

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 02.01.2012

+ **W.P.(CRL) 1072/2011**

IDU KHAN

.... Petitioner

-versus-

UNION OF INDIA & ANR

.... Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr Aruneshwar Gupta with Mr.Manish Raghav and
Mr Nikhil Gupta, Advocates

For the Respondent : Mr Sachin Datta, CGSC and Ms Gayatri Verma,
Advocate

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS JUSTICE VEENA BIRBAL

VEENA BIRBAL, J

1. Present is a petition under Article 226 of the Constitution of India wherein prayer is made for quashing of preventive detention order dated 6th May, 2011 as well as subsequent orders dated 29th June, 2011, 8th July, 2011 and 30.08.2011 respectively by which representations of the petitioner against the aforesaid order have been rejected. The petitioner has also challenged the order dated 30th August, 2011 by which detention order has been confirmed for one

year by the Central Government after seeking advice from the Central Advisory Board.

2. Briefly the facts relevant for the disposal of present petition are as under:-

The petitioner has alleged that one Surender Singh s/o Charan Singh was holder of valid PS-3 licence for the year 2010-2011 for sale, purchase and storage of Poppy Straw and Poppy Powder upto total quantity of 5000 KG. Shri Surender Singh was carrying the said business from C-119, Industrial Area, Malanpur, Bhind, M.P. It is alleged that on 7th October, 2010, Central Bureau of Narcotics, Gwalior (hereinafter referred to as 'CBN, Gwalior') received an information about illegal manufacturing and trade of Poppy Straw and Poppy powder from the aforesaid premises. On receipt of said information, Assistant Commissioner, CBN, Gwalior issued search warrant for the search of the said premises. At about 1.30 pm, on the aforesaid day CBN, Gwalior conducted the search of the said premises. The CBN, Gwalior on the alleged information given by Surendra Singh intercepted the car in which petitioner along with Shiv Shankar Aggarwal and Ram Kumar were sitting and they were asked to accompany them to the said premises. On the search of said premises, 4110.54 kg of poppy straw and 91.240 kg of poppy powder were seized. At about 6 pm, panchnama of the raid conducted by the CBN, Gwalior was prepared. On 8th October, 2010 after completion of seizure of poppy straw and poppy powder at about 2 am, search of car which was intercepted in the afternoon of 7th October, 2010 was carried out wherein objectionable documents in relation to PS 3

licence which was in the name of Surender Singh, documents relating to M/s Salasar enterprises and blank cheques were seized. Thereupon notices u/s 67 of NDPS Act, 1985 were issued to Surender Singh, Shiv Shankar Aggarwal, Ram Kumar Meena and petitioner. Their respective confessional statements were also recorded. It is alleged that in the confessional statement, Surender Singh has stated that PS-3 licence has been procured by the petitioner and Shiv Shankar Aggarwal and he is their employee and his salary is Rs.5000/-. It is alleged that all the accounts of money in relation to illegal trade of poppy powder were managed by Shiv Shankar Aggarwal and petitioner through their accountant Ram Kumar and all trade of illegal poppy straw and poppy powder was carried out by petitioner and Shiv Shankar Aggarwal.

3. The petitioner in his confessional statement has stated that he has been involved in the business of trade of poppy powder for several years. It is alleged that he had also started the business from the said premises along with his associate Shiv Shankar Aggarwal after making an investment of Rs.6 lakhs. He has stated that they have taken the licence in the name of Surender Singh S/o Charan Singh at Malanpur Bhind. He has further stated that they purchased the poppy powder from PS-2 license holder and used to sell the same at high price in Punjab and Haryana and show the same as consumption by fake PS-7 license holder. It is alleged that petitioner has further stated that he used to share the profits equally with Shiv Shankar Aggarwal. Their servant Ram Kumar used to keep the account of business and original licence and stock register of Surender Singh are kept with

them. He has further stated that Ashok Kumar Meena was his servant at a salary of Rs.3500/- who was made the proprietor of M/s Salasar Enterprises. Some of the amount of illegal trade used to come in account of Salasar Enterprises and rest of the money used to come in cash.

4. The co-accused Surender Singh was arrested u/s 8 and 15 of NDPS Act, 1985, Shiv Shankar Aggarwal was arrested u/s 8, 15, 26 and 27 of NDPS Act, 1985, Ram Kumar Meena was arrested u/s 8, 15 and 26 of NDPS Act, 1985 and petitioner was arrested u/s 8, 15, 26 and 27 of NDPS Act, 1985. On 10th October, 2010 notice u/s 67 of NDPS Act, 1985 was issued to Ashok Kumar. Thereafter, confessional statement of Ashok Kumar u/s 67 of NDPS Act, 1985 was recorded and he was arrested u/s 8, 15, 26 and 29 of NDPS Act, 1985.

5. On 27th October, 2010 petitioner had filed bail application before the Special NDPS Judge, Bhind, M.P which was rejected on 11th November, 2010. On 16th November, 2010 petitioner filed bail application u/s 439 Cr.P.C before the High Court of Madhya Pradesh, Gwalior Bench. The CBN, Gwalior filed objections to the said bail application. On 12th January, 2011, High Court of Madhya Pradesh, Gwalior Bench granted bail to the petitioner and Shiv Shankar Aggarwal. On 5th April, 2011, CBN, Gwalior filed the complaint case against the petitioner u/s 8, 15, 26 and 29 of NDPS Act, 1985 before the Special Judge, NDPS Act, Bhind, Madhya Pradesh and the same is pending disposal.

6. The detaining authority on 6th May, 2011 passed the impugned order of detention u/s 3(1) of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the PIT-NDPS Act) and the grounds of detention were communicated to the petitioner under Article 22(1) of the Constitution of India. On 16th June, 2011, petitioner was detained pursuant to the aforesaid detention order. In June, 2011, petitioner filed representation to the Joint Secretary, Ministry of Finance, Government of India against his detention order dated 6th May, 2011. The same was placed before the Central Advisory Board, Delhi High Court. On 29th June, 2011, the Department of Revenue, PIT-NDPS Division informed the petitioner that his representation dated June, 2011 against the detention order dated 6th May, 2011 has been rejected. On 8th July, 2011, Under Secretary, Ministry of Finance, informed the petitioner that his representation to Secretary Revenue, Government of India has been rejected. The petitioner was further informed vide letter dated 30.08.2011, that after considering the opinion of Central Advisory Board, the Central Government has confirmed the detention order dated 06.05.2011.

7. By way of additional affidavit petitioner has stated that on 12th October, 2010, he had filed objection for arrest and retracted statement u/s 67 of the NDPS Act, 1985 but no action was taken. It is further alleged that on 15th February, 2011, petitioner again filed an application in crime case no.1/2010 before the court of Special Judge, Bhind (M.P.) for retraction of statement made before the respondents. It is contended that in representation dated June, 2011, petitioner had

stated that he had filed an application for retraction of statement u/s 67 of the NDPS Act, 1985 when they were produced before the Special Judge, Bhind, but the same has not been considered by the respondents.

8. Aggrieved with the action of respondents, the present petition is filed.

9. Learned counsel for the petitioner has assailed the detention order on the ground that the confessional statement of the petitioner without any corroborative evidence against him cannot be used against him. It is contended that even there is no recovery of any narcotic and psychotropic substance from the petitioner pursuant to the confessional statement, as such the same cannot be used against him. It is contended that the High Court of Madhya Pradesh has already granted bail to the petitioner wherein it has been categorically stated that no poppy straw has been seized from the petitioner. It is also observed in the aforesaid order that there is no documentary evidence that the petitioner was a partner in the firm of Salasar Enterprises with co-accused Shiv Shankar Aggarwal and no criminal history is attributed to the petitioner. It is contended that considering the aforesaid circumstances bail has been granted to the petitioner. It is contended that, in these circumstances, detention order could not have been passed against the petitioner. Learned counsel has further submitted that the petitioner has already retracted the confessional statement, as such the same could not have been used against him. It is further submitted that Surinder Singh was the holder of valid PS-3 licence for the year 2010-2011 for sale, purchase and storage of poppy

straw upto 5000 kg and whatever has been recovered from his premises was below 5000 kg and petitioner is not dealing in any manner for sale of poppy straw and he has nothing to do with the said business.

10. In the counter affidavit, the respondents have taken a stand that detention order dated 6th May, 2011 has been passed against the petitioner on the ground that he along with Shiv Shankar Aggarwal and other co-accused persons were found indulging in illicit trafficking of poppy straw and poppy straw powder. They used to obtain PS-3 licence in the name of others and quantity of poppy straw and poppy straw powder bought against the licence was sold illicitly to various persons. They also got registered a firm M/s Shri Salasar Enterprises for stone and marble commission business and Shri Ashok Meena was made its proprietor. A bank account of M/s Shri Salasar Enterprises was opened in the ICICI Bank and another account in the name of Shri Ashok Meena in Bank of Maharashtra. The blank cheques of M/s Shri Salasar Enterprises signed by Shri Ashok Meena remained either with Shri Shivshankar Aggarwal or Shri Ramkumar Meena. Shri Shivshankar Aggarwal and petitioner had adopted the modus operandi of benami transaction to earn money through the alleged illicit business which was carried out in the name of others. Petitioner used to keep himself safe from Govt agencies. Respondents have denied that petitioner was a daily wage worker and used to be earning his livelihood. It is alleged that the petitioner was involved in the sale of narcotic substance in collaboration with co-accused persons and was the owner of a car with a driver-cum-servant on payment of

₹3500/- per month. It is alleged that Ashok Kumar Meena had been shown as a driver but he had issued two cheques, one for ₹ 2 lakhs in the name of petitioner, another of ₹ 2.70 lakhs in his own name but was encashed by Shiv Shankar Aggarwal. It is alleged that the money generated by illicit trafficking of poppy straw/poppy straw powder was being transferred from the account of servant Ashok Kumar Meena to petitioner and his associate. It is alleged that same proves involvement of petitioner in the business of illegal poppy powder. It is admitted that Surender Singh was a PS-3 licensee for the year 2010-2011. However, Surinder Singh was not doing any business of sale of poppy straw and poppy straw power himself but the same was being done by the petitioner and Shivshankar Aggarwal. It is stated that petitioner in his voluntary statement u/s 67 of the NDPS Act, 1985, has admitted his involvement in the illicit trade of poppy straw. It is stated that the order granting bail in favour of the petitioner is not a bar in passing the detention order under PIT-NDPS Act, 1988. It is stated that detention order has been passed after considering relevant material on record and the confessional statement of the petitioner.

11. As regards the allegations of retraction of confessional statement, the respondents have filed an additional affidavit contending that the petitioner did not file any retraction statement dated 12th October, 2010 or 15th February, 2011, as is alleged. It is further contended that reading the order sheets of the relevant case, pending in the court of Special Judge, NDPS, Bhind (M.P), it cannot be said that any such applications were filed by the petitioner. It is contended that averments in this regard are completely false. No such

application is there in the record of Special Judge, NDPS, Bhind, M.P.

12. Learned counsel for the respondent has contended that detention order is legal and valid in all respects and the same has been passed after due application of mind and on the basis of material on record. It is contended that petitioner never retracted the confessional statement as is alleged. It is contended that petitioner has committed forgery of record to show that he had filed application for retraction of confessional statement. It is contended that the certificate of public prosecutor appearing in criminal case no. 1/2010 of CBN Gwalior as well as order sheets of the concerned court wherein aforesaid case is pending clearly substantiate the stand of respondents that no application for retraction was filed by petitioner. It is contended that petitioner is not entitled for any relief.

13. We have heard the submissions of the parties and perused the record.

14. Perusal of the detention order dated 6th May, 2011 shows that the same has been passed by the detaining authority after considering the material seized by the Preventive Unit of CBN, Gwalior at the time of raid at the godown M/s Balaji Trading Company. At the said godown, Sh. Surendra Singh s/o Charan Singh was present who had stated that he was a retail Poppy Straw seller having PS-3 licence. However, he did not produce the original/copy of the said licence and the inspection book when demanded. He admitted that he was only a licensee by name and the actual owners/operators of the said license were petitioner and one Shivshankar Aggarwal and the entire work of

godown was being dealt with by one Ram Kumar Meena. Thereafter stock registers were checked by the raiding team and excess and unaccounted quantity of 1999.280 kgs of poppy straw was found when compared to the stock register. On the basis of disclosure statement of Surendra Singh, the preventive unit of CBN, Gwalior raided the residence of Shivshankar Aggarwal and found that petitioner along with Shivshankar Aggarwal and Ram Kumar Meena were fleeing in a vehicle no.MP 07-9005. All three were brought at the godown and during the search of godown, CBN, Gwalior recovered 4110.540 kgs of Poppy Straw and 91.240 kgs of Poppy Straw powder. Thereafter the vehicle in which they were trying to flee was searched in the presence of petitioner, Shivshankar Aggarwal and Ram Kumar Meena and the documents relating to transactions carried out with regard to the PS 3 licence in the name of Surendra Singh along with other documents like cash register of M/s Shri Salasar Enterprises dealing with stone and marble commission business were found. The vehicle was registered in the name of Shivshankar Aggarwal. The said team had also recorded the voluntary statement of Surendra Singh wherein he has disclosed the manner in which said business of sale of Poppy Straw powder was being done and gave names of present petitioner and other persons involved in the same. Thereafter, voluntary statement of petitioner u/s 67 of the NDPS Act, 1985 was recorded which is already discussed in brief while dealing with the facts of the present petition wherein petitioner has admitted having started business of illegal trade of poppy after investment of ₹ 6 lakhs and is

sharing the profit with others. He has also admitted incriminating material against him.

15. The detaining authority has noted in the impugned order dated 06.05.2011, that the documents found in the car show some transactions of high value wherein the names of petitioner and Shivshankar Aggarwal were found. The detaining authority has considered that Ashok Kumar Meena, who in his voluntary statement has stated that he was simply a driver, had issued a cheque no.000059 dated 15th September, 2010 for Rs.2 lakh of the ICICI Bank in favour of petitioner.

16. Based on the recovery at the time of raid conducted by the CBN, Gwalior from the godown of M/s Balaji Trading Company, the voluntary confessional statements of present petitioner and other co-accused and other incriminating evidence recovered at the time of raid, the detaining authority has passed the detention order.

17. As regards grant of bail to the petitioner by the High Court of Madhya Pradesh, the same has also been noticed by the detaining authority while passing the detention order in question and has observed as under:-

“I also noted that the Hon’ble High Court of M.P. Bench at Gwalior vide its orders dated 12.01.2011 granted bail to both, Shri Idu Khan i.e you and Shri Shivshankar Agarwal, I am, therefore, convicted that you will again indulge in the illicit trafficking of Poppy Husk and Poppy Straw Powder because of your nexus with your associate Shri Shivshankar Agarwa who has been granted bail. I, therefore, feel that there is compelling necessity to detain you to prevent you from indulging in illicit trafficking of narcotic drugs i.e. poppy husk and poppy straw powder

and accordingly, I have passed the order of detention against you.”

There is no legal bar in passing the detention order even if bail is granted especially when detaining authority is convinced that there is necessity to do so.

18. As regards contention of retraction of confessional statement on 12.10.2010 and thereafter vide application dated 15.02.2011, there is dispute between the parties. The learned counsel for the respondents has denied that voluntary statement was retracted as is alleged. It may be noticed that in the writ petition which was filed on 1st August, 2011, nothing has been stated about retraction of confessional statement made by the petitioner. Learned counsel for the petitioner has fairly conceded this position. However, in the rejoinder affidavit dated 12th September, 2011, to the counter affidavit of respondents, the petitioner has stated that the confessional statement was retracted. The same has been stated in para 3 of reply to the preliminary objections of rejoinder affidavit. For the first time, in the pleadings before the court it has come on 12th September, 2011 that the confessional statement was retracted by the petitioner. No date is mentioned as to when it was retracted.

19. In the additional affidavit of petitioner dated 12.10.2011, it is stated that petitioner had retracted his statement made under section 67 of the NDPS Act, 1985 on 12.10.2010 when they were produced before the learned trial court i.e., Special Judge, NDPS, Bhind (MP). It is further stated that on 15.02.2011 petitioner had again filed

application before Special Judge, Bhind (M.P.) for retraction of statement made before respondents. Reply to the said affidavit has been filed by the respondents wherein the aforesaid averments are denied. It is stated that no application for retraction of confessional statement has been filed/made before the learned Special Judge, Bhind M.P on 12th October, 2010. The order sheet of the said court dated 12th October, 2010 is also annexed to substantiate the stand. Further no material has been placed on record by the petitioner to substantiate his stand that any such application was filed on 12th October, 2010.

20. Learned counsel for petitioner has submitted that application dated 15.02.2011 for retraction of confessional statement was filed before the learned Special Judge, Bhind on 17.02.2011. Learned counsel for respondent has filed copy of order sheet dated 17th February, 2011 of the concerned court. The order sheet dated 17th February, 2011 shows presence of petitioner, Shivshankar Aggarwal and other accused from Bhind jail on the said date. The order sheet records that accused Surendra, Ashok, Ram Kumar produced applications to the effect that they were made to sign blank papers during the custody. The order sheet reveals that copies of applications were given to CBN, Gwalior. Thereafter order sheet dated 19th February, 2011 also shows that CBN, Gwalior on behalf of Government of India has submitted reply to the aforesaid applications. There is no mention of the petitioner's name in the order sheet dated 17.02.2011 or of the petitioner having filed any such application dated 15.02.2011 as well as in the order sheet dated 19th February, 2011. Respondents have also filed a certificate of Special Public Prosecutor

of District court of Bhind to the effect that an application provided to him during the hearing dated 17th February, 2011 before the learned Special Judge, Bhind pertains to accused Ashok Kumar only and no other accused has signed on the said application.

21. We have perused the application dated 15th February, 2011 which is alleged to have been filed on 17.02.2011 and is alleged to be of present petitioner also. The application which is annexed with the counter affidavit of respondents shows that it is moved by one Ashok Singh S/o Mahavir Prasad on 15th February, 2011. The application is a typed one. The name of the petitioner has been written by hand on it at the bottom of the application. The petitioner has filed an affidavit of Sh. Dharmendra Singh Bhadauria, Adv. who is appearing for him and other co accused persons before the Special Judge, Bhind explaining the reasons as to why a separate application for petitioner could not be filed. The counsel has stated that he had drafted an application for retraction of confessional statements of petitioner and other three persons on 15th February, 2011 for filing in concerned court. He had to move the applications on 17th February, 2011. At the time of filing before court learned Special Judge, Bhind, he found three applications in his possession and the application of the petitioner was misplaced. Thereafter, in the application of Ashok, he endorsed the name of the petitioner and filed before the learned Special Judge, Bhind on 17th February, 2011, as such, a joint application of retraction was filed in the name of Ashok and the petitioner. It is further stated that it appears the same has not been inadvertently mentioned in the order sheet dated 17th February, 2011

and 21st February, 2011. As per said counsel no independent application was filed on behalf of petitioner.

Learned counsel for the petitioner has submitted that the affidavit of the aforesaid counsel of the petitioner ought to be believed and the same shows that application dated 15th February, 2011 of Ashok for retraction of confessional statement was made on 17th February, 2011 as the same was in respect of petitioner also. Learned counsel has also relied upon the order dated 25th February, 2011 passed by the Special Judge, Bhind wherein bail application of co-accused Ashok was rejected and especially para 8 of the said order which mentions that Shivshankar Aggarwal and petitioner have retracted alleged confessional statement.

22. The stand of the respondents is that the name of the petitioner has been added later on in the application of Ashok and the record of the trial court has been interpolated. Respondents have also moved an application in this regard wherein a prayer is made for issuance of direction to the Special Judge, Bhind to conduct an enquiry as to whether application filed by Ashok Kumar on 17th February, 2011 was a joint application or individual application of Ashok Kumar.

23. There is certificate on record filed by the Special PP, District Court, Bhind, M.P. dated 29.10.2011 wherein it is stated that the application provided to him during hearing on 17.2.2011 in Criminal case no.1/2010 pending against the petitioner and other co-accused persons was signed by the advocate of co-accused Ashok and no one had signed on the said application. It is further stated that at the bottom of said application only Ashok was written. The name of

present petitioner was not appearing in the said application. The said prosecutor has further certified that the copy of same application was supplied by him to the IO Shri Mukesh Khatri for filing the reply by 21st February, 2011. It is further stated that on that date i.e., 17.2.2011, three separate applications on behalf of Ram Kumar, Surendra and Ashok were submitted in the court.

24. In view of the above discussion, there is controversy as to whether joint application was filed for Ashok and the petitioner Idu Khan on 17.2.2011 or individual application for Ashok was filed. Till date respondents have not filed any application before the concerned court for initiation of enquiry as is contended before us. Considering the facts of the case, it will be appropriate if steps are taken by respondents in the concerned court in this regard.

25. Even assuming that the counsel for the petitioner had endorsed the name of petitioner in the application of retraction of confessional statement of Ashok at the time of filing before the Special Judge, Bhind, petitioner has failed to substantiate that the same was brought to the notice of Special Public Prosecutor who was appearing for the respondents. There is also nothing on record to substantiate that the copy provided to Special Public Prosecutor had the name of petitioner, who in turn had supplied the same to the IO. Under these circumstances, it cannot be said that the detaining authority had failed to consider the alleged retraction of confessional statement of the petitioner. It is not a case where the sponsoring agency had a retraction statement and that the same was withheld from the detaining authority. On the contrary, from the material on record, it appears that

neither the sponsoring authority nor the detaining authority was ever made aware that the purported retraction had been made, if at all.

As discussed above, on the basis of material on record, the detaining authority has arrived at its satisfaction and has passed the impugned detention order. The petitioner has not been able to substantiate any of the grounds of challenge.

We find no merit in the writ petition. We accordingly dismiss the same.

VEENA BIRBAL, J

BADAR DURREZ AHMED, J

JANUARY 2nd, 2012
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