
(1991) 04 DEL CK 0005

In the Delhi High Court

Case No : Criminal Writ Appeal No. 363 of 1990

Arayath Barambil Markkar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-04-1991

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 2

Citation : (1991) 44 DLT 324

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : Sangeeta Nanchaha and B.D. Batra, for the Appellant;

Judgement

V.B. Bansal, J.

(1) Arayath Barambil Markkar petitioner has by way of this writ petition under Sections 226 and 227 of the Constitution of India read with Sec. 482 of the Code of Criminal Procedure prayed that the detention order dated 13th June, 1990 by the Administrator of Delhi, may be quashed and the petitioner may be ordered to be released forthwith.

(2) Briefly stated the facts leading to the filing of this writ petition are that on 26.2.90 the petitioner arrived at 101 Airport, New Delhi by Gulf Air Flight No. GF-132. The petitioner was near the exit gate on way out when intercepted by a Customs Officer. An enquiry was made from the petitioner by the aforesaid Customs Officer as to whether he was carrying any contraband, like gold, silver, watch to which he replied in the negative. The petitioner was, thereafter, taken inside and in the presence of two independent witnesses similar enquiry was made from him to which he replied that he was not carrying with him any contraband. The Customs Officer did not find any incriminating article from his personal search. However, from the baggage one steel cutter was found which being unusually heavy and it was found that there was a cavity inside. The cutter was cut on which 32 pieces of yellow metal rods were recovered which on

weighing were found to be 8131 grams of 24ct. purity gold. The petitioner was not in a position to produce any proof with regard to his lawful importation or possession of the said gold recovered and so it was seized by the Customs Officer after preparing a panchnama.

(3) The petitioner was examined and his statement under Sec. 108 of the Customs Act was recorded in which he had, inter alia, stated that about his knowledge regarding the presence of the gold inside the cutter which was given to him at Abu Dhabi Airport by one Aslam and that it was to be handed over by him to a person outside the Airport and in turn was to receive a sum of Rs. 3000.00 . The petitioner was arrested and proceedings were started against him.

(4) In exercise of the powers under Sec. 3(1) read with Sec. 2(f) of the Conservation of Foreign Exchange and Smuggling Activities Act, the Administrator of Delhi came to the conclusion that with a view to preventing him from smuggling goods and also preventing him from engaging in transporting, concealing and keeping smuggled goods ordered that the petitioner be detained. This order was issued on 13.6.1990 under the signatures of Mrs. Achia Singh, Deputy Secretary (Home), Delhi Administration, Delhi.

(5) The order of detention was served on the petitioner on the same day, i.e. 13th June, 1990 when the grounds of detention and the documents relied upon were served upon him pari passu with the order of detention.

(6) I have heard learned counsel for the parties and have also gone through the records.

(7) A number of grounds have been taken by the petitioner in the petition. Learned counsel for the petitioner has, however, restricted her submissions only on two grounds.

(8) Learned counsel for the petitioner has submitted that as per the admitted case of the respondent the petitioner was in custody ever since he was apprehended on 12.2.1990. It has also been submitted that no application for bail had been moved by the petitioner and, thus, there were no compelling reasons for the detaining authority to pass the detention order. It has, thus, been submitted that on this ground alone the detention order is liable to be set aside. It would at this stage be appropriate to quote para 7 of the grounds of detention served upon the petitioner which reads as under : Para 7 The Administrator of the the Union Territory of Delhi is aware that you are still in judicial custody and you have not moved any bail application in the Court till date but nothing prevents you from moving any bail application and getting you released on bail cannot be ruled out in the near future.

(9) In reply to the ground taken by the petitioner as ground no. 2 respondent no. 2 has stated that in spite of the fact that the petitioner was in judicial custody but it could not be said that he was sufficiently detained or that there was no prospect of his being released on bail. It was, thus, pleaded that the detaining

authority had the knowledge about the detention of the detenu but in spite of it considered .it expedient to pass the order of detention keeping in view the value of the gold smuggled.

(10) I have given my thoughtful consideration to these submissions and I am clearly of the view that there was no sufficient material before the detaining authority for subjective satisfaction that the petitioner could be released on bail especially when the petitioner had not moved any application for bail till the passing of the said order.

(11) It would at this stage be appropriate to refer to the case Dharmendra Suganchand Chelawat v .Union of India and Others Judgments Today 1990(1) S.C. 184. The following observations made by the Supreme Court, in my view, are appropriate for this case:

"THE expression compelling reasons in the context of making an order for detentions of a person already in custody implies that there must, be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

(12) Learned counsel for the respondent submits "that there were compelling reasons with the detaining authority to justify passing of the order of detention and, thus, serving the same on the petitioner when he was already in custody. I do not agree with the submission. There is only a mention that the petitioner is likely to be released on bail. As already referred to no application for bail had been moved. Where is the cogent material in this regard. In the absence of cogent material before the detaining authority the detention order cannot be sustained. I find support for this view from the case Jawahar Lal Khanna v. Union of India & Others 1990(1) C.C. Cas 545. On this ground alone the petitioner is entitled to be released add the order of detention cannot be sustained.

(13) Learned counsel for the petitioner has also submitted that the grounds of detention are vague on account of which the petitioner has been prejudiced in his right of making an effective representation. This submission is based on plea the detaining authority has used the words "or otherwise" to show that the petitioner was to be prevented from indulging in smuggled activities. This submission is based on the facts narrated in para 8 of the grounds of detention. The relevant portion reads as under-

"ON the basis of the foregoing facts and circumstances and statement recorded in this connection as disclosed herein above the Administrator of the Union Territory of Delhi has no hesitation in arriving at the conclusion that you have engaged yourself in smuggling activities in an organized and clandestine manner and unless prevented you are likely to indulge in the smuggling activities in the

similar manner or otherwise.....".

(14) Submission of learned counsel for the petitioner has been that the detaining authority was to explain as to what was the meaning of the word "otherwise" which being vague has deprived the petitioner of his right of making an effective representation.

(15) Learned counsel for the respondent has, however, submitted that the word "otherwise" could not be explained further because it was only the petitioner who could have the knowledge as to what means were to be adopted by him for indulging in smuggling activities in future. I do not agree with this submission. The detaining authority has to satisfy the grounds weighing with the authority and if the same is not to the knowledge of the detaining authority the same need not be mentioned. However, the moment the detaining authority chooses to make a mention of, the fact it has to be specific and cannot be vague, This very point came up for consideration before this Court in a number of cases and it was held that the use of the term "in a similar manner or otherwise" is vague thereby affecting the right of the detenu to make an effective representation and, thus, vocative of his right under Article 22(5) of the Constitution. Reference in this regard can be made to the cases Abdul Razak Nannekhan Pathan Vs. Police Commissioner, Ahmedabad and Another, and Jahangirkhan Fazalkhan Pathan Vs. Police Commissioner, Ahmedabad and Another, , Avtar Chand Kehar v. Union of India & others 1989(3) DL 374, Swjit Singh Kohli v. Union of India Cr. Writ No. 31 of 1989 and Rafiuddin @ Rafi v. Union of India and Others Criminal Writ No. 292 of 1990. Thus I am clearly of the view that the ground being vague has affected the rights of the petitioner to make an effective representation and on this ground also the order of detention cannot be sustained.

(16) In view of my aforesaid discussion, the writ petition is allowed. Rule is made absolute. The order of detention dated 13.6.90 passed against the petitioner is quashed. The petitioner shall be released forthwith, if not required in any other case.