

(1998) 08 MP CK 0002

Madhya Pradesh High Court (Indore Bench)**Case No:** Writ Petition No's. 1858, 1859, 1860 and 1862 of 1997

Amrit Lal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Aug. 4, 1998**Acts Referred:**

- Constitution of India, 1950 - Article 22(5)
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18, 3(1), 8

Citation: (1999) 1 ACR 836**Hon'ble Judges:** Shambhoo Singh, J; B.A. Khan, J**Bench:** Division Bench

Judgement

B.A. Khan, J.

All the four petitions, being identical in facts and law are disposed of by this common order:

Petitioners were arrested pursuant to a raid conducted by the officers of the Central Bureau of Narcotics, Neemuch on 7.12.96 leading to seizure of 132 kgs., of opium from them. Crime No. 29 of 1984 was registered against them u/s 8/18 of the N.D.P.S. Act of 1985. They sought release on bail but A.D.J., Neemuch rejected their application by order dated 21.2.97. They were eventually detained u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short "P.I.T.N.D.P.S. Act") by order dated 5.6.97. Grounds of detention were communicated then within the stipulated time and their detention was confirmed by the Government on 17.8.97.

2. Petitioners have filed these petitions to question their detention on the grounds that it was illegal and invalid as the Detaining Authority had passed the detention order mechanically and without application of mind and that the grounds of detention were unconnected and remote and did not justify the detention and that the detention was punitive in nature and that they were falsely implicated in Crime.

No. 22 of 1996.

3. Petitioners' counsel Mr. Khan, however, assailed the detention of the Petitioners on three grounds viz. (i) that they could not be detained u/s 3(1) of the P.I.T.N.D.P.S. Act as they were already in custody facing trial for the alleged offence committed by them and that their detention was invalid because the Detaining Authority had not shown any awareness of their being in custody already and had also not shown the compelling reasons for their detention despite such custody ; (ii) that detention order was also vitiated because of six months delay between the date of occurrence (7.12.96) and the date of order (5.6.97) and (iii) that the order of detention was passed without any material and basis by the Detaining Authority.

4. Mr. Khan placed reliance on a [Collector of Central Excise, New Delhi Vs. Ballarpur Industries Ltd.](#), and four other unreported judgments of this Court in M.P. No. 1881 of 1997, M.P. No. 593 of 1994 and M.P. No. 1902 of 1994.

5. Learned Counsel for Respondents Mr. Desai, on the contrary, submitted that the detaining authority had shown his awareness of Petitioners being in custody and had indicated the compelling reasons for their detention in the grounds of detention communicated to them. He also pointed out that Petitioners did not set-up any case alleging any delay in passing of detention order and as such, Respondents had no occasion to meet it and to explain their position.

In any case, their plea in this regard was not tenable because they were under a wrong notion that such delay was calculable on the date of occurrence.

He referred to [Abdul Salam alias Thiyyan Vs. Union of India and others](#), [Abdul Sathar Ibrahim Manik Vs. Union of India and others](#), .

6. Shorn of irrelevant details and submissions, what falls for consideration is whether the Petitioners' detention could be invalidated on account of the alleged failure of the Detaining Authority to show awareness of their being already in custody and to indicate compelling reasons for their detention or whether the detention proceeded without any basis or was any delay caused which was fatal for such detention.

7. Petitioners' case must fail on all counts. It is undoubtedly well-settled that the Detaining Authority must show awareness of the detent being in custody, wherever he is in such custody at the time of detention and also further show that despite that, there were compelling reasons for his detention to prevent him from engaging in illicit traffic of narcotic drugs and psychotropic substances.

But it is not that an order of detention gets necessarily vitiated if the detent happened to be in custody at the time of detention. Such an order could be passed validly against him even when in custody but for the purpose, detaining authority was obliged to show that he was aware of such custody and had compelling reasons to detain the detent despite such custody. It is also well-established that the

expression "compelling reasons" while making an order of detention of a person already in custody implied that there must be cogent material before the authority to satisfy him that the detent was likely to be released in near future and that he was likely to engage in the illicit trade of narcotic drugs and psychotropic substances. This position stands enunciated in numerous authorities by the Supreme Court and even in the judgment cited by

L.C. for Petitioners [Dharmendra Suganchand Chelawat and another Vs. Union of India and others](#), it was held as under:

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 detent is already in detention and (ii) there were compelling reasons justifying such detention despite the fact that the detent is already in detention. The expression "compelling reasons" 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 detent is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent actuation of the detent.

8. Tested thus, it is a matter of record that Detaining Authority in the present case had shown awareness of Petitioners being in custody and had also indicated the compelling reasons by hinting at the likelihood of their being enlarged on bail and engaging in illicit trade of narcotics in the grounds of detention. It was also pointed out in the grounds that two other persons connected with the occurrence were granted bail and as such, there was likelihood of Petitioners also being released on bail. In the circumstances, it cannot be said that the Detaining Authority was oblivious or ignorant of Petitioners' custody or had failed to give the compelling reasons for their detention u/s 3(1) of the Act.

9. Petitioners' second submission that detention order was passed without any material basis also merits rejection. Because, the authority had justified the detention and had shown application of mind by according consideration to available material and by deriving appropriate satisfaction. It is a different thing whether the charge for alleged offences under the N.D.P.S. Act, 1985, would ultimately sustain against the Petitioners but that had no bearing on their detention which could be ordered taking in regard their past activities and the likelihood of their engaging in the illicit trade of narcotics.

10. As regards Petitioners' last plea that the detention order was vitiated because of the delay in passing it after six months from the date of raid and arrest, seems misdirected on the face of it. Because the alleged delay which could invalidate a detention was not calculable from the date of a particular incident which only formed a consideration for such detention.

11. It requires to be emphasized that delay had been held to be fatal for detention only in cases where a case of detention was placed before the Detaining Authority and he/she had taken months together to pass an order of detention or where a detention order was passed and inexplicable delay had occurred in executing it against a person in custody-See [Rabindra Kumar Ghosel alias Buli Vs. The State of West Bengal](#), . This is so because such kind of delay prejudices a detent in communication of grounds to him and in making representation under Article 22(5) of the Constitution. This cannot be held true in a case of alleged delay from the date of a particular incident to the date of passing of the order of detention because such incident may or may not lead to a preventive detention and may be dealt with other in normal course.

12. For the reasons given, these petitions fail and are dismissed.