

(1984) 11 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 6528 of 1984

Abdul Rahiman

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-11-1984

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 11, 3, 5A, 8, 9
Constitution of India, 1950 — Article 22, 32
General Clauses Act, 1897 — Section 21
Maintenance Orders Enforcement Act, 1921 — Section 10

Citation : (1985) 6 ECC 1

Hon'ble Judges : K. Bhaskaran, Acting C.J.; M.P. Menon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.P. Menon, J.—This is a habeas corpus petition directed against the detention of one K.P. Abdul Majeed under Clauses (ii) to (iv) of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2. The detention order came to be passed on 14th June, 1984 under the following circumstances. One Anjilath Ahamed reached the Trivandrum Airport on 6th February, 1984 by Air India flight from Dubai, and declared that he was carrying goods worth about Rs. 1,450. A search of his baggage by the customs authorities however revealed that he was carrying textiles and other goods in commercial quantities worth about Rs. 7,940, besides 15 gold biscuits worth Rs. 2.21 lakhs concealed in the cavities of his suit case. A cover addressed to "Abdulla" and containing a piece of paper with eight names and certain code words was also found on his person. On interrogation, Ahmed stated that the goods were entrusted to him at Dubai by Basheer (brother of the detenu) and Majeed of Alkuluthu Hotel, for being handed over to the detenu who had instructions to wait for him at the Trivandrum airport, wearing white shoes for

identification. The detenu had also instructions to provide him with extra funds, if found necessary for customs clearance, and to pay him Rs. 1,000 as remuneration. The customs officers thereupon apprehended the detenu who was waiting outside the arrival hall of the airport. On interrogation he too stated that he was waiting to take delivery of the baggage brought by the passenger. He also stated that he had been in contact with Basheer and Alkuluth Majeed of Dubai, that he was engaged for some time past in taking delivery of smuggled goods sent from Dubai through different passengers and carrying them to Abdulla Patel of Bombay, that he was being regularly remunerated for this work and that in January, 1984 alone he had visited Trivandrum for the purpose on six different occasions registering himself as "Williams" in the Hotel Lucia. A search of his room in the hotel resulted in the discovery of three pieces of paper, two in his own handwriting, containing the names of Anjilath Ahmed and others. The detenu was then arrested and produced before a Magistrate for remand. The customs officers thereafter questioned two employees of the hotel, some of the persons named in the pieces of papers recovered, and the detenu and Anjilath Ahmed again (on 10th February, 1984). It was on the basis of information so collected and forwarded to the State Government that the Home Secretary passed the order of detention on 14th June, 1984.

3. The State Government reported to the Central Government u/s 3(2) on 18th June, 1984. The detenu was taken into custody on 22nd June, 1984. Ext. P2 grounds of detention, drawn up in English, was served on the detenu on 24th June, 1984 along with all the connected papers and statements. A Malayalam version of the grounds was served on 5th July, 1984. On 26th July, 1984 the Central Government made a declaration u/s 9(1). In the meanwhile, the State Government had also made a reference, u/s 8(b), to the Advisory Board. On 6th August, 1984 the detenu made a representation to the State Government, and the State Government forwarded it to the Collector of Customs for comments, on 7th August, 1984. The Advisory Board met on the 7th, and after hearing the detenu in person, reported to the State Government on the same day that there was sufficient cause for his detention. In the light of the above report, the Government passed an order on 14th August, 1984 confirming the detention for a period of one year. By a communication dated 13th August, 1984 the Collector of Customs had offered his remarks on the detenu's representation, in response to the State Government's letter dated 7th August, 1984 and after considering the same, the Government passed Ext. P7 order, also on 14th August 1984, rejecting the representation.

4. The contentions raised in the writ petition, in the background of the above facts, are the following:--

(i) the detenu was unable to read and understand the grounds of detention furnished to him in English, on 24th June, 1984, and the Malayalam version was supplied beyond the time specified in Section 3(3);

(ii) one of the two grounds for detention was either non-existent or too remote;

(iii) at any rate, the detention order was based on two instances; and in the light of the State's stand in the counter-affidavit that one of them was not taken into account, the other alone was insufficient to justify the detention; and

(iv) the detenu's representation dated 6th August, 1984 was not placed before the Advisory Board, with or without the comments of the detaining authority, at any time.

5. It should at once be stated that we are not impressed by point No. (i). The detenu had admittedly studied up to pre-degree, and he should therefore be presumed to be fairly conversant with English. Ext. P2 contained only a narration in simple English of the facts and circumstances that had led to his detention, and these narrations themselves were almost wholly based on the statements of the detenu, of Anjilath Ahamed and Amerudhin, and certain mahazars, which were all in Malayalam and copies of which had all been given on 24th June, 1984 itself. By a mere reading of these statements and mahazars the detenu could have understood that he was being detained for alleged participation in abetting the smuggling of goods, transporting them and dealing with them on a regular basis, in collaboration with Basheer and Alkuluth Majeed of Dubai, and that the detaining authority was taking the view that it was necessary to detain him in order to prevent him from engaging in such activities. In the statement given on 6th February, 1984 the detenu had almost conceded that he was part of a smuggling racket which was operating for some time; and in the second statement given on 10th February, 1984, he had stated that he was in frequent contact with the Dubai people and was also engaged in selling the gold pieces and paying the nominees of the said two persons. It is impossible to hold, on the facts and circumstances of the case, that the grounds of detention were not communicated to the detenu in time and in a manner not reasonably sufficient to enable him to make an effective representation, within the meaning of Article 22(5) of the Constitution.

6. Turning to points (ii) and (iii) which can be considered together, we cannot subscribe to the view that the detention order in the case on hand stands on two separate grounds or instances. It is settled law that "grounds" in the context of preventive detention laws means the conclusions drawn by the detaining authority from the facts or particulars which persuaded it to pass the detention order. In view of the constitutional requirement that a detenu should be given an effective or reasonable opportunity to make representations against the detention order, it may not be sufficient to merely supply him with the conclusions or inferences forming the "grounds"; the factual constituents on which the subjective satisfaction of the authority is founded should also be communicated to him. But that is different from saying that all the facts, particulars or events which form the basis of a "ground" are themselves separate grounds. A careful analysis of Ext. P2, in the background of the contentions raised by counsel, will itself illustrate the point. Paragraph 1 of Ext. P2 refers to the circumstances under which Anjilath Ahamed was searched, on arrival at the

airport on 6th February, 1984, and to the recovery of the smuggled goods and a letter from him. Paragraph II deals with the contents of the letter and the codes used therein. Paragraph III contains summaries of the statements taken from Ahmed and the detenu on 6th February, 1984 and 10th February, 1984. Paragraph IV makes a passing reference to the surrender of passport by the detenu, and paragraph V deals with the search of certain houses, and preparation of mahazars. Paragraph VI reproduces the contents of the statements taken from note of an Enforcement case of 1983 involving seizure of Indian currency and a statement made by the detenu's brother implicating him. And the last paragraph reads:--

It is evident from the above that.

(i) Shri Basheer (your brother), Habeeb Bank, Dubai, Sri Majeed, proprietor of Alkuluthu Hotel, Dubai, and yourself are together running a racket in which foreign currency are collected from the Indian Nationals at Dubai with the promise of compensatory payment at their home and with this amount gold and other goods are purchased from Dubai and smuggled into India in passengers baggage. The said smuggled goods are sold in India and with the sale proceeds compensatory payments are being made as pre-planned. The above operations at the Dubai end are being attended to by your brother Basheer, and Majeed, proprietor of Alkuluthu Hotel, and the operations at this end (in India), namely, receiving passenger's baggages, transporting of smuggled goods, sales of smuggled goods and compensatory payments are being attended to by you. The details of the persons and the amount to be given are being communicated to you by Basheer from Dubai either by coded letters sent through the passengers or by telephonic messages. The statement of Shri M.F. Amerudheen, the paper containing coded messages recovered from Shri Mukri Anjilath Ahamed, paper bits containing the addresses and code recovered from your brief case and the statement of the receptionist and house keeping supervisor of Lucia Hotel, Trivandrum are corroborative evidence to show the existence of the above smuggling gang and your and your brother's involvement.

(ii) The paper containing the addresses of eight persons and certain codes recovered from Mukri Anjilath Ahamed on 6th February, 1984 was sent by Basheer (your brother) from Dubai to you. The codes shown in the paper are the instructions to you relating to compensatory payment to be made. Basheer telephonically informed you the names of Shri Mukri Anjilath Ahamed and name and address of Shri M. Ebrahim Amer. These names and addresses were written down by you in the paper bits, which were recovered from your briefcase on 6th February, 1984 by the Customs Officers.

(iii) In the statement of Amerudhin it is stated that he had paid 11,800 dirhams to your brother Basheer at Dubai and your brother promised him Rs. 40,000 compensatory payment. This shows that the code "DJ" shown against the address of Amer on the paper recovered from Shri. Mukri Anjilath Ahamed and on the paper bits recovered from your briefcase denotes Rs. 40,000. Similarly it

is evident from your own statement and from the statement of Mukri Anjilath Ahamed that code "A" on the paper denotes Rs. 1,000. All other codes on the letter denotes to certain amounts to be paid to the persons mentioned against each.

(iv) On several previous occasions you have received baggage, sent along with the passengers by your brother Basheer and Majeed from Dubai and in 1984 alone you have received such passenger's baggages on 7 items. The baggages of all the passengers sent by Basheer and Majeed were containing gold.

(v) During your visit to Trivandrum to receive the passengers you used to stay in Lucia Hotel in fictitious names and on 5th February, 1984 you stayed in Lucia Hotel in the name of Williams. This was confirmed by statement of the receptionist and the statement of the house keeping supervisor of the Lucia Hotel.

The grounds of detention have thus to be found in the portion extracted above. And on comparing the recitals in paragraphs I to VI of Ext. P2, with the statements, mahazars and papers referred to therein, we find no difficulty in holding that the 1983 incident has not been treated as a separate or distinct ground, or that even as an instance, it has played any decisive role in the matter. In other words this is not a case of detaining a person on two different grounds one of which is found to be irrelevant or non-existent, even assuming that such an approach to the legality of the detention is now possible, in view of Section 5A of the Act.

7. Mrs. Swaran Ahuja Vs. State of Karnataka, relied on by counsel was a case where the detention was founded on two grounds, and the Court found that the first was totally unsustainable inasmuch as complicity in smuggling was accepted to be established by applying the principles of agency in partnership law. The second ground also proved to be vague, and unsubstantiated by a counter-affidavit. While ordering the release of the detenu under the above circumstances, the Court also observed:--

So far as the second ground is concerned, we are of the view that notwithstanding the introduction of Section 5A, if one of the grounds on which the order of detention is made is sought to be sustained by several instances and if one or more of those instances is shown to be either irrelevant, stale, nonexistent, indefinite or vague, or otherwise deficient, that ground itself must be held to have become infirm. Such a consequence is not provided against by the introduction of Section 5A.

There can be no doubt that a detention has to be declared bad when all the grounds fail, in spite of Section 5A; but it is difficult, with respect, to go further and suggest that when a ground is based on a series of instances, the mere failure of one such instance, without anything more, will be fatal to the ground itself. At any rate, that is not the factual situation in the present case, as we have explained earlier.

8. It is also wellsettled that even a single occurrence or incident can, under certain circumstances, afford a valid ground for detention. In *Dharua Kanu Vs. State of West Bengal*, it was contended that a single instance of removing fish plates from a running track was insufficient to assume that the person concerned would continue to act in a manner justifying preventive detention under the Maintenance of Internal Security Act, 1971. Mathew, J., rejected the contention and observed:--

It cannot be said that the satisfaction of the detaining authority on the basis of this single occurrence that if the petitioner were to be left at large he would indulge in similar activities in future and thus act in a manner prejudicial to the maintenance of supplies and services essential to the community was not based on adequate materials.

9. That takes us to the last contention that the detenu's representation dated 6th August, 1984 was not placed before the Advisory Board at all. Section 9 of the Preventive Detention Act, 1950 provided that within 30 days of the detention, the appropriate Government should place before the Advisory Board "the grounds on which the order has been made and the representation, if any, made by the person affected". The question arose whether the duty of the Government was only to forward the representation to the Advisory Board, or whether it had an independent obligation to consider it even before the meeting of the Board. And in *Sk. Abdul Karim and Others Vs. State of West Bengal*, the Supreme Court held:

The obligation of the detaining authority to consider the representation is different from the obligation of the Advisory Board to consider the representation later on at the time of hearing the reference. It follows, therefore, that even if reference is to be made to the Advisory Board u/s 9 of the Act, the appropriate Government is under legal obligation to consider the representation of the detenu before such a reference is made.

The position was further clarified in *Pankaj Kumar Chakrabarty and Others Vs. The State of West Bengal*, in the following terms:--

In our view it is clear from Clauses (4) and (5) of Article 22 that there is a dual obligation on the appropriate Government and a dual right in favour of the detenu, namely, (1) to have his representation irrespective of the length of detention considered by the appropriate Government and (2) to have once again that representation in the light of the circumstances of the case considered by the Board before it gives its opinion.

As the provisions of Section 10 of the Maintenance of Internal Security Act, 1971 were similar to those of Section 9 of the Preventive Detention Act, 1950 the dual obligation of the Government, as explained by the Court, continued under the MISA also. But Section 8 of the COFEPOSA imposed no specific obligation on the Government to place the representation of a detenu before the Board, and some of the High Courts inferred from this circumstances that the law laid down by the

Supreme Court was not applicable to detention under this enactment. The Supreme Court, however, did not agree with this view; and in *Narendra Purshotam Umrao Vs. B.B. Gujral and Others*, the Court said that the constitutional safeguards implicit in Article 22(5), and as explained by it in the decisions noticed earlier, should be read into the provisions of Section 8(b) of the COFEPOSA also. That is to say, the dual rights secured to the detenu continue to survive under the COFEPOSA also, despite different phraseology.

10. The position therefore is that the Government should first consider the representation of the detenu and take a decision by itself, and then place it before the Advisory Board, if that is possible before it meets. But suppose the representation is received by the Government after the deliberation of the Board? It can even then make up its own mind on the points raised and accept or reject it, but is there a further obligation on its part to reconvene the Board for examining such a representation?

11. The only case that seems to throw light on this aspect is *Ram Bali Rajbhar Vs. The State of West Bengal and Others*, . The detenu there made a representation on 8th October, 1973 and that was considered by the Advisory Board on 5th November, 1973. The detention was confirmed by the Government on 8th November, 1973 in the light of the report of the Board, and the order was served on the detenu on 14th November, 1973. On 27th November, 1973 he made a second representation, and the question that arose was what action the Government could or should take thereon. The Supreme Court indicated that in view of Section 14 of the MISA empowering the Government to revoke a detention order, and in the light of Section 21 of the General Clauses Act, the second representation could be treated as a request for revocation and that even in the absence of a specific provision in the Act to that effect, the Government could ask the Advisory Board to meet again and give its opinion on such a request. But it is significant to note that the continued detention of the person concerned was not held to be bad on account of Government's failure to do so; the petition under Article 32 was disposed of with a direction to the Government to consider the second representation in the manner indicated.

12. In the present case the representation was made on 6th August, 1984, i.e., before confirmation of the detention on 14th August, 1984. It cannot, therefore, be equated to a second representation requesting for revocation of the detention order, though Section 11 of the COFEPOSA also provides for revocation. That apart, the Advisory Board which met on 7th August, 1984 had given a personal hearing to the detenu. It is reasonable to assume that the detenu was thereby given an opportunity by the Board to place before it everything he had set forth in the representation made on the previous day. If the requirement of law is that the Government should consider every representation by itself, that was satisfied in this case when the representation was duly disposed of by it on 14th August, 1984 after obtaining the comments of the Customs Collector. If the requirement is that the Board also should consider whatever a detenu has to say, that was

also satisfied when he was given a hearing on 7th August, 1984. We are unable to agree with counsel that the Government was bound to countermand the meeting of the Board fixed for 7th August, 1984, on receipt of the detenu's representation dated 6th August, 1984, and to arrange for another meeting of the Board after the receipt of comments from the Customs Collector. As pointed out by the Supreme Court in *Frances Coralie Mullin Vs. W.C. Khambra and Others*, the time-imperative can never be absolute or obsessive;

There has to be lee-way, depending on the necessities (we refrain from using the word "circumstances") of the case. One may well imagine a case where a detenu does not make a representation before the Board makes its report making it impossible for the detaining authority either to consider it or to forward it to the Board in time or a case where a detenu makes a representation to the detaining authority so shortly before the Advisory Board takes up the reference that the detaining authority cannot consider the representation before then but may merely forward it to the Board without himself considering it. Several such situations may arise compelling departure from the time-imperative. But no allowance can be made for lethargic indifference. No allowance can be made for needless procrastination. But allowance must surely be made for necessary consultation where legal intricacies and factual ramifications are involved.

Even otherwise, there is no point in treating the representation in question as a request for revocation and directing the Government to place it before the Board because, as we have already indicated, the Board had heard the detenu even after the making of the representation.

In the result, the Original Petition fails and it is accordingly dismissed.