
(1987) 07 CAL CK 0031
In the Calcutta High Court
Case No : Criminal Misc. Case No. 539 of 1987

Darshan Lal Vohra

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-07-1987

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Criminal Procedure Code, 1973 (CrPC) — Section 439

Citation : (1988) 37 ELT 176

Hon'ble Judges : Padma Khastgir, J; A.K. Chatterjee, J

Bench : Division Bench

Advocate : B.C. Roy and D.K. Gupta, for the Appellant; P.R. Roy and A. Talukdar, for the Respondent

Final Decision : Dismissed

Judgement

1. The detenu Vinod Kumar Vohra, a permanent resident of New Delhi, stated to be engaged in road transport business, arrived at Calcutta Airport on 16th of February, 1987 from Hongkong via Bangkok through Thai International Airliner, when he was arrested by the Customs Authorities on the ground that gold bars were found from his possession, i.e. secreted in his rectum. He was produced on the very next day before the Chief Judicial Magistrate, Barasat, and was remanded to jail custody. On 27th February, 1987 a bail application was moved on his behalf before the Chief Judicial Magistrate which was rejected. Being aggrieved by such order on 27th of February, 1987 an application was moved before the High Court which was rejected. Again on 4th of March, 1987 an application was moved before the Chief Judicial Magistrate for bail, which was rejected. Again being dissatisfied with such order dated 4th March, 1987 an application u/s 439 of the Code of Criminal Procedure was moved before the High Court on 18th March, 1987 whereupon the Division Bench presided over by Mr. Justice Monoj Kumar Mukherjee granted bail in favour of detenu on 20th of March, 1987.

2. Shri Tarun Roy, the Joint Secretary, Government of India, Ministry of Finance, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 directed that the detenu be detained and kept in safe custody at Dum Dum Central Jail with a view to prevent him from smuggling goods. The said order together with the grounds was served on the detenu on 31 st March, 1987. From the detenu's possession eight gold bars of ten tolas each of 999 purity was recovered. The detenu also made a statement before the Customs Officer admitting the recovery of such gold bars from his person and having taken with him US \$ 12,200 and Rs. 3,000/- in Indian currency when he left Delhi for Hongkong. The detenu contended that he arrived at the Calcutta Airport from Hongkong via Bangkok on 16th of February, 1987 by Thai International Airways, carrying only miscellaneous goods, i.e. textiles, shoe, etc. He filled in the Red Channel Declaration Form declaring the articles brought by him and only after thorough check and payment of Customs duty to the tune of Rs. 2.550/- he passed through the customs barriers. His statement given to the Customs Authorities, according to him, was under duress, coercion and due to the assault committed by the Customs Authorities. He submitted that the allegation by the Detaining Authority that he had been knowingly smuggling gold, foreign currency and Indian currency as stated in the grounds was untrue and/or mala fide.

3. The main contention of Mr. Balai Roy, the learned lawyer appearing on behalf of the detenu, was that although the detenu had been granted bail by an order of the High Court as stated earlier, such fact had not been placed before the Board, as such there had been non-application of mind, inasmuch as, had the attention of the Board been drawn to the fact, the Board after due consideration of such fact would have come to a different finding. As a follow-up action although a search was made at his residence, nothing incriminating was found there. Withholding of such material facts from the Board had resulted in such order. Under those facts and circumstances, the present proceeding in the nature of Habeas Corpus have been initiated.

4. The affidavit affirmed by Shri Tarun Roy indicated that the detenu had been to Hongkong in the first week of February 1987 earlier to this trip. The gold seized from his possession on his return from the second trip this year weighing 932.80 gms. was of the value of Rs. 2,50,932/-. No valid documents or permits could be produced by him for importation of such gold bars legally. In his voluntary statement the detenu admitted the recovery of such gold from his person. He also admitted of carrying 12,200 US \$ and Rs. 3,000 in Indian currency without the necessary permission. He could not produce his air tickets from the Hongkong to Calcutta, nor the boarding pass to the Customs Authorities inasmuch as he threw them inside the cabin of the aircraft to avoid customs. He planned to leave Calcutta by Rajdhani Express for Delhi on the very day, he arrived from Hongkong. The seized gold from his possession was examined at the laboratory and on chemical test it indicated that the seizure from his possession contained 99.9% gold which he intended to sell at New Delhi to

interested buyers. From the above facts and circumstances, the deponent was satisfied and pass such order for detention. The Office of the Detaining Authority at Delhi prepared several sets of papers connected with the Detention Order and the grounds of detention together with all connecting documents to the sponsoring authority, when the sponsoring authority after receipt of the documents and papers forwarded it to the Secretary, Home Special Department, for causing services of the detention order with the grounds upon the detenu at Dum Dum Central Jail, which was served on him on 31st of March, 1987. The Central Government referred the matter to the Advisory Board, New Delhi, for its opinion, which Board gave a hearing on 23rd of April, 1987 to the detenu at Calcutta. The deponent contended that it was specifically stated that Vinod Kumar Vohra, the detenu, was granted bail on 20th March, 1987 but he did not avail of the said bail order and remained in custody.

5. Although the detenu was produced on the very next day on 17th of February, 1987 after his arrest at the Dum Dum Airport before the learned Chief Judicial Magistrate, Barasat, he did not make any complaint of any coercion, duress and/or assault made by the Customs Authorities. The manner and the method by which the detenu had wrapped the gold bars in carbon papers and tying the same with adhesive tapes and carrying the same in his rectum while arriving at Calcutta indicated his mala fide intention and conduct in smuggling gold and currency in India. There had been subjective satisfaction and application of mind by the Detaining Authority before such detention order was passed. Hence, such order did not suffer from the vices of arbitrariness and/or mala fide.

6. Mr. P. Roy, the learned lawyer on behalf of the Customs Authorities with reference to the original documents had drawn the attention of this Court to the fact that the petitioner's application to the High Court for bail and the necessary order for release of the petitioner on bail had been placed before the Board for its consideration.

7. Mr. Balai Roy, the learned lawyer on behalf of the petitioner, contended that inasmuch as the learned Judges of the High Court had granted bail, that fact alone indicated that the learned Judges were satisfied that if enlarged on bail the detenu will not repeat his conduct by smuggling goods into India, but from the nature of the order passed it indicated that such bail was not a bail simpliciter, but stringent conditions had been imposed inasmuch as the passport impounded was directed not to be handed over to the detenu until further orders of the Court. The detenu was directed to report to the Investigating Authorities twice a month. Under the circumstances, the restrictions were imposed although enlarged on bail on his movement. Under these circumstances, the object of preventing the detenu from continuing and/or repeating his conduct of smuggling gold illegally into India has been achieved. The fact that he applied for bail before the High Court has been placed before the Board. The Board after due consideration of the grounds and the representation of the detenu had opined that the detenu should be put under detention for a specific period. Under the

circumstances, there had been no non-application of the mind to such fact before such order was passed. In the case reported in *Sita Ram Somani Vs. State of Rajasthan and Others*, where the facts that the detenu retracted his confession and also granted bail were not placed before the Detaining Authority and one of the principle points contended was that there was no-application of mind by the Detaining Authority, it was held that certain vital facts were not brought to the attention of the Detaining Authority and were, therefore, not taken into consideration by the Authority. In the instant case the fact that the detenu applied for bail before the High Court was placed before the Detaining Authority.

8. Under the circumstances, this Court does not find any reason to interfere with the opinion given and the order for detention of the detenu for the period mentioned in the order. As a result this petition is rejected. Rule is discharged.