
(1978) 09 DEL CK 0005

In the Delhi High Court

Case No : Criminal Writ Appeal No. 40 of 1978

Baldeep Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-09-1978

Acts Referred:

Citation : (1979) ILR Delhi 72

Hon'ble Judges : Prakash Narain, J; Leila Seth, J

Bench : Division Bench

Advocate : Ram Jethmalani, Harjinder Singh, K.K. Sud and Charanjit Talwar, for the Appellant;

Judgement

Leila Seth, J.

(1) We had accepted this writ petition on 18th September, 1978 and directed the respondents to set the detenu at liberty. The reasons are now being recorded.

(2) The detention in this case was to prevent the smuggling of hashish. Human ingenuity knows no bounds. A novel method of hashish smuggling has been referred to in the grounds of detention. The hashish was being concealed in fork lift tyres, which could not be opened except with some special apparatus, which were being exported out of India.

(3) Baldeep Singh (hereinafter referred to as the detenu) was apprehended on the 20th of April, 1978. The Directorate of Revenue Intelligence had conducted a search at his residence at Hardiyan Singh Road, Karol Bagh, New Delhi, followed by a search at the factory premises. The detenu's wife not knowing the where about of her husband, sent a telegram on 21st April, 1978 to the Department of Revenue Intelligence to try and trace her husband. A bail application, u/s 437 of the Code of Criminal Procedure in the matter of Section 13 of the Dangerous Drugs Act, 1930 read with Section 61 of the Punjab Excise Act, 1914 was moved on 21st April, 1978. On the said application the Metropolitan Magistrate passed the following order :

"NOsuch accused present in the Court. Put up before Shri R. Dayal, A.C.M.M., New Delhi on 22-4-78. Copy be sent to DSI/NC/CBI."

On 22nd April, 1978 the Advocate for the petitioner withdrew the said application with permission and filed a fresh application setting out identical facts except that Section 13 of the Dangerous Drugs Act, 1930 read with Section 61 of the Punjab Excise Act, 1914 was deleted. The order passed on the said application indicated that the case was Customs v. Baldeep Singh under the Customs Act and that the Advocate for the Customs, Shri M. Ganesan, was present. The detenu who was in custody was represented by Shri R. D. Mehra, Advocate. The order was in the following terms :

"SHRIBaldeep Singh accused has been arrested u/s. 104 of the Customs Act. He is alleged to have committed an offence u/s. 135 of the Customs Act. The quantity involved is about 350 kgs. of hashish. 2. An application for bail has been moved by the accused. The investigation of the case likely to take considerable time. The accused is resident of Delhi and there is no likelihood of his jumping the bail. The accused be released on furnishing a personal bond in the sum of Rs. 25,000.00 with two sureties each in the like amount. 3. Bail bonds furnished and accepted."

(4) Thereafter the detenu joined the investigations which were being conducted by the Customs Authorities and the Directorate of Revenue Intelligence and made certain statements on the 22nd, 23rd, 24th and 25th of April, 1978. The detenu was then detained on 29th April, 1978 under an order of detention No. F. 5/17/78-Home(F-II), Delhi Administration, Home (Police-11) Deptt. The order reads as follows

"WHEREAS, the Administrator of the Union Territory of Delhi is satisfied with respect to the person known as Shri Baldeep Singh S/o Late Shri Bishan Singh r/o 53/1771, Naiwalan, Hardhyan Singh Road, Karol Bagh, New Delhi that with a view to preventing him from smuggling and abetting the smuggling of goods hashish, it is necessary to make the following order: 2. Now, Therefore, in exercise of the powers conferred by Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the Administrator of the Union Territory of Delhi hereby directs that the said Shri Baldeep Singh be detained and kept in custody in Central Jail, Tihar, New Delhi. By order and in the name of the Administrator (I. J. Talwar) Deputy Secretary (Home), Delhi Administration, Delhi."

(5) On 4th May, 1978 the grounds of detention were served on the detenu. Ground No. 4(v) is as follows : "(v) In your statements dated 20, 21, 22 and 24-4-78 you confessed that you were the prop. of the firm M/s. A. B. Associates; that the consignment of 16 fork lift tyres which was booked under Air France, Air Way Bill No. 057-9660-2763 dated 3-4-1978 through M/s. Continental Carriers and from which 50 Kg. of hashish was recovered in Usa on 12-4-78 was booked by you; that you had sent 8 undermentioned similar consignments of tyres out of

India in which drug was concealed in a similar manner. S.No. Airline/Airways Consignee No. of Pieces Results Bill No. & date of Fork lift Tyres 1 2 3 4 5 1. Bill of Lading M/s.Wheel Centre 25 crates Intercepted 2 tyres No. 839851 dated 3415, Girouaid Ave. x4 pcs. opened 3 Kg. of 30-3-78 per Suit 815, Montreal == 100 pcs. hashish from each S.S. Export Notify: M/s.G. tyre, controlled Agent Levin Wheel Centre. delivery awaited 2. LH.AWB.220 Gerlach & Co. 4 crates 8448-7524 50 Pavilgoen x4 pcs. ! dt. 6-4-78 Airport, Saventhem, = 16 pcs. Intercepted one Brussels. tyre opened, contain 3 Kg. 3. LH.AWB.220 Technim Import 4 crates of hashish. 8448-7513 C/o Gerlach & Co. x4 p.:s. controlled deli- dt. 6-4-78 50 Pavilgoen Air- = 16 pcs. very awaited. port, Saventhem, Brussels. Notify: Technim Import, Ballamy street 102, Amsterdam. 4. AF.AWB.057 Industrialist 4 crates Intercepted in 9660-2763 dt. 3-4-78 520, Sangeronimo, Valley Road, x 4 pcs. = 16 pcs. Usa opened and found 3 Kg. of Sangeronimo, hashish in each C.A.94963 tyre. 2 person arrested. 5. Lh 220-8448 -do- -do- -do- 7056 dt. 3-4-78 6. Lh 220-8447. Equipments 4 crates 5941 dt. Rouland UNI- x4 DCS. Seized at 17-4-78 Versals 8820 Pascal = 16 pcs. L.H.Cargo Gangnon Warehouse ST.LEONARD Recovered QUEBEC. - 78.950 Kgs. of hashis 7. LH-220-8447- -do- 4 crates 5963 dated x4 pcs. 17-4-78 == 16 pcs. 8. KL.074-1395 M/s.TechNi 4 crates Sent by 9422 dated Belmistraat x 4 pcs. Blacker 4-3-78 102, Amsterdam = 16 pcs. Co. You further confessed that two consignments booked under Air Way Bill Nos. 220-8447-5963 and 220-8447-5841 dated 17-4-78 by Lufthansa Airlines were also sent by you and you knew that drug was concealed in the said fork lift tyres. On, 21-4-78 you tendered certificates of original Nos. EI-3237.08 and 323709 and Invoice Nos. C/006/78 dated 15-4-78 C/005/78 dated 15-4-78 in respect of the said two consignments. You disclosed that the aforesaid fork lift tyres had been, given to you by one Mr. John; that you did not know the exact whereabouts of Mr. John, but you gave his description broadly; that Mr. John used to give you Rs. 2000.00 per consignment for the services rendered by you the because you knew that the shipments in, question were not lawful, you wanted to keep the identity of you firm secret; Therefore, you availed the services of Dmms for receiving mail, etc. that for same reason you registered yourself with Dmms in fictitious name and you mentioned your name as R. S. Bhasin instead of the correct name Baldeep Singh. You further disclosed that 102 similar fork lift tyres were lying in a godown at XVI/438, Faiz Road, Karol Bagh, New Delhi; that this place belongs to your father-in-law, Shri B. S. Sethi and been rented out to Mr. John; that the said 102 fork lift tyres are also supposed to contain drug and are meant for export out of India after crating etc., that relevant documents required for shipment have already been prepared and were recovered on 21-4-78 on search of your scooter No. Pno 2683. You also disclosed that 55 similar fork lift tyres given to you by said Mr. John for export out of India were lying at 9, Bagh Diwar Road Opp. Delhi Railway Station, Delhi. On 20-4-78, residential premises at 53/1771, Naiwalan, Hardhyan Singh Road, Karol Bagh and shop at Gali No. 14, Shop No. 445, Faiz Road, Karol Bagh were searched. Incriminating documents were recovered from there. Besides, a sum of Rs. 21,400.00 were recovered from your

residential premises. A stencil press for marking (A. B. Associate Gross Weight Net Weight toronto) also recovered." Ground No. (4) (vii) is as follows : "Shri Nassim Janiv was accordingly interrogated. He confessed that he had engaged you for arranging the shipment of fork lift tyres; that 102 and 55 tyres recovered from the premises at AVI/438, Faiz Road, Karol Bagh, New Delhi and 9 Bagh Diwar, Opp. Delhi Railway Station, Delhi respectively were given by Jun to your for export out of India. Yourself and Shri Nassim Janiv were confronted and identified each other in the context of what has been, stated above. Shri Nassim Janiv also stated that he had been given the tyres for export from time to time by one Mr. Jun. He, however, did not give any identifying particulars or whereabouts of Mr. Jun". After setting out the grounds it was stated :

" YOU are informed that you have a right to make a representation in writing against the aforesaid order of detention to the Administrator, Union Territory of Delhi within, a period of thirty days from the date of service of the detention order on you. Any representation which you may wish to make to the Administrator may be submitted to the Superintendent, Central Jail, New Delhi who will forward it to the Administrator."

(6) The detenu made an application asking for further particulars, in order to make an effective representation. From the record, which was shown to us, it appears that this application, was sent by the Jail Authorities on 18th May, 1978 and was received by the Delhi Administration on 20th May, 1978. The particulars were supplied to the detenu only on the 16th June, 1978 i.e. long after the period of thirty days from the date of service of the grounds. The petitioner had, however, made a representation on the 24th May, 1978. In the said representation he made a grievance of the fact that not having received the particulars asked for, he could not make an effective representation. The representation dated 24th May, 1978 was received in the Home Department of Delhi Administration on the 28th May, 1978 and was rejected on the 4-5th July, 1978.

(7) The detenu then moved a petition under Article 226 of the Constitution of India, which is the matter before us, for a writ of habeas-corpus, challenging his detention, on various grounds inter alia, an infringement of his constitutional right guaranteed under Article 22(5).

(8) Learned counsel for the detenu urged four main points : (1) The detenu was not afforded an opportunity to make an effective representation and there was considerable delay in representation being considered. (2) The non application of mind of the detaining authority to a vital and relevant circumstance, i.e. the fact that the confession of the detenu had been retracted vitiated the entire grounds of detention. It was submitted that the concession coloured all the grounds. (3) The non application of mind of the detaining authority to the fact that the detenu was in the custody of the Customs Authorities at the time of the alleged confession especially on the 20th and 21st April, 1978 vitiated the detention order, as the alleged confession was not voluntary. (4) The non communication of

a material particular on which the Authorities had relied vitiated the detention. This material particular was a confession said to have been made by the detenu on the 25th April, 1978, mentioned in the reply affidavit but not in the grounds of detention,.

(9) We shall first deal with the first facet of the first point, that the detenu was not afforded an opportunity to make an effective representation. As above mentioned, an application had been moved to the Administrator through the Superintendent of the Central Jail, New Delhi by the detenu requesting for copies of the statements and alleged confessions dated 20th, 21st, 22nd, 23rd and 24th April, 1978. The detenu stated that he was unable to make an effective representation in the absence of the statements, the same having been relied upon in the grounds of detention. The application is undated but, from the record, it appears that the application was sent by the Superintendent of Central Jail, New Delhi on the 18th May, 1978 and received by the Delhi Administration on 20th May, 1978. The copies were supplied on the 16th June, 1978.

(10) Learn, counsel submits that the copies and particulars asked for should have been given within a reasonable time. It is contended that as grounds are supplied within five days, similarly a reasonable time for supply of the statements and particulars should also be five days. In any case, the non-supply of copies till the 16th June, 1978 had resulted in a failure to make an effective representation. It is further urged that the fact of non supply of copies till the 16th June, 1978 was not brought to the notice of the Administrator.

(11) In reply, it is urged that the non-supply of copies is not relevant and does not really effect the opportunity to make an effective representation. In any event, the detenu could have filed a supplementary representation as his representation was not rejected till the 4th-5th July, 1978.

(12) The non-supply of copies requested for, till long after the service of the grounds, is in our opinion, a relevant factor in considering whether the detenu had an opportunity to make an effective representation. He had made a grievance of this in his representation dated 24th May, 1978. Apart from this, in the last paragraph of the grounds of detention it is mentioned that the representation is to be made within a period of thirty days from the date of service of the detention order. The copies having been supplied long after this period had expired, the detenu would certainly be led to believe that no further opportunity of representing was" available to him.

(13) It is not the case of the respondents that they informed the detenu on supplying the copies, that the detenu could make a further or supplementary representation, even though the earlier period of thirty days" had expired. What they submit is that there is no fixed period in law within which the representation is to be made and so a supplementary representation could have been made.

(14) The fact of the matter is, that the procedural safeguards attached to detention without trial, and contained in Article 22(5) of the Constitution of India

are clear. The first is to receive the grounds of detention as soon as may be and the second is to be afforded an, opportunity to make a representation at the earliest. It is inherent that this opportunity must be to make an effective representation. Further, the detenu must be aware of the opportunity. This awareness is indicated to him in the last paragraph of the grounds of detention, which also carry the limiting words "within a period of thirty days from the date of service of the detention order on you". Naturally, the detenu is led to believe, whatever might be the position in law, that his representation has to be within the period mentioned. He in fact makes his representation within the period mentioned on 24th July, 1978. He is not informed when the copies/particulars are supplied on the 16th June, 1978 that he can make a further representation. In, *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, , the detenu was so informed when the subsequent communication was sent to him. It was observed in the said case, that the communication of the particulars relating to the grounds was linked with the duty of giving the detained person the earliest opportunity to make a representation. This could not be overlooked.

(15) For the reasons outlined above, we feel that the detenu was not afforded an adequate opportunity to make an effective representation.

(16) The second facet of the first point is that there was considerable delay in the representation being considered. This representation was rejected on the 5th July, 1978. Respondent No. 1 has tried to explain the delay and has stated the following facts in its counter affidavit.

(17) The representation of the detenu dated 24th May, 1978 sent through the Superintendent, Central Jail Tihar, New Delhi on 25th May, 1978 was received in the Home Department on 28th May, 1978. In view of the contentions raised by the detenu in his representation, comments were called for from the Directorate of Revenue Intelligence, Customs, New Delhi. The detailed comments on various aspects and contentions raised by the detenu in his representation were received on 26th June, 1978 which were duly examined and minutely scrutinised by the Deputy Secretary (Home). The comments and the opinion of the law Department were also obtained on 3rd July, 1978 and submitted to the Lt. Governor/Admn. On 4th July, 1978 and thereafter the representation along with the comments and opinion were submitted to the Administrator Lt. Governor, Delhi who after consideration of the entire material was pleased to reject the reprsentation of the detent on 5th July, 1978. As such it is submitted that there was no delay in considering the representation.

(18) Counsel for the respondents placed the record before us. It appears from the record that the representation dated 24th May. 1978 was in fact received in the Home Department on the 28th May, 1978. Thereafter, a note of 3rd June, 1978 indicates that it be sent to the Customs for comments i.e. six days later. A letter was then issued to the Customs on the 8th June, 1978 i.e. five days later. The letter was received by the Customs Authorities on 9th June, 1978. After four days the Customs Authorities sent the matter for comments to the Directorate of

Revenue Intelligence. The Directorate of Revenue Intelligence returned it to the Customs with their comments after eleven days. The Customs then sent the detailed comments to the Home Department by 26th June, 1978.

(19) It was submitted that as three authorities were involved the delay was not unreasonable. Further the detenu not having made a specific grievance in his writ petition, should not, now be allowed to do so. *Arun Kumar Roy Vs. The State of West Bengal*, was relied on. 81

(20) Several cases were referred to pertaining to delay. In *Jayanarayan Sukul Vs. State of West Bengal*, , four principles" were enunciated with regard to the representation of a detenu. (1) appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation as early as possible. (2) The consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board. (3) There should be no delay in the matter of consideration of the representation. No hard and fast rule can be laid down as to the measure of the time taken by the appropriate authority but the Government must be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State, and (4) The appropriate Government is to exercise its opinion on the representation before sending the case along with the detenu's representation to the Advisory Board.

(21) In *Prof. Khaidem Ibocha Singh, etc. Vs. The State of Manipur*, , 17 days" unexplained delay in passing orders on representations made by the detenus who were detained u/s 3(1)(2) of Orissa Preventive Detention Act (1970) (as extended to Manipur) was itself held to be a sufficient ground for holding that the orders of detention were illegal. In consequence it was held that there had been a violation of the constitutional right guaranteed under Article 22(5) to the detenu.

(22) Similarly in *Sri Baidya Nath Chunakar Vs. State of West Bengal*, , it was held that in the absence of any material which could excuse the delay, the petitioner was entitled to be released. In that case the representation had been received on the 10th May. 1971 and had been considered by the Government on, the 8th June, 1971. In paragraph 12 of the said judgment Mitter J. had observed : "As the entire record of the case was before us we went into the matter and looked into the record to see whether there was any material which would lead us to infer that there was some justification for the delay in considering the representation, but we found none and the counsel for the State was not able to point out any material which would excuse the delay."

(23) In the case of *Ranjit Dam Vs. State of West Bengal*, , 19 days delay in disposing of the detenu's representation by the Government was held to render his detention illegal as the Court felt that it is a constitutional right of the detenu 82 under Article 22(5) of the Constitution to have his representation dealt with as expeditiously as possible, "for, otherwise the obligation to furnish the earliest

opportunity to make a representation would lose both its purpose and meaning".

(24) In *Abdus Sukkur Vs. State of West Bengal*, , an unexplained delay of 27 days in considering the detenu's representation was held to invalidate his detention.

(25) In *State of Orissa and Another Vs. Shri Manilal Singhanian and Another*, , it was held that the law is well settled that the representation should be considered by the State Government as soon as possible, that is with reasonable dispatch and if that is not done, it would have effect of vitiating the order of detention. Relying on *Rashid Sk. Vs. State of West Bengal*, the Court observed that it is neither possible nor advisable to lay down any rigid period of time uniformly applicable in all cases within which the representation must be considered. The Court will have to consider the matter in each case on the available material whether the gap between the receipt of the representation and its consideration by the State Government is so unreasonably long and the Explanation for the delay offered by the State Government so unsatisfactory as to render the detention order thereafter illegal. On the facts of that case the Court came to the conclusion that there had not been any undue delay.

(26) As above mentioned we have been shown the entire record and as such can deal with the question of delay even though it may not have been specifically raised in the writ petition.

(27) The representation, dated 24th May, 1978 was received in the Home Department on 28th May, 1978. There is no Explanation as to why the request for comments" was sent to the Customs Department only on the 8th June, 1978 i.e. after eleven days. The request was received by the Customs on 9th June, 1978 and there is no satisfactory Explanation as to why the Customs and their allied department Directorate of Revenue Intelligence should have taken 18 days to provide the comments. There appears to be no alacrity in dealing with the matter nor any awareness that there should have been immediate dispatch as personal liberty is involved. In the facts and circumstances of the case we feel that there has been undue and unexplained delay in disposing of the representation and this infringes the constitutional right guaranteed to the detenu under Article 22(5).

(28) Points 2 and 3 raised by counsel for the detenu are interlinked as they pertain to the voluntary statements and/or retraction of the confessions.

(29) It appears from the record that the bail applications moved on 21st April, 1978 and 22nd April, 1978 were not before the Authorities when they issued the order of detention. Paragraph 4 of the said applications is in the following words : "The petitioner has been made to sign various blank papers during the said illegal custody and is also being subjected to write things against his wishes under duress which the D.R.I. and other authorities might use against him during trial, if any. The petitioner is absolutely innocent."

(30) The question whether this amounted to a retraction and/or whether a retraction had been made and brought to the notice of the appropriate authority was vehemently contested.

(31) The confessions are an important factor on which the grounds of detention are based, as is apparent from grounds 4(v) and 4(vii) set out above. Whether these confessions coloured all the grounds is questioned. The respondents urged that grounds 4(i), (ii), (iii) and (iv) and 5(vi), (viii) and (ix) are independent grounds and the order of detention is not vitiated. They are not coloured by the confessions and huge recoveries have been, made. They submit that the detention order must be upheld, even if one ground is sustainable in view of Section 5A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Section 5A was inserted by an amending Act of 1975, Act 35 of 1975 w.e.f. 1st July, 1975. By the said section the grounds of detention are now severable.

(32) The last point argued by the learned counsel for the detenu was that a material particular i.e. confessions said to have been made on the 25th April, 1978 was not communicated to the detenu and this vitiated the detention. The date 25th April, 1978 does not find mention in the grounds whereas it is mentioned in the affidavit of Shri I. J. Talwar, Deputy Secretary (Home), Delhi Administration. The respondents urged that what has been stated therein is that voluntary statements were made as the petitioner joined the investigations and nothing turns on the non-communication of this fact.

(33) In view of the decision we have taken with regard to the first point urged, that the fundamental right of the detenu under Article 22(5) of the Constitution has been violated, we feel it is not necessary to express any opinion on these points. We accordingly quash the impugned orders and make the rule absolute and direct the respondents that the petitioner be released, if not required in any other case.