

Birendra Kumar Rai

Vs

Union of India and Others

Petn. for Spl. Leave to Appeal (Criminal) No. 1050 of 1992

(Kuldip Singh, N. M. Kasliwal JJ)

03.09.1992

JUDGEMENT

KASLIWAL, J.:-

1. This petition for special leave to appeal is directed against the judgment of the Allahabad High Court dated 21-2-1992, (reported in 1992 Cri LJ 3866) (FB), dismissing the habeas corpus petition filed by the detenu Birendra Kumar Rai alias Virendra Kumar Rai.
2. The petitioner was arrested on 21-11-1990 by Zamania Police in connection with Crime No. 402 of 1990 under Section 25 of the Arms Act and Section 207 of the Motor Vehicles Act. The petitioner was detained in District Jail, Ghazipur in connection with the above case. During the custody of the petitioner in District Jail Ghazipur he was served on 10-12-1990 with a detention order passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the 'PITNDPS Act, 1988'). The petitioner was given the grounds of detention along with the copies of documents relied on by the detaining authority along with the detention order.
3. It was alleged in the grounds of detention that on a secret information the Officers of Varanasi and Delhi units of Narcotic Control Bureau intercepted Shanti Swaroop and A. K. Chaudhary alias P. P. Singh on the night of 12/13th August, 1990 at the Indira Gandhi International Airport (Terminal-II), New Delhi when they reported for boarding Flight No. K. L. 836 to Amsterdam. On search of their baggage, P.P. Singh was found to possess 975 grams of Heroin concealed in the false bottom of his shoulder bag. On the basis of statements and disclosures made by these persons, the house of the petitioner, his father and brothers were searched and 855.250 grams of foreign marked 7 gold biscuits and some incriminating documents were recovered. On search of the petitioner's flat at Varanasi some more documents were recovered. The father and brothers of the petitioner in their statements admitted their involvement in the business of Heroin. Kamta Rai also stated that the petitioner fell into bad company and started preparing Heroin from opium and the petitioner also joined his brothers in the same trade and from the money earned from the said business the petitioner had purchased one flat at Andheri (Bombay). The statements of the members of the petitioner's family clearly revealed that the petitioner had been engaged in the clandestine business of preparing and selling Heroin.
4. On 7-11-1990 a complaint was filed against the petitioner and others under the Narcotic Drugs

and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act, 1985'). Before any warrant of arrest could be served on the petitioner in respect of the aforesaid case lodged under the NDPS Act, 1985, the petitioner was arrested on 21-11-1990 in the case registered under the Arms Act and the Motor Vehicles Act. He was arrested and detained in District Jail Ghazipur. The petitioner moved an application for bail on 3-12-1990 before the session Judge in respect of the case under NDPS Act, 1985. The detention order under Section 3 (i) of the PITNDPS Act, 1988 was passed by the Joint Secretary to the Government of India on 4-12-1990 and the aforesaid detention order was served along with the grounds of detention on 10-12-1990 while the petitioner was in the custody at District Jail Ghazipur. The petitioner made a representation to the President of India and Joint Secretary to the Government of India on 22-12-1990. The Central Government rejected the representation on 25-1-1991. The petitioner then filed a habeas corpus petition in the Allahabad High Court challenging his detention. There was a difference of opinion between the two learned Judges of the High Court in the order pronounced on the habeas corpus petition on 23-4-1991. The matter was ultimately heard by the Full Bench of the High Court and the writ petition was dismissed by unanimous order dated 21-2-1992 (reported in 1992 Cri LJ 3866). The petitioner aggrieved against the order of the High Court has come before this court by filing special leave petition under Article 136 of the Constitution.

5. We have heard Mr. R. K. Jain, Learned Senior Counsel for the petitioner and Mr. K.T.S. Tulsi, Learned Additional Solicitor General on behalf of the Union of India. Though the detention order was challenged on several grounds before the High Court, but the learned counsel for the petitioner challenged the detention of the petitioner before us on the following grounds :-

(1) That the detaining authority did not apply its mind in passing the detention order dated 4-12-1990.

(2) That there was unexplained long delay in the disposal of the representation made by the petitioner. The representation made by the petitioner dated 22-12-1990 was disposed of on 18-1-1991 and communicated to him on 25-1-1991 and this long delay of 33 days remains unexplained.

6. We shall consider the arguments advanced in respect of the above grounds in seriatim. As regards the first ground, Mr. R. K. Jain, learned senior counsel adverted our attention to ground No. 21 of the grounds of detention order which reads as under :-

"Even though prosecution proceedings under Narcotics Drugs and Psychotropic Substances Act, 1985 are likely to be initiated against you, I am satisfied that there is compelling necessity, in view of the likelihood of your indulging in illicit traffic of Narcotics Drugs as is evident from the trend of your activities, to detain you under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

7. It was submitted that the above facts mentioned in para 21 clearly show the unawareness of the correct facts on the part of the detaining authority and which leads to the non-application of mind of the detaining authority. It was pointed out that though the complaint under the NDPS Act, 1985 had already been filed on 7-11-1990 yet the detaining authority under the above para No. 21 of the grounds of detention dated 4-12-1990 was mentioning "that prosecution proceedings under Narcotics Drgus and Psychotropic Substances Act, 1985 are likely to be initiated against you." It was further submitted that though a warrant of arrest had also been issued by the Court at Varanasi

where the case under NDPS Act, 1985 had already been initiated and a bail application had also been moved still the detaining authority was mentioning that the prosecution proceedings under NDPS Act, 1985 were likely to be initiated against the petitioner. It was also argued in this regard that when the petitioner was already in custody and a case had been initiated against him under the NDPS Act, 1985, there was no question of any grant of bail and there was no ground or justification for the satisfaction of the detaining authority and to hold that there was any compelling necessity for the detention of the petitioner under the provisions of Section 3 (1) of the PITNDPS Act, 1988. It was also argued that the grounds of detention did not show that the detaining authority was aware that the petitioner was already in jail in District Jail, Ghazipur for the offences under the Arms Act and the Motor Vehicles Act.

8. We find no force in the above contention. The admitted facts of the case as also recorded by the High Court in the impugned order show that on 7th November, 1990 a complaint had been lodged by the Intelligence Officer of the Narcotics Control Bureau, Varanasi against the petitioner, his father and two brothers in the Court of Sessions Judge, Varanasi and a custody warrant was also issued on 22-11-1990. But the petitioner having already been arrested and detained on 21-11-1990 in the cases under the Arms Act and Motor Vehicles Act and detained in District Jail, Ghazipur, the warrant of arrest issued from the Varanasi Court in Crime Case No. 195 of 1990 was never executed nor the detenu had been brought from District Jail, Ghazipur to the concerned Court at Varanasi. In these circumstances, when the petitioner was not taken into custody under the Crime Case No. 195 of 1990 under the NDPS Act, 1985 and continued to remain in District Jail, at Ghazipur in Crime Case No. 402 of 1990 under the Arms Act and Motor Vehicles Act till the passing of the detention order on 4-12-1990, there was nothing wrong in mentioning in the grounds of order of detention that the prosecution proceedings under NDPS Act, 1985 are likely to be initiated against the petitioner. It is no doubt correct that the word 'likely' used in the grounds of detention may not be fully appropriate but this cannot be meant that the detaining authority was not aware of the case pending under NDPS Act, 1985 at Varanasi. We are satisfied with the explanation given by the Learned Additional Solicitor General in this regard that till the warrant of arrest issued by the Varanasi Court was executed and the petitioner was brought and produced before the concerned Court at Varanasi, the detaining authority was justified in considering that the prosecution proceedings under NDPS Act, 1985 were likely to be initiated against the petitioner. It may be further noted that in para 19 of grounds of detention, it has been clearly mentioned that a bail application on behalf of the petitioner had been filed in the Court of session Judge, Varanasi on 3-12-1990 and in which the next date of hearing had been fixed for 7-12-1990. Thus, it cannot be said that the detaining authority was not aware or had not applied its mind in respect of the fact that a case under NDPS Act, 1985 was already pending in the Court at Varanasi when the detaining authority was mentioning the fact that the petitioner had moved the bail application on 3-12-1990 and which was fixed for hearing on 7-12-1990. So far as the question of the satisfaction of the detaining authority is concerned that there was a compelling necessity for detaining the petitioner in order to prevent him from indulging in Illicit Traffic of Narcotic Drugs is concerned, the same depends on the subjective satisfaction of the detaining authority and if sufficient material in this regard was placed before the detaining authority, the Court is not entitled to interfere in such order.

9. It was contended on behalf of the petitioner that there was no possibility of the petitioner being released on bail and as such there was no ground or justification for the detaining authority to hold that there was a compelling necessity for the detention of the petitioner. We find no force in this contention. The detaining authority was aware that a bail application had already been filed by the petitioner and the same was to come up for hearing on 7-12-1990 and in these circumstances the detaining authority was justified in recording the satisfaction of compelling necessity of issuing the

detention order as it could not have been predicted with certainty that the petitioner would not be released on bail. During the course of the arguments of this case before us, it was pointed out by the Learned Additional Solicitor General that the bail has been granted in favour of the petitioner and this proves the correctness and legitimacy of the satisfaction of the detaining authority in this regard. There was voluminous documentary evidence placed on record before the detaining authority for passing the order of detention. The voluminous record available with the detaining authority showed that the petitioner was engaged in illicit traffic in the purchase, sale, possession and abetting the export of Narcotic Drugs in the city of Varanasi which is an area highly vulnerable to such illicit traffic. There was enough material for the satisfaction of the detaining authority that the petitioner and his family was engaged in the clandestine business of preparing and selling Heroin for export from India.

## Ground No.2

10. It was contended on behalf of the petitioner that the petitioner had submitted the representation on 22-12-1990, but it was disposed of on 25-1-1991 and this shows the callousness And the casual manner in which the authorities acted in dealing with the liberty of a citizen. There can be no manner of doubt that if the delay remains unexplained leading to the conclusion that the conduct of the authorities in this regard amounted to inaction, callousness or slackness then the detenu is entitled to be released. However, the question of delay depends on the facts of each case. This argument was made before the High Court also, and the same was dealt in detail and it was ultimately held that in the facts and circumstances and on perusal of the original record they did not find that any inference of slackness, callousness, casualness, inaction or leisurely treatment of the petitioner's representation is made out. The observations of the High Court in this regard are reproduced as under (1992 Cri LJ 3866 (FB), paras 47 and 48) :-

"For this we examined the file from the original records which were placed before us. From the records, we find that the petitioner submitted his representation on 22nd December, 1990, which was forwarded to the authority concerned on the next date, though it was a Sunday. The said representation was received in the Ministry of Finance on the 27th December, 1990. Thereafter, the same was sent to Pt. NDPS which was received on 31st December, 1990 (29th and 30th December, 1990, being Saturday and Sunday respectively). On the same day it was sent to the Deputy Director, Narcotic Bureau, Varanasi, and was received in the office at Varanasi on 10th January, 1991. On the very next day i.e. 11th January, 1991, the documents as desired was posted at Delhi and was received back in Delhi on the 14th January, 1991. On 17th January the Under Secretary examined and placed it before the Detaining Authority. The detaining authority again placed the same before the Secretary, Government of India and on 18th January, 1991, the representation of the petitioner was rejected by the Finance Minister. There are two dates on which argument was raised regarding delay in disposal even after these dates were disclosed from the record. The first set of days is between 23rd December to 27th December, 1990, when the Superintendent, District Jail, Ghazipur in the Ministry of Finance, and other from 1st January, 1991 when it was sent by Pt. NDPS, Delhi to 10th January, 1991, on which date it was received in the office of Dy. Director, Narcotic Bureau, Varanasi. Regarding the first set of days it is revealed from the record that the said representation was sent through the Messenger Sri Indra Prakash Lal Srivastava of Ghazipur District Jail, who received the same on 23rd December, 1990. He carried two letters with him. One was to be delivered at Lucknow and the other

(petitioner's representation with comment) at Delhi. He proceeded to Gorakhpur his home on 24th December, 1990, on his own by a private bus. 25th December was a holiday on account of X-Mas and on 26th December he delivered the letter at Lucknow, on the way meant for I.G. Prison, Lucknow and then reached Delhi and delivered the letter with the representation in the office of the Joint Secretary, Finance, Government of India on 27th December, 1990. Regarding the second set of dates, according to the respondent it was despatched on 1st January, 1991 by post from Delhi and was only received in Varanasi on 10th January, 1991. From a perusal of the letter dated 11th January, 1991, sent back along with the comment annexed a reference was made that in future, representation be sent by speed post to avoid delay. The delay could only be on account of it being sent by ordinary post and not speed post. Further, according to learned counsel for the respondent the delay of delivery by ordinary post would only be on account of riots during that period in Varanasi. However, on the aforesaid facts and circumstances and on perusal of the original record we do not find that any inference of slackness callousness, casualness, inaction or leisurely treatment of the petitioner's representation is made out. On the facts of this case we come to the conclusion that it cannot be held that there was any delay in disposal of the representation of the petitioner."

11. We are fully in agreement with the above observations of the High Court and find no valid reason to take a different view.

12. During the pendency of this special leave petition the petitioner filed an application stating additional grounds for challenging the declaration issued under S. 10(1) of the PITNDPS Act, 1988. In this regard, it has been submitted that the declaration under S. 10(1) was issued on January 8, 1991. The petitioner sent a representation dated 31-3-1992 against the declaration. The said representation was submitted through the Jail Superintendent, Agra on 10-4-1992 to be forwarded to the Secretary to the Government of India, Ministry of Finance. The said representation has been rejected by the Central Government on 27-5-1992 after a long delay of one month and 17 days. This long delay in consideration and disposal of the representation is violative of Art. 22(5) of the Constitution. In reply to the above additional ground a counter affidavit has been filed on behalf of the respondents. In the counter affidavit filed by the Under Secretary to the Government of India, Ministry of Finance, the period from 10-4-1992 to 27-5-1992 is explained in the following manner :-

2. The detenu's representation dated 10-4-1992 against the 10(1) declaration as forwarded by Central Jail, Agra, was received in the main registry of the Department on 20-4-1992. Since the receipt section of the Department is heavily loaded, it appears that the receipt was wrongly marked to some other branch, who returned it to the main registry as is indicated on the representation and thereafter it was sent to this section. In between, 25-4-1992 and 26-4-1992 were holidays and the representation was received by the PITNDPS CELL on 27-4-1992.

3. On 27-4-1992, a letter was issued by registered post to the Sponsoring Authority i.e. Narcotics Control Bureau, Varanasi for their comments. Narcotics Control Bureau, Varanasi, vide their letter dated 30-4-1992 gave their comments, which was received in the PITNDPS CELL on 5-5-1992. Within the constraints of office workload in other official matters, the comments offered by the Narcotics Control Bureau, Varanasi, were examined vis-a-vis the points made in the petition on the following

three working days i.e 6, 7 and 8-5-1992. Since 9 and 10-5-1992 were holidays, another letter was issued on 11-5-1992 to Narcotics Control Bureau, Varanasi asking for further detailed comments so that the representation could be considered thoroughly and appropriately.

4. The detailed comments were forwarded Narcotics Control Bureau, Varanasi vide their letter dated 15-5-1992 and the same were received in the PITNDPS CELL on 20-5-1992. Since there were two sets of comments with reference to the petition these were thoroughly examined on 21st and 22nd May, 1992. 23rd and 24th May, 1992 being holidays, these were submitted with a detailed note on 25-5-1992. These were further scrutinized by the Joint Secretary on 25-5-1992 and the Hon'ble Finance Minister rejected the representation on 26-5-1992.

5. Vide our memorandum dated 27-5-1992, the detenu was intimated about the result of the representation through the Superintendent, Central Jail, Agra, which was received by the petitioner on 2-6-1992. Though apparently this office has taken one month, the fact is that the representation was given a through consideration in consultation with the Sponsoring Authority twice. Further, one has to take into consideration the time taken in transit. As such there has been no delay at any stage and the representation has been processed as expeditiously as possible."

13. A perusal of the above explanation given by the Union of India explains the time taken in dealing with the representation. The period taken by the postal authorities cannot be attributed to any delay or inaction or callousness on the part of the authorities considering such representation. Now, if we consider the period after 20th April, 1992, it may be noted that some time was taken in wrongly marking the representation to some other branch by the receipt section of the department. However, the representation was received in the concerned section of PITNDPS CELL on 27-4-1992. 25th and 26th April, 1992 were holidays. Much stress is laid by the learned counsel for the petitioner on the time spent during the period the representation was wrongly marked to some other branch. Mr. Tulsi in this regard submitted that it was due to human error and the period spent in wrongly marking the representation to some other branch is not long one, but only five days. We are satisfied with the above submission made by Mr. Tulsi. It may be further noted that this representation was not against the order of detention or any grounds in support of the detention order, but it was a representation against the declaration made under S. 10(1) of PITNDPS Act, 1988. The period from 27-4-1992 till 27-5-1992 has been explained in detail in the counter affidavit filed before this Court and a perusal of the above explanation shows that the time taken cannot be considered so as to draw an inference of inaction or callousness on the part of the authorities. Thus, we do not find any substance in the second ground of challenge levelled by the petitioner against the detention.

14. Before parting with the case we would like to say that this Court has already laid down the law relating to detentions under the preventive detention laws during the last four decades. If the Government takes care that the detention cases arising under the preventive detention laws are handled by persons fully trained and having experience in such matters, the rights of the citizens can be safeguarded and the precious time of this Court can be saved. The detaining authorities are required to deal such cases with more care and circumspection. They should not leave such cases to be dealt with by lower officials and should keep a track on such cases from beginning to the end and also take care that the representations, if any, made by the detenus are also dealt with expeditiously without any delay. In matters where the detention orders are passed in relation to such persons who

are already in jail under some other laws, the detaining authorities should always apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail and stating the necessity of keeping such persons in detention under the preventive detention laws. We earnestly hope that the concerned authorities shall deal such matters with special care.

15. In the result, we dismiss this special leave petition.      Petition dismissed.

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