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AMRITLAL AND ORS.

v.

UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF
FINANCE AND ORS.

NOVEMBER 7, 2000

B

[UMESH C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

C

*Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic
Substances Act, 1988 : Section 3(1).*

*Narcotic Drugs and Psychotropic Substances Act, 1985 : Sections 8
and 18.*

D

*Preventive Detention—Detention order against a person already in
custody—Necessary conditions for validity of such an order.*

E

*Preventive detention—Seizure of opium from appellant—Charge under
Sections 8 and 18 of the N.D.P.S. Act—Rejection of bail application filed by
appellant—Subsequently appellant detained under P.I.T.N.D.P.S. Act, 1988—
Order passed on the ground that there was likelihood of the appellant
moving the bail application—Writ challenging detention order—Rejection
on the ground that the detaining authority had shown awareness of the
petitioner being in custody and had also provided compelling reasons—
Appeal before Supreme Court—Held, for validity of an order passed against
a person in custody the necessary requirement is that there must be likelihood
of the petitioners being released on bail—In the instant case the reasoning
available is the 'likelihood of appellant moving an application for bail'
which is different from 'likelihood to be released on bail'—This reasoning,
is not sufficient compliance with the requirements laid down—Detention
order held not valid.*

F

G

*Rivadeneyta Ricardo Augustine v. Govt. of the National Capital
Territory of Delhi & Ors., [1994] Supp. 1 SCC 597 and Kumarunnissa v. Union
of India, [1991] 1 SCC 128, referred to.*

*Binod Singh v. District Magistrate, Dhanbad, [1986] 4 SCC 416, relied
on.*

H

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 838-841 of 1999. A

From the Judgment and Order dated 5.8.98 of the Madhya Pradesh High Court in W.P. Nos. 1858, 1860, 1862 and 1859 of 1997.

Pallav Shishodia and Abhijat P. Medh for the Appellants. B

A.S. Rawat for D.S. Mehra for the Respondents.

The following Order of the Court was delivered :

In these appeals the validity of the order of detention passed by the Joint Secretary to the Government of India stands challenged. C

The contextual facts depict that the appellants were arrested pursuant to the raid conducted by the officers of the Central Bureau of Narcotics leading to the seizure of 132 Kgs. of opium and crime No. 22/96 was registered against them under sections 8/18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'). The appellants prayed for being released on bail, but the Addl. District Judge, Neemuch, rejected the application. Subsequently however they were detained under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'the PITNDPS Act') by order dated 5.6.1997. The record depicts that the grounds of detention were communicated to the appellants within the stipulated time and subsequently by order dated 17.8.1997 their detention has been confirmed. The appellants moved the High Court on the ground that it was illegal and invalid as the detaining authority passed the order mechanically and without application of mind and that facts do not justify their detention. In any event the detention was further challenged on the ground of the same being punitive in nature. The Division Bench of the High Court however dismissed the petitions on the ground that the detaining authority had shown awareness of the petitioners being in the custody and had also communicated the compelling reasons 'by hinting at the likelihood of their enlarging on bail'. The Division Bench of the High Court while dealing with the matter did take into consideration the factum of the two other persons connected with the occurrence being released on bail and, as such, the detaining authority was not oblivious of the petitioners' custody and had also provided compelling reasons under section 3(1) of the Act. D E F G

Learned advocate appearing in support of the appeals during the course of hearing informed this Court that while it is true that by reason of efflux of H

A time the period of detention has otherwise expired but continued to press the appeal with some emphasis by reason of the consequences as provided in the statute to wit: the forfeiture of the property of the detenu and it is in this context strong reliance has been placed on the decision of this Court in *Rivadeneyta Ricardo Augustin v. Govt. of the National Capital Territory of Delhi & Ors.*, [1994] Supp. 1 SCC 597. This Court while dealing with the matter and relying upon the decision of this Court in *Kamarunnissa v. Union of India*, [1991] 1 SCC 128 came to the conclusion that the order of detention cannot but be quashed. In *Kamarunnissa's* case (supra) this Court was pleased to observe thus :-

C “The decisions of this Court to which our attention was drawn by the learned counsel for the petitioners lay down in no uncertain terms that detention orders can validly be passed against detenus who are in jail, provided the officer passing the order is alive to the fact of the detenus being in custody and there is material on record to justify his conclusion that they would indulge in similar activity if set at liberty.”

D In *Augustin's* decision (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in *Binod Singh v. District Magistrate, Dhanbad*, [1986] 4 SCC 416 wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This E Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the *ipsi dixit* of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference F ought to be noticed and the same reads as below :-

G “Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.”

H It is this reasoning which the learned advocate contended that the High Court should have held to be completely erroneous in the matter of being the

basis of an order of detention.

A

The requirement as noticed above in *Binod Singh's* case, (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

B

The emphasis however, in *Binod Singh's* case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

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On the wake of the aforesaid, we do not feel inclined to record our concurrence with the order of detention passed in the matter. As such the same is quashed. The appeals are disposed of accordingly.

D

T.N.A.

Appeals disposed of.