

(1988) 05 DEL CK 0045

In the Delhi High Court

Case No : Criminal Writ Petition No. 529 of 1987

Abdul Rehman Jumakhan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-05-1988

Acts Referred:

Citation : (1988) 2 Crimes 537 : (1988) 35 DLT 140

Hon'ble Judges : S.B. Wad, J; Gian Chand Jain, J

Bench : Division Bench

Advocate : Harjinder Singh, Rohit Kochhar, S.K. Mishra, S.K. Dubey and Rajeev Nanda, for the Appellant;

Judgement

G.C. Jain, J.

(1) This judgment shall also dispose Criminal Writ Petition No. 530/87 (Sh. Sattar Usman Wadiwala v. Union of India & Ors.) as both these petitions raise common questions of fact and law. On April 22, 1987 Sh. Abdul Rehman Jumakhan (petitioner in CrI. W. 529/87) and Sh. Sattar Usman Wadiwala (petitioner in Cri. W. No. 530/87) arrived at Calcutta Airport from Hong Kong via Bangkok. They were intercepted by the Intelligence Officers of the Custom. Their person and baggage were searched. On personal search Indian currency amounting to Rs. 10,000.00 was recovered from the possession of each of them. No contraband item was recovered from their baggage. However, after protracted interrogation both of them confessed that they had secreted contraband gold bars inside their rectum, Thereafter Sattar Usman Wadiwala ejected through his anal passage three packets containing six gold bars of 10 tolas each. Similarly Abdul Rehman Jumakhan ejected through his anal passage three packets containing six gold bars of 10 tolas each. They had no valid documents in support of the importation of the said gold bars. The Indian currency, gold bars, traveling documents etc. were seized. Both of them, thereafter, it is stated, made confessional statement before the Custom Officers.

(2) They were arrested on April 22, 1987 and were produced before the Chief Judicial Magistrate, North 24 Paraganas Barasat on April 23, 1987 who remanded them to judicial custody till 7.5.1987. It was further extended from time to time till July 1, 1987. They applied for bail before the Calcutta High Court. Their applications were rejected on May 14, 1987. The bail was, however, granted by the High Court of Calcutta on June 19, 1987 on certain conditions. On June 26, 1987 the petitioners moved applications before the High Court for modification of the bail orders dated June 19, 1987 and the orders were modified on July 6, 1987.

(3) On July 2, 1987 Sh. S.K.Kohli, Joint Secretary to the Govt. of India (respondent No. 2), especially empowered in this behalf, with a view to prevent them from smuggling goods in future, directed their detention u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 by two separate orders-one in respect of Abdul Rehman Jumakhan and the other in respect of Sattar Usman Wadiwala. The detention orders were served on them on July 7, 1987 when they were in Dumdum jail, Calcutta.

(4) Their cases were referred to the Advisory Borad. They found that there were sufficient grounds for their detention. On examining the reference the Central Govt. confirmed their detention, by order dated September 29, 1987. In the case of Jumakhan, it was directed that he be detained for a period of one year from the date of the detention, i.e. from July 7, 1987. In the case of Wadiwala, however, it was directed that he be detained for a period of two years from the said date of detention. The petitioners made representations to the authority but with no success. Now they have filed these petitions under Article 226 of the Constitution of India for quashing the detention orders.

(5) The main submission made by learned counsel for the petitioners is that there was non-application of mind by the detaining authority as certain vital and material facts were not brought to the notice of the detaining authority, and the same were, Therefore, not taken into consideration by that authority. This plea is contained in para Vii (iv) which reads :-

"VII.That there has been suppression of vital aad material facts from the detaining authority. The following amongst other facts and documents have been suppressed from the detaining authority :-

(IV)Order dated 19.6.87 of the Hon"ble High Court of Calcutta granting bail to the petitioner and to the other person Shri Sattar Usman Wadiwala."

(6) In the counter affidavit filed on behalf of the respondents it was stated :-

"VII.I say that the contents of this para are wrong hence denied. It is further denied that any vital and material fact has been suppressed. It is submitted that I was aware of the fact that the petitioner was in judicial custody inspire of the order dated 19.6.87 passed by the Hon"ble High Court of Calcutta. It is submitted that application dated 26.6.87 filed by the petitioner in the Hon"ble

High Court of Calcutta for modification of the bail order dated 19.6.87 was fixed for hearing, on 6.7.87 whereas the detention order was passed on 2.7.1987. It is also submitted that the order dated 14.5.87 passed by the Hon"ble Court of Calcutta rejecting the bail application of the petitioner and order dated 19.6.87 of the Hon"ble High Court of Calcutta granting bail to the petitioner and other person Shri Sattar Usman Wadiwala were considered by me and also communicated to the petitioner vide Section 23 and Section 28 of the list of documents supplied to the petitioner."

(7) These averments reveal that the fact that the petitioners had been granted bail by the High Court of Calcutta on 19th June, 1987 had been brought to the knowledge of detaining authority and he was aware of this fact. However, admittedly, the exact bail order was not brought to the attention of the detaining authority. All what was intimated to him was a letter dated 19th June, 1987 by Sh.Amit Talukdar, Advocate. This is clear from the averments reproduced above where it was stated "that the fact that the petitioners had been granted bail on 19th June, 1987 had been considered and also intimated to the petitioners vide documents at Section 23 and Section 28". At Section 23 and Section 28 are letters dated 14th May, 1987 and 19th June, 19b7 of Sh. Amit Talukdar, Advocate intimating the operational part of the order passed by Calcutta High Court on 14th May, 1987 and 19th June, 1987 respectively.

(8) Learned counsel for the petitioner contended that the bail was granted on certain conditions. Those conditions constituted vital material facts. Thus vital facts were not brought to the notice of the detaining authority and there was non-application of mind by the detaining authority.

(9) Learned counsel for the respondents contended that the detaining authority was not required to know the terms of the bail order and the knowledge of the factum of grant of bail was sufficient.

(10) The question which arises for consideration is whether the conditions on which the bail was granted to the petitioners constituted vital and material facts and what was the effect of the information conveyed by Sh.Amit Talukdar, Advocate ?

(11) The bail order and the letter dated 19th June, 1987 of Sh. Amit Talukdar, Advocate intimating the factum of grant of bail read as under: -

"LET the accused/petitioners be released on bail of rupees one lakh each with five sureties of rupees twenty thousand each, one of whom should be local to the satisfaction of the Sub Divisional Judicial Magistrate, Barasat, on condition that they shall meet the Investigation Officer everyday for one month and thereafter twice a week, until further orders in as much as the registered sureties at Barasat can furnish bail for Rs. 20,000.00 only.

BEFORE the petitioners are released on bail they will provide the Investigating officer with an address where they will be residing within the jurisdiction of this

Court.

THE International Passports of the petitioners will be retained until further orders.

The 19th June, 1987. Padma Khastgir A.K. Chatterjee." "Supdt. of Customs (Preventive) 19.6.87 R & I Customs House, Calcutta. Sir, Re. Sattar Hussain Wadiwala v. UOi Today Khastgir & Chatterjee, Jj granted bail to the above petitioner and Mr. A.R. Jumankhan to the satisfaction of the Ld. Sdm Barasat of Rs. 1.00000.00 each on condition to see the I/O every working day for month and to furnish the local address before his release, and thereafter for twice a week," Yours faithfully, Amit Talukdar Advocate"

(12) Examination of the bail order. shows that the bail had been granted on petitioners" furnishing of bail of Rs. I lakh each with five sureties of Rs. 20,000.00 each, one of whom should be local, to the satisfaction of the Sub Divisional Judicial Magistrate, Barasat. It was subject to further conditions that they will meet the investigation Officer everyday for one month and thereafter twice a week until further orders and the registered sureties at Barasat should furnish bail of Rs. 20,000.00 only. The petitioners were also required to provide the investigating officer with the address where they were residing within the jurisdiction of the Court. It was also ordered that their International Passports will be retained until further orders.

(13) By means of the letter dated 19th June, 1987 the learned Advocate intimated only about the grant of bail on furnishing bail bond in the sum of Rs. I lakh each to the satisfaction of the sub Divisional Judicial Magistrate and subject to the conditions that they shall meet the Investigating Officer everyday for one month twice a week and that the petitioners were also required to furnish their local address before their release. Two facts, namely, (i) that they were to furnish five sureties out of which one was to be local, and (ii) that their international passports had been retained, were not intimated to the authorities. These facts, consequently were not brought to the notice of the detaining authority and were not considered by him.

(14) Were these facts vital facts ? In our considered opinion the reply must be in the affirmative. These facts, especially the fact that their international passports had been retained, could have persuaded the detaining authority to desist from passing the detention order, which order had been made with a view to prevent them from smuggling goods, because by retention of their passports the chances of their continuing smuggling did not exist or were reduced to a great extent. The detaining authority might have passed the detention orders inspire of these facts keeping in view the overall situation. One cannot say with definiteness which way he would have reacted. In our view these facts were material facts. Absence of consideration of these facts amounted to non-application of mind on the part of the detaining authority rendering the detention orders invalid.

(15) There is another infirmity. One Abdul Zabbar made a representation dated 31st August, 1987 (Copy Annexure C) on behalf of Abdul Rehman Jumakhan.

Similar representation was made by Mohd. Arif on behalf of Sattar Usman Wadiwala. It was stated in the representation that the detenus had not been supplied with the copy of the order dated 19th June, 1987 of the High Court of Calcutta granting bail to the detenus. It was further stated that the said document was very relevant and material. The detaining authority was requested to supply the same. Inspire of these requests the exact order dated 19th June 1987 of the High Court of Calcutta was not supplied by them, as is clear from the Memorandum (Copy Annexure E) dated 24th September, 1987. It was stated that they had already been supplied with the order dated 19th June, 1987 vide documents at Serial No. 23 and 28. As stated above the document at SI. No. 23 and 28 were letters sent by the Advocate intimating the factum of rejection and then grant of bail. It did not include all the conditions on which the bail had been granted. Thus this vital document was not supplied. Non-supply of this document jeopardised their right of making an effective representation. The orders of detention were liable to be quashed on this ground as well.

(16) In the view taken above we need not go into other submissions made by the learned counsel for the petitioners.

(17) In conclusion we accept the petitions and quash the orders of detention and direct the release of the petitioners forthwith unless they are liable to be detained for some other reasons.