Naresh Kumar JaIn Vs. Union of India (Uoi) Through Ncb and ors.

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SooperKanoon Citation : sooperkanoon.com/848849

Court : Delhi

Decided On : May-21-2010

Judge : A.K. Sikri and; Ajit Bharihoke, JJ.

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 2, 8A, 12, 24, 24A, 27A, 32, 36A and 67; ; Prevention of Money Laundering Act, 2002 - Sections 3 and 4; ; Code of Criminal Procedure (CrPC) , 1973 - Section 188; ; Constitution of India - Article 226

Appeal No. : WP (Crl.) No. 485 of 2010

Appellant : Naresh Kumar Jain

Respondent : Union of India (Uoi) Through Ncb and ors.

Advocate for Def. : A.S. Chandhiok, ASG,; V.B. Niren, CGSC,; Rajesh Manchanda

Advocate for Pet/Ap. : B. Kumar, Sr. Adv. and; Naveen Malhotra, Adv.

Judgement :

A.K. Sikri, J.

1. On 24th September, 2009 a search operation was launched in the residential premises of the petitioner by the officials of the Directorate of Enforcement under the supervision of its Deputy Director. During this search, Indian currency in the

sum of Rs. 12,50,000/-and some foreign currency was recovered from the petitioner. The petitioner was also taken to the office of Directorate of Enforcement where he was interrogated about the seized money and his statements were also recorded under Section 67 of the Narcotic Drugs and Psychotropic Substances Act 1985 (hereinafter referred to as 'NDPS Act') on 5th December 2009 and 6th December 2009.

2. It is the allegation of the petitioner in this writ petition that since officials of the Directorate of Enforcement could not find any incriminating material against him, they felt defeated and, therefore, started searching a trap to implicate the petitioner or to bring him within the provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PML Act'). The premises of the petitioner was thereafter again searched on 5th December, 2009 by the officers of the Narcotic Control Bureau of India (NCB for short) alongwith the officers of Directorate of Enforcement.

3. The petitioner was arrested on 6th December, 2009 by invoking the provisions of Section 24 and 27A of the NDPS Act. He was produced before the Duty Magistrate when the NCB officials sought custodial remand of the petitioner for three days. In the remand application, the respondent-NCB, inter alia, stated that the petitioner was involved in financing directly and indirectly to various peoples all over the world for sale, purchase, transportation of narcotic drugs, import into India, export from India or transshipment of the said narcotic drugs and psychotropic substances etc. and was in fact indulging in such activities. It was further alleged that the involvement of the petitioner in such activities was apparent from the facts disclosed by the petitioner in his statements recorded on 5th December 2009 and 6th December 2009 under Section 67 of the NDPS Act and also from the inputs provided from the enforcement agencies from abroad.

4. Though the petitioner opposed this application through his lawyer, the learned Duty Magistrate was pleased to grant three days police remand of the petitioner i.e. till 9th December, 2009. On 9th December, 2009, the petitioner was once again produced before the learned Special Judge, NDPS, New Delhi This time, the respondent moved an application seeking judicial remand of the petitioner for a

period of fourteen days on the same averments which were narrated in their first application. At the same time, the petitioner also moved an application alleging that he had been falsely implicated in the case; during the police remand he was interrogated by the Directorate of Enforcement, DEA (USA) and other agencies in the office of NCB and was tortured; his signatures were forcibly obtained on blank papers; he was forced to write a statement which was dictated by NCB officials and officials of other agencies; no recovery of any drug was effected from the petitioner or money seized either. He also denied any transaction of the nature alleged by the respondents having been made by the petitioner either in India or in any other country. He reiterated his statement made before the NCB. The Petitioner was remanded to judicial custody by the learned Special Judge.

5. On the basis of search which was earlier carried out by the office of the Directorate of Enforcement on 24th September, 2009, the said Directorate also registered a case against the petitioner and arrested him on 11th December, 2009 under the provisions of Section 3 & 4 of the PML Act. By another application dated 15th December, 2009 the respondents again sought judicial remand of the petitioner for a further period of fourteen days stating therein that the investigation was likely to take some time. The learned Special Judge remanded the petitioner to judicial custody vide orders dated 15th December, 2009. The learned Special Judge rejected the contention of the petitioner contained in the application dated 15th December 2009 which he had also moved opposing his custody and remand, wherein he had, inter alia, stated that there was no material against him and in any case provisions of Section 24 and 27A of the NDPS Act could not be invoked.

6. On 23rd December, 2009 the learned Special Judge extended the remand till 6th January, 2010. On 6th January, 2010, the petitioner moved another application stating that he was a Non-Resident Indian and residing in Dubai for the last fourteen years and has been engaged in a business. He further alleged that his arrest was effected by the respondents only at the instance of Enforcement Directorate as they wanted to bring the case under the schedule of the PML Act. The petitioner also produced a certificate issued by Ministry of Justice, Milan, Italy, and Ministry of Justice, Modena to the effect that no criminal record pertaining to the petitioner was available either in Milan and Modena, as alleged by the

respondents. The learned Special Judge did not accede to his request and rather, allowed the prayer of the respondents, sending him in judicial custody till 13th January, 2010. This custody has been extended from time to time by the learned Special Judge. The last application filed by the petitioner opposing the judicial remand on 25th February, 2010 was also dismissed by the learned Special Judge vide orders dated 18th March, 2010.

7. At this stage, the petitioner approached this Court by filing the present petition for habeas corpus and other reliefs invoking the provisions of Article 226 of the Constitution of India with the following prayers:

(a) issue of Writ of Habeas Corpus for release of the petitioner from the illegal custody .

(b) further issue a writ of Mandamus/Certiorari or any other Writ order or direction for quashing of the proceedings./ arrest memo dated 06.12.2009 Under Section 24 and 27A of the Narcotics Control and Psychotropic Substances Act, 1985, pending in the court of Shri Sanjeev Jain, ASJ (Special Judge NDPS Act Cases) New Delhi against the Petitioner which are without jurisdiction as well as resulting in gross abuse of the process of the court against the petitioner, after calling the record in case file No. VIII/37/DZU/2009.

(c) Release the petitioner forthwith from the custody of the respondents.

(d) Call for the records of the cases pending before the learned Special Judge NDPS cases, New Delhi and after perusing the same quash the same.

(e) Initiate appropriate proceedings against the respondents for falsely implicating the petitioner in an NDPS case and punish them suitably.

(f) Pass any other or such further order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case in the interest of justice.

8. When this writ petition came up for preliminary hearing/admission on April 6, 2010, learned Counsel for the petitioner dropped the prayer of Habeas Corpus submitting that he would confine his writ petition limited to challenging the arrest

memo dated 6th December, 2009 under Section 24 & 27A of the NDPS Act on the ground that entire proceedings against the petitioner are without jurisdiction. This being a jurisdictional issue touching upon the jurisdiction of Special Judge, NDPS Cases, to deal with the matter, we fixed the matter for hearing on this issue on 12th April, 2010. Matter was heard on that day and on subsequent dates. Since arguments are heard limited to the question of jurisdiction, we are called upon to decide that issue in the present writ petition.

9. The submissions of learned Senior Counsel appearing for the petitioner was that the petitioner is a Non Resident Indian who has been residing in Dubai for the last fourteen years. As such, no case can be foisted upon him by the authorities in India invoking the provisions of Section 24 & 27A of the NDPS Act. Drawing our attention to these provisions, learned Senior Counsel argued that Section 24 of the Act deals with the engagement in or controlling any trade in Narcotic Drug or Psychotropic Substance. Likewise, Section 27A of the Act imposes punishment for financing illicit traffic and harbouring offenders. His submission was that it was not the case of the respondents that petitioner deals with the narcotic drugs. Even if the prosecution case was to be believed, as per the allegations of the respondents, the petitioner comes into picture only after the drug is sold, as allegations against him are for dealing with money which he received from others after the drug operation/activity was over. It was the submission of the learned Senior Counsel that even if it was tainted money in his hands, Section 24 & 27A of the Act would not be applicable. For this purpose, he also referred to Section 12 of the said Act as per which it had no territorial operations. He referred to the provisions of Section 8A and Section 32 of the Act as well as some other provisions and submitted that even if a case is treated to have been made out under the aforesaid provisions (though no such case was registered against the petitioner under these provisions), those were bailable offences and on this ground also, the petitioner could not have been arrested and kept in continued incarceration.

10. Learned Counsel for the respondents, on the other hand, challenged the maintainability of the writ petition on the ground that in the present case, the petitioner was kept in judicial custody pursuant to the orders passed by the

competent court of law namely the Special Judge, NDPS and if the petitioner was aggrieved by those orders, his remedy was to challenge those orders by filing appropriate proceedings and not by way of present writ petition. On merits, learned Counsel for the respondents submitted that considering the complex nature of operation involved, the authorities probing into the matter on the basis of material collected thus far were justified in arresting the petitioner. His further detention was thereafter authorized by the learned Special Judge, NDPS by passing a valid order giving detailed reasons. The judicial remand of the petitioner thereafter has been extended from time to time. In support of this contention, learned Counsel for the respondents relied upon the orders passed by learned Special Judge giving reasons for the remand. Learned Counsel also submitted that a prima facie case is made out for booking the petitioner under Section 24 and 27A of the NDPS Act. The submission in this behalf was that the petitioner was admittedly an Indian citizen and, therefore, as per the provisions of Section 188 of the Code of Criminal Procedure, he could be tried by a court of law in India as well, even if the offence is committed outside India. Mr. Manchanda, learned Counsel appearing for the Narcotic Department also produced the record containing the material/information received from the authorities in Dubai, Italy and Modena.

11. We have considered the submissions made by counsel of either side and also gone through the records produced by the respondents. Before adverting to the discussion on the respective arguments, it would be apposite to take note of some relevant provisions.

12. Section 2 of the NDPS Act: Definitions: In this Act, unless the contest otherwise requires:

(viiia) 'illicit traffic', in relation to narcotic drugs and psychotropic substances, means-

(i) Cultivating any coca plant or gathering any portion of coca plant;

(ii) Cultivating the opium poppy or any cannabis plant;

(iii) Engaging in the production, manufacture, possession, sale purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;

(iv) Dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in Sub-clauses (i) to (iii); or

(v) Handling or letting out any premises for the carrying on of any of the activities referred to in Sub-clauses (i) to (iv).

Other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorization issued, thereunder, and includes-

(1) Financing, directly or indirectly, any of the aforementioned activities;

(2) Abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and

(3) Harbouring persons engaged in any of the aforementioned activities.

Section 24: Punishment for external dealings in narcotic drugs and psychotropic substances in contravention of Section 12-

Whoever engages in or controls any trade whereby a narcotic drug or a psychotropic substance is obtained outside India and supplied to any person outside India without the previous authorization of the Central Government or otherwise than the accordance with the conditions (if any) of such authorization granted under Section 12, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also liable to fine which shall not be less than one lakh rupees but may extend to two lakh rupees:

Provided that in the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees. Section 27A- Punishment for financing illicit traffic and harbouring offenders:

Whoever indulges in financing, directly or indirectly, any of the activities specified in Sub-clauses (i) to (v) of Clauses (viiia) of Section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees. Section 36A- Offences triable by Special Courts:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) All offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.

13. A conjoint reading of the aforesaid provisions would clearly disclose that the definition of 'illicit traffic' is very wide and even those handling or letting out any premises for carrying on any of the activities referred to in Sub-clauses (i) to (v) of the definition are covered by the said definition. Not only that, whosoever finances these activities is also treated as indulging in 'illicit traffic'. Section 24A of the Act provides for punishment to those who indulge in financing, directly or indirectly, any of the activities specified in Sub-clauses (i) to (v) of Clause (viiia) of Section 2 which provides the definition of 'illicit traffic'. We had examined the record keeping in view the aforesaid legal position in mind.

14. Since the matter is still at investigation stage and charge-sheet is yet to be filed, it would not be appropriate for us to comment upon the material collected by the investigating officer against the petitioner during the investigation. We would only observe at this stage that the material collected so far does indicate the possibility of launded money received by the petitioner and hawala money which is being rooted again to facilitate illegal traffic where the possibility of role of the

petitioner in financing the said illicit traffic, directly or indirectly, cannot be ruled out. Therefore, it cannot be said that there is no jurisdiction with the Special Judge to deal with this matter. The submission of the learned Counsel for the petitioner that even on the basis of admitted facts no case of illicit trafficking is made out, cannot be accepted at this stage.

15. From the record, it is clear that the petitioner was arrested on the basis of the investigations carried out so far. He was produced before the concerned Court and his judicial custody remand was authorized by the Court from time-to-time. While passing said remand orders, the concerned Special Judge considered the allegations in the applications made by the prosecution and at the same time rejected the prayer of the petitioner for rejecting the remand application. The learned Special Judge has given his reasons by passing detailed speaking orders. The petitioner has not challenged those remand orders by preferring any appeal or other proceedings in the High Court. Instead, present writ petition is filed, that too, at a time when the investigation is at a nascent stage. Since statutory remedy to challenge these remand orders is provided under law, which has not been availed of as yet by the petitioner, it would not be appropriate for us to comment on the merits of those orders. Stating at the cost of repetition that the scope of this writ petition is very limited and as we do not find that the proceedings pending before the learned Special Judge are ex-facie without jurisdiction, we have no option but to dismiss this writ petition giving liberty to the petitioner to challenge the orders of the Special Court in accordance with law, if he so desires.

16. In the circumstances of this case, there shall be no orders as to costs.