

(1993) 01 DEL CK 0066

In the Delhi High Court

Case No : Criminal Writ Petition No. 630 of 1992

Daljit Singh Sandhu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-01-1993

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Customs Act, 1962 — Section 132

Citation : (1993) 3 AD 879 : (1993) 3 Crimes 629 : (1993) 51 DLT 667 : (1994)
3 RCR(Criminal) 242

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : V.K. Shall and N.K. Hunda, for the Appellant;

Judgement

S.C. Jain, J.

(1) The petitioner has challenged the detention order passed against him u/s 3(1) read with Section 2(f)(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short COFEPOSA) on 8-10-1992 by filing this criminal writ petition.

(2) As per the facts available on record, the petitioner was intercepted on 19-5-1992 at I.G.I. Airport, New Delhi when he was leaving for Dubai and as a result of search of his baggage, foreign currency equivalent tors. 9,19,058.25 was recovered. On 20-5-1992 the residence of the petitioner was also searched, but nothing incriminating was recovered. On 6-6-1992 a complaint under Sections 132 and 135(1)(a) of the Customs Act was filed against the petitioner and the petitioner was granted bail by the Additional Sessions Judge, New Delhi on 7-7-1992. Departmental proceedings were started against the petitioner and a show cause notice was issued on 26-8-1992 and on 8-10-1992 this detention order was passed and in pursuance of that detention order the petitioner was arrested on 4-11-1992. The detention order was served on the petitioner on

6-11-1992 when he was in jail and on 12-11-1992 he made a representation to respondent Nos. 1 and 2.

(3) The petitioner has challenged the said detention order on various grounds, but stress has been laid on the point that though the date of incident was 19-5-1992, but no detention order was passed till 8-10-1992. This long and undue delay in passing the detention order has snapped the nexus between the activity alleged and the activity sought to be curbed by passing the impugned detention order and on this ground it has been alleged that the said detention order is illegal and void and the Detaining Authority had not applied its mind to the facts of the case before passing the said detention order. According to the learned Counsel for the petitioner, the delay in passing the detention order shows that the detention was unnecessary and the delay has vitiated the same. It is submitted that there was non application of mind on the part of the Detaining Authority. Learned Counsel further submitted that even thereafter the order of detention was not served upon the petitioner till 6-11-1992. Reliance has been placed on a decision of the Division Bench of this Court in the case of *Amit Sadruddin Khan v. Administrator, Union Territory of Delhi & Ors.* Criminal Writ Petition No. 136 of 1991-decided on 25-9-1991 in support of the contention that in such circumstances when he detention order has been passed after a long delay and the service was also effected after delay the detention order is liable to be quashed.

(4) Learned Counsel for the State countering the arguments of the learned Counsel for the petitioner submitted that there is a reasonable nexus between the prejudicial activity and the purpose of detention and in such circumstances the delay in passing the detention order has to be overlooked. In the counter affidavit filed by Mr. M.U. Siddiqui, Deputy Secretary (Home), Govt. of National Capital Territory of Delhi, it has been admitted that the detention order was passed on 8-10-1992 and on the same day it was sent to the Govt. of Punjab for execution. The petitioner is a resident of Gurdaspur. The detention order and the accompanying documents were sent by the Govt. of Punjab to the concerned S.P. who, in turn, must have sent them to the S.H.O. of the concerned police station and; Therefore, this time has been consumed in serving the detention order. Moreover, less than one month's time was taken for ultimate execution of the detention order which cannot be termed as undue delay. Regarding the passing of the detention order on 8-10-1992 it is submitted that the proposal from the Customs Department was received on 10-7-1992 which was considered by the Screening Committee constituted for this purpose along with other cases on 18-8-1992. Up-to-date documents and relevant information were received from the Customs Department periodically and finally on 25-9-1992 the documents were scrutinised and put up on 28-9-1992. L.G. passed the order on 30-9-1992. After fairing out and arranging the documents, the detention order was issued on 8-10-1992 on receipt of the translation of the grounds of detention and detention order in the language known to the detenu.

(5) According to the learned Counsel, the delay in passing the detention order and in its execution have been properly explained and there is no merit in this point raised by the learned Counsel for the petitioner.

(6) As far as the facts are concerned, there is no dispute that the detention order was passed on 8-10-1992 i.e. after about 5 months from the date of the incident which allegedly took place on 19-5-1992. There is also no dispute that the petitioner was granted bail by the Court of the Additional Sessions Judge on 7-7-1992. Even after the release of the petitioner from jail on 7-7-1992, the Detaining Authority took 3 months in passing the detention order which was served on the petitioner on 6-11-1992, i.e. after about 28 days. In this case it has to be seen whether the delay in passing of the detention order which is about 5 months from the date of the incident and after three months after the grant of bail by the Additional Sessions Judge has been properly explained or not. No doubt it is true that if the respondent i.e. the prosecution shows that there is a reasonable nexus between the prejudicial activity and the purpose detention, the delay in passing the detention order has to be overlooked.

(7) In the present case I 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 incident for which criminal proceedings are already initiated. In my view, the respondents have not adequately explained the delay in passing the detention order. If there was any apprehension in the mind of the Detaining Authority that this petitioner would indulge in prejudicial activities even after this incident, proper steps would have been taken to pass the detention order immediately thereafter preventing him from indulging in the said prejudicial activities. Even after his release on bail on 7-7-1992 the detention order was not passed immediately and rather the detention order was passed on 8-10-1992 after three months from the release of the petitioner on bail. It shows that there is no nexus between the prejudicial activities and the purpose of detention and the delay in passing the detention order cannot be overlooked.

(8) The respondents have not adequately explained the delay in passing the detention order which has vitiated the impugned detention order. This detention order was passed mechanically without application of mind and without considering the fact that the passing of detention order at such later stage would serve no purpose when particularly there was no material before the concerned authority that during the period of his release on bail on 7-7-1992 and until 8-10-1992 there was any instance of any prejudicial activity involving this petitioner.

(9) In these circumstances, the writ petition is allowed, Rule is made absolute and the impugned detention order dated 8-10-1992 is hereby quashed.