

2022 LiveLaw (SC) 122

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Dr. Dhananjaya Y. Chandrachud; Dinesh Maheshwari, JJ.

Criminal Appeal No 125 of 2022 [Arising out of SLP (Crl) No 9919 of 2021]; January 24, 2022

Devesh Chourasia *Versus* The District Magistrate, Jabalpur and Others

National Security Act, 1980 - Section 8 - The failure of the Central and the State governments to communicate the rejection of the representation in a time bound manner would vitiate the order of detention. (Para 10)

For Petitioner(s) Mr. Sidharth Luthra, Sr. Adv. Mr. Ashwani Kumar Dubey, AOR Mr. Pankaj Dubey, Adv. Mr. Akshat Kumar, Adv. Mr. Manish Kumar, Adv. Mr. Akshay Khandelwal, Adv. Ms. Reetika Gupta, Adv. Mr. Sheezan Hashmi, Adv. Ms. Rytham Sheel Srivastava, Adv.

For Respondent(s) Mr. Saurabh Mishra, AAG Mr. Sunny Choudhary, Adv. Mr. Pashupathi Nath Razdan, AOR Mr. K.M. Nataraj, ASG Mr. Shailesh Madiyal, Adv. Mr. Prashant Singh (A), Adv. Ms. Preeti Rani, Adv. Mr. Sharath Narayan Nambiar, Adv. Mr. Mohammed Akhil, Adv. Mr. Arvind Kumar Sharma, Adv.

ORDER

1. Leave granted.

2. The appeal arises from a judgment dated 24 August 2021 of a Division Bench at the Indore Bench of the High Court of Madhya Pradesh.

3. In the course of a petition under Article 226 of the Constitution, the appellant assailed an order of detention which was passed against him on 11 May 2021 under Section 3 of the National Security Act 1980 and a subsequent order dated 8 July 2021, by which the period of detention was extended by three months. The writ petition - Writ Petition No 10177 of 2021 - instituted by the appellant was heard, as the High Court described it “analogously” with another petition under Article 226, Writ Petition No 10085 of 2021 **[Sarabjit Singh Mokha vs State of Madhya Pradesh].**

4. The appellant was an employee in the pharmaceutical wing of City Hospital which was run by Sarabjit Singh Mokha, the petitioner in the companion petition before the High Court. The petition instituted by Sarabjit Singh Mokha was rejected by the High Court by a judgment dated 24 August 2021. The petition fled by the appellant was also rejected on 24 August 2021 by another judgment.

5. Against the judgment of the High Court in the companion writ petition, a Special Leave Petition was instituted before this Court under Article 136 of the Constitution. Leave was granted and by a judgment dated 29 October 2021, this Court set aside the order of detention dated 11 May 2021 and the extensions which were granted on 15 July 2021 and 30 September 2021 in that case.

6. As the judgment of this Court in the previous proceedings indicates, the facts of the two cases are substantially similar. The narration of facts in paragraph 4 of the judgment of this Court dated 29 October 2021, sets out the underlying basis on which

an order of detention was passed against the petitioner in the earlier proceedings. Paragraph 4 reads as follows:

“It is alleged that the Police Station of 'B' Division in District Morbi of Gujarat seized fake Remdesivir injections from a factory where they were manufactured and an FIR was registered in that regard. On 10 May 2021, the statement under Section 161 of the CrPC of a co-accused by the name of Devesh Chaurasia, who was running a pharmacy in the hospital owned by the appellant, was recorded to the effect that the appellant had procured fake Remdesivir injections without a bill. The appellant is said to have collected the injections through a person named Prakhar Kohli from Indore, who sent the cartons through a transporter called Amba Travels. The fake Remdesivir injections were stated to have been administered to 50 patients at the City Hospital on 30 April 2021. In his statement under Section 161 of the CrPC recorded on 10 May 2021, Prakhar Kohli stated that the appellant's son had on 21 April 2021 asked him to send the fake Remdesivir injections from Indore to Jabalpur. Prakhar Kohli was made to speak to the appellant in that connection. Prakhar Kohli is stated to have sent the fake injections through Amba Travels, and these injections were received at Jabalpur by the co-accused, Devesh Chaurasia, on behalf of the appellant.”

7. The above extract contains a reference also to the appellant. During the course of the hearing, Mr Sidharth Luthra, senior counsel appearing on behalf of the appellant has tendered a tabulated chart reflecting the similarities both in respect of the grounds of detention and the findings which weighed with this Court in allowing the earlier appeal which arose from the judgment of the High Court in the case of Sarabjit Singh Mokha. For the convenience of reference, the chart is reproduced below:

S. No.	GROUND OF DETENTION in Sarabjeet Singh Mokha v District Magistrate & Ors SLP (Cri.) No. 7012/2021	GROUND OF DETENTION in Devesh Chourasia v District Magistrate & Ors SLP (Cri.) No. 9919/2021	FINDING IN JUDGEMENT DATED 29.10.2021 titled Sarabjeet Singh Mokha v District Magistrate & Ors {SLP (Cri.) No. 7012/2021}
1.	<p>DELAY IN CONSIDERING THE REPRESENTATION</p> <p>Facts as recorded in Para 41 to 43 of the Judgement: (PAGE 323 OF SLP)</p> <p>CENTRAL GOVERNMENT:-</p> <p>- Delay of one and a half month on part of Central Government in considering the representation dated 18.05.2021 and rejecting the same on 24.06.2021</p> <p>STATE GOVERNMENT:-</p> <p>- Representation rejected by State Government on 15.07.2021 however, no proof of communication to detenu nor an explanation for almost 60 day delay is provided.</p>	<p>DELAY IN CONSIDERING THE REPRESENTATION</p> <p>-Representation dated 22.05.2021 sent to State Government on 24.05.2021 which was delivered on 27.05.2021 (REFERENCE AT PG. 260 OF SLP)</p> <p>-Representation dated 22.05.2021 was processed for consideration of Union on 29.06.2021 and thereafter rejected by the Central government vide Wireless message dated 27.07.2021 {REFERENCE AT PG. 232-233 OF SLP}</p> <p>(Delay of nearly 2 months in rejecting Representation dated 22.05.2021)</p>	<p>By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously.</p> <p>(PARA 46 AT PAGE 325 OF SLP)</p> <p>The delay by the State Government in disposing of the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu.</p> <p>(PARA 46 AT PAGE 326 OF SLP)</p>

2	<p>FAILURE TO COMMUNICATE DECISION ON THE REPRESENTATION</p> <p>The Central Government's wireless message dated 28 June 2021 directed the SP to collect the Detenu's acknowledgement of receipt. However, the respondents were unable to furnish any proof of such acknowledgement. (PARA 47 AT PAGE 326 OF SLP)</p>	<p>FAILURE TO COMMUNICATE DECISION ON THE REPRESENTATION</p> <p>The Central Government's wireless message dated 27.07.2021 {REFERENCE AT PAGE 236 OF SPL} directed the SP to collect the Detenu's acknowledgement of receipt. However, no such acknowledgement was acquired nor any such proof has been filed by the Respondents.</p>	<p>The failure of the Central and the State Government to communicate the rejection of the appellant's representation in a time-bound manner is sufficient to vitiate the order of detention (PARA 54 AT PAGE 331 OF SLP)</p>
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8. Notice was issued by this Court in the present appeal on 3 January 2022, specifically recording the contention of the appellant based on the applicability of the judgment dated 29 October 2021 in **Sarabjit Singh Mokha vs District Magistrate, Jabalpur** [Criminal Appeal No 1301 of 2021].

9. In pursuance of the order issuing notice, the State of Madhya Pradesh has entered appearance through Mr Sourav Mishra, Additional Advocate General. Besides the learned AAG appearing on behalf of the State, Mr K M Nataraj, Additional Solicitor General has appeared on behalf of the Union of India.

10. The two principal grounds which weighed with this Court in the earlier judgment were that (i) the detenu was deprived of the right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously; and (ii) the failure of the Central and the State governments to communicate the rejection of the representation in a time bound manner would vitiate the order of detention. No distinguishable feature has been indicated in the counter affidavit which has been filed in these proceedings. As a matter of fact, as already indicated above, the appellant was in the pharmaceutical wing of the hospital which was conducted by the appellant in the previous case decided by this Court. Both the AAG and ASG did not dispute the applicability of the earlier judgment of this Court.

11. For the above reasons and following the judgment dated 29 October 2021, we allow the appeal and set aside the order of detention dated 11 May 2021 as well as the consequential extensions which were granted on 8 July 2020 and 30 September 2021.

12. The appeal shall stand disposed of in the above terms.

13. Pending applications, if any, stand disposed of.