

(1987) 11 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 4321 of 1987

Abdul Latheef

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-11-1987

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 22, 226
Customs Act, 1962 — Section 108

Citation : (1988) 17 ECC 5

Hon'ble Judges : S.A. Kader, J;E.J. Bellie, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.A. Kader, J.—This writ petition is filed under Article 226 of the Constitution of India seeking the issuance of a writ of habeas corpus quashing the order of detention passed against the petitioner on 9-5-1986 and for setting the petitioner at liberty.

2. The impugned order of detention has been passed by the 1st respondent-State of Tamil Nadu in exercise of the powers conferred on it by and u/s 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, with a view to preventing the detenu from smuggling gold.

3. On the night of 26/27-9-1985 at about 4-30 a.m. the petitioner arrived at the Airport at Madras from Abudhabi by Air India flight A.I. 906. He produced all the packages including one "Long March" suit case for Custom's examination and orally declared that the total value of the goods was Rs. 2,550. His declaration was accepted and duty was levied accordingly. At the exit gate, the petitioner was intercepted by the intelligence officers and taken for detailed examination. He was again questioned before the commencement of examination whether he had kept concealed any gold either in the suit case or on his person. The

petitioner denied having concealed anything. The suit case was therefore subjected to thorough examination, and it was found that there were 35 gold bars each weighing ten tolas kept fixed at the bottom of the suit case, all with foreign markings. A statement was recorded from him on 27-9-1985 and he was arrested on that day and produced before the Additional Chief Metropolitan Magistrate, who remanded him. Subsequently the petitioner was released on conditional bail. This incident has given rise to the passing of the impugned order of detention.

4. Though several grounds have been taken in the affidavit in support of this petition, challenging the validity of the order of detention, Mr. Abdul Gani, the learned Counsel for the petitioner confined his arguments to the following submissions only:

- 1) There has been inordinate and inexplicable delay in passing of the order of detention;
- 2) Copies of material documents, such as bail applications filed by the petitioner, the objection filed by the Customs Department and the orders of the Magistrate passed thereon have not been furnished to the petitioner detenu;
- 3) The fact that the petitioner/detenu was subjected to ill-treatment by the customs official was not placed before the detaining authority; and
- 4) The petitioner/detenu did not know English and the grounds of detention as well as the documents have not been furnished in Malayalam, which is the only language known to him.

We shall now deal with the above points of submission,

5. Submission No. 1: The incident, which has led to the passing of the impugned order, took place in the early hours of 27-9-1985, whereas the order of detention has been passed against him only on 9-5-1986, that is, after a delay of about eight months. It is urged that the delay is extraordinary and has not been properly explained, and the order of detention is therefore vitiated. In *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another*, , the Supreme Court pointed out:

Delay ipso facto in passing an order of detention after the incident is not fatal to the detention of a person, for in certain cases, delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority.

The detaining authority is in no legal liability to tell or satisfy the detenu as to the causes of delay; it is under an obligation to satisfy the court as to the causes of delay to show that there was no infraction of the constitutional provisions laid down in Sub-article (5) of Article 22 of the Constitution.

In a recent decision in *Shiv Narain Hakim v. Union of India* AIR 1986 SC 810 This is obviously a reference to *Shiv Ratan Makim Vs. Union of India (UOI)* and

Others, at page 612--Ed. the learned Judges of the Supreme Court observed.

It is no doubt true that where an unreasonably long period has elapsed between the date of the incident and the date of the order of detention, an inference may legitimately be drawn that there is no nexus between the incident and the order of detention and the order of detention may be liable to be struck down as invalid.

In paragraph 26 of the counter affidavit, the 1st respondent has come forward with the following explanation for the delay; The gold bars were seized from the detenu on 26/27-9-1985 and a statement was recorded from him on 27-9-1985. A telex message was sent to the Assistant Collector of Central Excise, Kozhikode, to cause search of the residential premises of the detenu, and a reply was received on 23-10-1985. Summons were sent to the detenu on 13-12-1985 for his appearance before the Superintendent of Customs (Intelligence) on 30-12-1985. The detenu did not respond. A further statement was recorded from the detenu on 24-1-1986 u/s 108 of the Customs Act by the Superintendent, S.C.P. Unit, Calicut and the same was received in the Custom House, Madras on 3-2-1986. Papers were then processed and after due consideration, proposals for detention were received by the 1st respondent on 25-2-1986, and after due consideration, the order of detention was passed on 9-5-1986. In the instant case, the petitioner has not responded to the summons issued by the Customs Department, and hence he had to be examined at Kozhikode on 24-1-1986. In the circumstances, we do not think that the delay was extraordinary or unexplained. This is not therefore a case where the order of detention can be quashed on the ground of delay.

6. Submission No. 2: It is urged by Mr. Abdul Ghani, learned Counsel for the petitioner that copies of the bail applications made by the petitioner/detenu before the Additional Chief Metropolitan Magistrate, objection filed by the Customs Department, and the orders passed by the Metropolitan Magistrate have not been furnished to him along with the grounds, and this failure violated the provisions of Article 22(5) of the Constitution of India. Ground No. 9 in the grounds of detention referred to the arrest of the detenu, his production before the Additional Chief Metropolitan Magistrate and his enlargement on bail. It is therefore clear that the bail applications, the objection filed by the department and the orders passed by the Magistrate have been taken into consideration by the detaining authority in passing the impugned order of detention. In paragraph 17 of the counter-affidavit filed by the 1st respondent, this fact is also admitted. But copies of these documents have not been furnished to the detenu. It has been repeatedly pointed out that the grounds of detention served on the detenu must be accompanied by copies of documents referred to or relied on or considered by the detaining Authority. As pointed out by the Supreme Court in *Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others*, ,

Once the documents are referred to in the grounds of detention it becomes the bounden duty of the detaining authority to supply the same to the detenu as part

of the grounds of pari passu the grounds of detention Thus it is absolutely clear to us that where the documents concerned are referred to, relied upon or taken into consideration by the detaining authority, they have to be supplied to the detenu as part of the grounds so as to enable the detenu to make an effective representation immediately on receiving the grounds of detention.

We therefore hold that non-furnishing of the copies of the above documents has deprived the detenu of the valuable opportunity of making an effective representation and the order of detention is bad.

7. Submission No. 3: It is the case of the petitioner that when he was produced before the Additional Chief Metropolitan Magistrate on 28-5-1985, he complained to the learned Magistrate of the physical ill-treatment meted out to him, and the learned Magistrate recorded the same. According to the learned Counsel for the petitioner/detenu this fact has not been brought to the notice of the detaining authority and had this matter been brought to its notice, it would have swayed the detaining authority in his favour. In paragraph 11 of the counter affidavit filed by the 1st respondent, it is admitted that the detenu was produced before the Additional Chief Metropolitan Magistrate for remand on 28-9-1985, and that he complained that he was beaten with hands by customs officials. The learned Magistrate must, therefore, have recorded this complaint. But this document has not been placed before the detaining authority. It is indeed a material document, which would have influenced the mind of the detaining authority one way or the other. The failure to produce this document before the detaining authority has resulted in non-application of the mind of the detaining authority in a proper way, and the order is therefore vitiated.

8. Submission No. 4: It is strenuously urged by Mr. Abdul Ghani, learned Counsel for the petitioner/detenu that the detenu knew only Malayalam, while the grounds of detention as well as all the documents have been furnished to him only in English, and failure to supply Malayalam translations of the grounds of detention and other documents is violative of Article 22(5) of the Constitution of India and the petitioner/detenu's continued detention is illegal. We have gone through the statement recorded from the petitioner at their port of Madras. It has been recorded in English and the petitioner/detenu would admit that he has studied up to S.S.L.C. and failed only in the public examination. He has also signed the statement in English in an artistic manner. We are therefore unable to accept the contention of the learned Counsel for the petitioner/detenu that the detenu does not know English language, and could not read and write English and there was therefore no effective communication of the grounds of detention and other documents. This ground must also fail.

9. In view [of] our findings on submission Nos. 2 and 3, we hold that the order of detention cannot stand and has to be quashed.

10. In the result, the writ petition is allowed. The order of detention passed against the petitioner/detenu is set aside, and he is ordered to be set at liberty

forthwith.