

(1991) 09 DEL CK 0003

In the Delhi High Court

Case No : Criminal Writ Appeal No. 136 of 1991

Amir Sadruddin Khan

APPELLANT

Vs

Administrator, Union Territory of Delhi and Others

RESPONDENT

Date of Decision : 25-09-1991

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1992) 46 DLT 137

Hon'ble Judges : Sunanda Bhandare, J;Chander Mohan Nayar, J

Bench : Division Bench

Advocate : H.R. Khan, K.G. Sharma and Jagdev Singh, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) This petition under Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C. has been filed seeking a writ of habeas corpus and praying that the order of detention passed on 23rd May, 1990 by the Deputy Secretary, Home, Delhi Administration under Sec- corporation 3(1) read with Section 2(f) of (Conservation of) Foreign Exchange and Prevention of Smuggling Activities Act, 1974 be quashed.

(2) The brief facts relevant for the decision are as follows : The petitioner arrived at Indira Gandhi International Airport, New Delhi from Dubai on 14.1.1990 by Emirates Airlines Flight No. EK.-700. On suspicion, the baggage was screened by the Customs Officer and presence of some high density metal was noticed in the electric iron kept in the baggage. The electric iron was opened in the presence of two independent witnesses and it was found that in the inner mould of electric iron two pieces of gold were hidden which collectively weighed 1048 gms valued at Rs. 3,47,936.00 . The electric iron Along with the gold was seized under a Panchnama dated 14.1.1990 drawn on the spot. The petitioner surrendered his passport, air ticket and boarding card to the Customs Officials. His statement was recorded. The petitioner was arrested along with one Sultan Ali Damani and

produced before the A.C.M.M., New Delhi on 15.1.1990. The court remanded both of them to judicial custody till 21.1.1990. The judicial custody was extended from time to time and ultimately on an application for bail filed by the petitioner dated 23.1.1990 he was released on bail on 17.2.1990 on his furnishing a personal bond in the sum of Rs. 50,000.00 with one local surety in the like amount with the condition that he will not leave the country except with the prior written permission of the Court, thereafter, the impugned order was passed on 23.5.1990. In the meanwhile, however the petitioner on 17.8.1990 against surrendered because according to the petitioner he required Rs. 50,000.00 deposited by him in the Court by way of personal bond for the marriage of his sister. Thereafter, on 17.9.1990 the impugned detention order was served on the petitioner while in custody.

(3) It was contended by the learned Counsel for the petitioner that the detaining authority had not applied its mind to the facts of the case before passing the detention order inasmuch as the petitioner was apprehended on 14.1.1990 and released on bail on 17.2.1990 and yet it was not considered necessary to pass the detention order till as late as 23.5.1990. Learned Counsel submitted that the delay in passing the detention order showed that the continued detention of the petitioner was unnecessary and the delay vitiated the detention order on the ground that there was non-application of mind. Learned Counsel further submitted that even thereafter the order of detention was not served on the petitioner till 17.9.1990 which also shows that the continued detention of the petitioner was unnecessary.

(4) COUNTER-AFFIDAVIT was filed by the Deputy Secretary, (Home) Delhi Administration on 28th May, 1990. However, in the said counter-affidavit, the delay in passing the detention order was not explained. Therefore, a further opportunity was given to file an additional affidavit. Accordingly, an additional affidavit was filed by the Deputy Secretary, (Home), Delhi administration on 17th August, 1990. It is stated in the said affidavit that the proposal was received from the Customs Department on 26.3.1990; additional documents and information were received by them on 4.4.1990, 30.4.1990 and 7.5.1990; the meeting of the Screening Committee was held on 18.4.1990 and thereafter the case was processed and put up before the Deputy Secretary on 11.5.1990. The Deputy Secretary passed it on to the Home Secretary on 15.5.1990. The Home Secretary, in turn submitted the file to the Lt. Governor on 16.5.1990 and the Lt. Governor passed the detention order on 17.5.1990 and the order was issued on 23.5.1990.

(5) From the affidavit the reasons for delay are not clear. The affidavit does not state why the proposal though received on 26.3.1990 was not considered or placed before the Screening Committee and also what were the additional documents and information which were received on three subsequent dates mentioned in the affidavit. Even after the Screening Committee considered the matter on 11.4.1990, it took over one month for the matter to be processed and

the order to be passed. All through this period the petitioner was on bail and the respondent did not consider it necessary to pass the order despite the fact that they were aware that the petitioner was at liberty and not in custody. The fact that the continued detention of the petitioner may not be necessary is also apparent from the fact that the detention order was not served on the petitioner for nearly four months after it was passed and it was served when the petitioner had already surrendered. It was vaguely suggested that the petitioner was not available and was absconding, but there is no material placed on record to show that any serious attempt was made to serve the detention order on the petitioner while he was on bail. There is no satisfactory Explanation for the delay in execution of the detention order either. Excepting the averment that the detention order was sent to the Government of Maharashtra on 23.5.1990. itself for execution and it was not known till 14.9.1990 that the petitioner had surrendered and was in Tihar Jail in New Delhi, no other Explanation was forthcoming. Thus, there is unexplained delay between the date of the detention order and the service of the detention order on the petitioner.

(6) Learned Counsel for Union of India referred to the judgment of the Supreme Court in *M. Ahamedkutti Vs. Union of India (UOI)* and *Another*, and contended that the test of proximity is not rigid and thus even though there was delay in passing the detention order as long as there was nexus between the prejudicial activity and the purpose of the detention, the order of detention is not vitiated because of the delay.

(7) Undoubtedly, if the respondent shows that there is a reasonable nexus between the prejudicial activity and the purpose of detention, the delay in passing the detention order has to be over-looked. However, in the present case we find that there was no additional material before the detaining authority which necessitated the passing of the detention order than the one which was available on the date of the occurrence for which criminal proceedings are already initiated. In our view, the respondents have not adequately explained the delay in passing the detention order after arrest of the petitioner even at a late stage after a period of five months.

(8) In the circumstances, we make the Rule absolute and quash the detention order dated 23.5.1990 and direct that the petitioner be released forthwith, if not required in any other case. Detention order set aside.