearly stated that the petitioner was out of Jail. This contention of the learned counsel for the petitioner has no merit and is repelled.

(6) The next ground urged by Mr. Bhanot is that the petitioner was already in Tihar Jail on 14-12-1989 when the order of detention was communicated to him But the said fact was not brought to the notice of detaining authority before serving the detection order on the detenu in Jail

(7) In support of this contention the learned counsel for the petitioner has relied upon the judgment of the Supreme Court in Dharmendra Sugan Chand Chelawat v. Union of India and others. : 1990 CriLJ1232 wherein it was observed as under :

'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 reason's 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'

The next authority relied upon by the counsel for the petitioner is Binod Singh v. District Magistrate, Dhanbad; : 1986 CriLJ1959 wherein it was observed as under:

'In this case there were grounds for the passing of the detention order but after that the detenu has surrendered for whatever reasons, thereforee, the order of detention through justified when it was passed but at the time of the service or the order there was no proper consideration of the fact that the detenu was in custody or that there was any real danger of his release. Nor does it appear that before the service there was consideration of this aspect properly. In the facts and circumstances of this case. thereforee, the continued detention of the detenu under the Act is not justified.'

(8) This view of the Supreme Court has been followed by our own High Court in the case of Barski Marek v. Union of India and others; (Crl. W.P. 59/1989 decided on 19-2-1989. It is an admitted fact that the fact that detenu was already in Jail on 14-12-1989 when the detention order was served on him. This fact was not brought to the notice of the detaining authority. if this fact that the petitioner was already in Jail had been brought to the notice of the detaining authority before the detention order was served upon the detenu in Jail, it might have influenced the mind of the detaining authority that no useful purpose would be served because the petitioner was already in Jail So even before service of the detention order, a material fact can come into existence which has to be considered by the detaining authority at the time of communication of the detention order. The detaining authority is required to reconsider the matter whether the detention. The detaining authority is required to reconsider the matter whether the detention order already passed could serve any useful purpose as the detenu was already in judicial custody.

(9) On behalf of the respondent a strong reliance was placed on a judgment of the Supreme Court in Poonam Lata v.M.L, Wadhawan; AIR 1987 Sc 209 in support of the proposition that the detenu being already in detention does not take away the Jurisdiction of the detaining authority for making the order of preventive detention in my opinion this judgment is not applicable to the facts of this case because in Poonam Lota's case (supra) it was held that there was sufficient material to show

that the detaining authority was aware of the fact that the petitioner was in custody when the order was made yet he was satisfied that his preventive detention was necessary.

(10) In this case when the 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 detenu might be released or that there was such a possibility of release, was taken into consideration, by the detaining authority properly and seriously before the service of the order of detention Though the order of preventive detention when it was passed was not invalid and was on relevant considerations, the service of detention order was not on proper considerations.

(11) In the result, the writ petition is allowed. The rule is made absolute. The detention order dated 7-12-1989 is quashed and set aside. This however, will not affect detenu's detention under other criminal cases.