
(2002) 04 AHC CK 0021

In the Allahabad High Court

Case No : Hebeas Corpus Writ Petition 3176 of 2002

Balbir Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Citation : (2002) CriLJ 2927 : (2002) 4 RCR(Criminal) 163

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : Shashank Shekhar Giri, J.N. Chaturvedi and A.D. Giri, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned detention order dated 16-2-2001 passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974. A large number of points have been taken in this writ petition, but it is not necessary to go into all of them since we are satisfied that this petition deserves to succeed on the very " first point, namely, there was unreasonable delay in executing the detention order.

2. Sri A.D. Giri, learned Senior Advocate, has pointed out that there are two periods of delay in executing the detention order which have not been explained. Firstly, the period from 16-2-2001, when the impugned detention order was passed, to 10-4-2001 when a stay order was passed in Writ Petition No. 2068 of 2001 i.e. a delay of about 55 days which has not been explained. Secondly he pointed out that the delay from 7-12-2001 when the aforesaid Writ Petition was dismissed till 12-1-2002 when the petitioner was arrested i.e. a period of about 35 days has also not been explained.

3. Learned counsel for the respondents submitted that this point has not been taken in the writ petition. But we do not agree with the submission. In ground (J) of the writ petition it has been clearly stated that the detention order was passed

on 16-2-2001 and the stay order was passed on 10-4-2001 in Writ Petition No.2068 of 2001 and during this period the petitioner was attending to his regular business duties and hence this period during which the detention order was not executed has not been explained. It is further stated in paragraph 2 of the writ petition that there is further delay of 5 weeks from 7-12-2001 when the earlier Writ Petition No. 2068 of 2001 was dismissed till 12-1-2002 when the petitioner was arrested. It is also stated at the end of paragraph 3(k) of the writ petition that there is delay in executing the detention order. In grounds (H) and (J) of writ petition there is clear averment regarding the delay in executing the detention order relating to the second period i.e. after the dismissal of Writ Petition No.2068 of 2001, whereas in ground (J) the averment is regarding the first period i.e. from 16-2-2001 when the detention order was passed to 10-4-2001 when the stay order was passed in Writ Petition No.2068 of "2001.

4. Moreover, it is well settled that the law of pleadings is not to be strictly applied in Habeas Corpus Petition as it concerns the liberty of a citizen. At any event the respondents were having knowledge of these pleadings as they have filed Counter Affidavit, Supplementary Counter Affidavit and Additional Counter Affidavit dealing with them. In paragraph 3(a) of the Counter Affidavit file on behalf of the respondent No. 1 and 2 it is stated that the detention order dated 16-2-2001 could not be served on the petitioner as he was absconding and concealing himself, and thus he evaded the service of the detention order.

3(a) of the Counter Affidavit deals with the question of delay relating to the first period of 55 days, and paragraph 3 (f) of the Counter Affidavit deals with the second period of 35 days i.e. after the dismissal of the Writ Petition No.2068 of 2001. In paragraph 3 (f) of the counter affidavit it is stated that the Station Officer, Meerut searched the house of the petitioner on 26-12-2001, 27-12-2001, 28-12-2001, 30-12-2001, 31-12-2001, 2-1-2002 and 4-1-2002 but the petitioner was not found at home and a confidential enquiry revealed that the petitioner was concealing himself. The Station Officer conducted a further raid on 12-1-2002, which resulted in the arrest of the petitioner. It is further stated in the counter affidavit that after dismissal of the Writ Petition No.2068 of 2001 a Fax copy of the judgment was received in the Ministry on 13-12-2001 and on 14-12-2001 the Sponsoring Authority was requested to make all out efforts in liaison with the Police Authorities to locate and detain the petitioner. The Police Authorities were also requested directly by the Ministry for executing the order without loss of time. Therefore, it is alleged that the petitioner had absconded and concealed himself and thus prevented the service of the detention order.

5. We have also examined the Supplementary Counter Affidavit and Additional Counter Affidavit and the Rejoinder Affidavits.

6. The Supplementary Counter Affidavit was filed by the respondents in pursuance of our Interim Order dated 22-2-2002 in this Writ Petition which reads as follows:-

Hon.M.Katju, J. -

Hon.Rakesh Tiwari, J.

Learned Government Counsel is granted two weeks time to file supplementary counter affidavit giving complete details regarding the allegation in paragraph 3(f) paragraph 10(i) and (j). In this affidavit the respondent should annex a copy of the alleged report of the S.S.P. Meerut and also Photostat copy of the Police record of the Station Officer e.g. G.D., Ravanagi etc. relating to the alleged searches on various dates referred to in paragraph 3 (f). It should also be stated where the petitioner was arrested. The details of the action and material relevant to Section 7(I)(b) mentioned in paragraph 10(I) and (j) should also be given with the affidavit. List on 14-3-2002.

Let a copy of this order be given to the learned Government Counsel if possible today on payment of usual charges.

7. Having carefully considered all aspects of the matter and having perused the record we are of the opinion that so far as the first period of 55 days i.e. 16-2-2001 to 10-4-2001 is concerned there is no explanation whatsoever for the delay in executing the detention order dated 16-2-2001. All that has been said in paragraph 3 (a) of the main" Counter Affidavit is that after the detention order dated 16-2-2001 was issued the petitioner is absconding and concealing himself to evade the service of the detention order. We are of the opinion that this averment in the counter affidavit is wholly vague. When a detention order is passed the normal course of action is that the detention order is communicated to the Police for executing the same. The Police normally goes to the residence of the person against whom the detention order is passed because ordinarily he would be staying at his residence. If the person concerned is not found at the residence then the Police would naturally try to enquire from the relatives or neighbours or other close persons about the places which the said person normally visits e.g. if he is a business man his business office or his factory or any other place where he normally goes. This is the natural course of action, which any Police Officer would undertake. In the present case no averment whatsoever is made in any of the Counter Affidavits as to what exactly the Police did between 16-2-2001 to 10-4-2001. There is no averment that during this period the Police went to the residence of the petitioner, which is at 82/1 Railway Road, Meerut City. There is also no averment in any of the counter affidavits that the Police visited the business premises of the petitioner which is also at 82/1 Railway Road, Meerut City as stated in paragraph 1 A of the Writ Petition. It is further not stated in the counter affidavit that the Police went to the relatives of the petitioner or his neighbours or others close to the petitioner for inquiring about his whereabouts during this period i.e. from 16-2-2001 and 10-4-2001. Only a bald allegation has been made in the Counter Affidavit that the detention order could not be served because the petitioner was absconding and concealing himself, but no basis for this averment nor any details have been given in any of the Counter Affidavits filed before us. Hence we hold that the first period referred

to by Sri Giri learned Senior Advocate, i.e. from 16-2-2001 to 10-4-2001 is totally un-explained.

8. We may now come to the second period referred to by Sri Giri i.e. from 7-12-2001 when the Writ Petition No. 2068 of 2001 was dismissed to 12-1-2002 when the petitioner was arrested. No doubt in this connection in paragraph 3(f) of the Counter Affidavit it has been stated that the petitioner's house was searched by the Station Officer, Meerut on several dates between 26-12-2001 and 4-1-2002 but the petitioner was not found at home and was concealing himself. However, we wanted to know the basis for this averment and hence we passed the interim order dated 22-2-2002 which has been quoted above in this judgment. In pursuance of the interim order the Supplementary Counter Affidavit has been filed. In paragraph 3 of the same it has been stated that the petitioner had absconded and concealed himself. It is further stated that the allegations that no sincere efforts were made for executing the detention order were baseless. The letter dated 27-2-2002 of the S.S.P. Meerut addressed to the Assistant Director, Intelligence, New Delhi (which is at P. 4 of the supplementary counter affidavit) annexes the G.D. entries of various dates on which it is stated that search was made in order to arrest the petitioner. We have carefully perused these G.D. entries. Photostat copies of these G.D. entries are annexed to this letter dated 27-2-2002 and have also been annexed to the Supplementary Counter Affidavit. They do not reveal that the Police visited the petitioner's residence-cum-business-Premises at 82/1 Railway Road, Meerut City where the petitioner has his residence and also does his business, or that enquiries were made by the police from his neighbours or relatives about his whereabouts.

9. The first G.D. which is on the left hand column of page 5 of the Supplementary Counter Affidavit states that the Police Officer Sri A.K.Singh did a round of the Railway Colony but it is not mentioned that he visited the residence - cum-business-premises of the petitioner. Merely going to a Colony in the City does not mean actually going to the residence of the person concerned with search or arrest warrant in respect of the accused. In the right hand column of page 5 it is also not mentioned that the Police visited the residence of the petitioner. They were only maintaining law and order and checking the vehicles but there is no mention that the police visited the residence of the petitioner or made any enquiry from the relatives or neighbours of the petitioner about his whereabouts. Even the name of the petitioner is not mentioned in these G.D. entries. We have perused the other 16 G.D. entries annexed to the Supplementary Counter Affidavit. In page 8 of the Supplementary Counter Affidavit it appears that the Police was searching some other persons namely Chand, Bhura, Noor Mohd. Mohd. Umar etc. who are history sheeters but the petitioner's name is not mentioned in these G.D. entries nor is it mentioned that the Police visited his house or business premises to search for accused. It seems to us that some G.D. entries, which have no connection with the petitioner, have been annexed to the Supplementary Counter Affidavit. At any event none of these G.D. entries except of 12-1-2002 discloses that the Police visited the

petitioner's residence or business premises or tried to find out his whereabouts. We therefore, fail to understand the relevance of these G.D. entries. The only relevant G.D. entry is on page 12 which is dated 12-1-2002 which is the date of the arrest of the petitioner and this entry states that the Police went to the residence of the petitioner where he was arrested. Thus it appears that only for the first time on 12-1-2002 the Police visited the residence of the petitioner where he was present. Thus the record discloses that the averments in paragraph 3(1) of the main Counter Affidavit that the police searched the house of the petitioner on several dates between 26-12-2001 and 4-1-2002 appears to be false. It may be noted that paragraph 3(f) has been verified on the basis of the record. The verification clause of this affidavit states that the contents of the affidavit are true to the deponent's knowledge derived from the official records. The affidavit has been sworn by a Jt. Secretary to the Government of India, who has obviously no personal knowledge of the contents of paragraph 3(f). The record, too, does not support the allegation. Hence it is evident that the averment is false.

10. Hence, even for 35 days after dismissal of the Writ Petition No. 2068 of 2001 on 7-12-2001 till the petitioner's arrest the delay has not been explained.

11. The Supreme Court has repeatedly held that unreasonable and unexplained delay in executing the detention order vitiates the entire proceedings vide *S.M.F. Sultan Abdul Kader v. Secy, to Govt. of India and Ors.* JT (1998) 4 457 In this case the delay in executing the detention order was only of about 40 days, whereas in the present case there are two periods of unexplained delay, one of 55 days and the other of 35 days. A similar view was taken by the Supreme Court in *A. Mohammed Farook Vs. Jt. Secy. To G.O.I. and Others*, In this case the delay was of about 40 days vide paragraph 9 and 10 of this decision. In paragraph 9 of this decision the Supreme Court observed "the detaining authority must explain satisfactorily the inordinate delay in executing the detention order otherwise the subjective satisfaction gets vitiated". Similar view was taken in *P.M. Hari Kumar Vs. Union of India and others*, vide paragraphs 17, 19 and 20. In this decision the Supreme Court observed "We must hold that the respondents did not make any sincere and earnest efforts and. take any urgent and effective steps which were available to them to serve the order of detention on the petitioner. That necessarily means that the unusual delay in serving the order of detention has not been properly and satisfactorily explained." A similar view was also taken in *K.P.M. Basheer Vs. State of Karnataka and another*, It is not necessary to refer to other decisions on this point. The law is well settled that un-ex-plained delay in serving the detention order vitiates the proceedings.

12. In view of the above discussion the petition is allowed.

13. The impugned detention order dated 16-2-2001 is quashed. The petitioner shall be released forthwith unless required in some other criminal or preventive detention case.,