
(1990) 04 BOM CK 0011

In the Bombay High Court

Case No : Criminal Writ Petition No. 231 of 1990

Dattatraya Babaji Golatkar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 24-04-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3

Citation : (1990) CriLJ 2081

Hon'ble Judges : M.L. Pendse, J;D.J. Moharir, J

Bench : Division Bench

Advocate : Maqsood Khan, for the Appellant; R.M. Agrawal and A.S. Khan and S.G. Page, Public Prosecutor, for the Respondent

Judgement

Pendse, J.—The Joint Secretary to the Government of India by order dated August 14, 1989 passed in exercise of powers conferred by S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 directed detention of the petitioner with a view to preventing him from engaging in transporting smuggled goods. The order of detention along with the grounds of detention was served on the detenu on August 19, 1989 while the detenu was in judicial custody.

The grounds of detention, inter alia, recite that on the basis of information the officers of the Directorate of Revenue Intelligence intercepted truck No. GRX 5075 on Bombay-Panvel Highway on July 12, 1989 early in the morning. One Sharifkhan, driver and the detenu were the occupants of the truck. The truck was escorted by an ambassador car which was occupied by Khaja Ahmed Hussein and Javed Shaikh Mohammed alias Usman Hippi alias Sardar. Both the vehicles were escorted to the D.R.I. office at Colaba and were searched. From the truck 11 gunny bags were recovered containing 2,150 foreign marked gold bars weighing 10 tolas each and valued at Rs. 7,52,50,000/-. The gold and the two vehicles were seized. The residential premises of the occupants were also searched but

nothing incriminating was found. The statement of four persons were recorded and the detenu in his statements dated July 12, 1989 and August 1, 1989 incriminated himself in the commission of the crime. The detenu admitted that he was engaged by Javed Shaikh and was aware that big consignment of gold was to be carried in the truck. The other occupants of the truck and the car also made incriminating statements. All the four occupants were arrested and produced before the Additional Chief Metropolitan Magistrate, Esplanade on July 13, 1989 and all of them were remanded to judicial custody. On this material the detaining authority came to the conclusion that the detenu was engaged in transporting smuggled goods and unless prevented, is likely to indulge in such activities in future and thereupon issued the order of detention. The order of detention is under challenge.

2. Mr. Khan, learned Counsel appearing on behalf of the detenu, submitted that the order of detention was entirely uncalled for as the detenu on the date of issuance of the order was in judicial custody and had not applied for release on bail. Learned Counsel did not dispute that it was open for the detaining authority to exercise powers of detention even when the detenu was remanded to judicial custody, but submitted that there must be some material available to the detaining authority to indicate that the detenu is likely to be released on bail and on such release would indulge in transporting smuggled goods. The submission of learned Counsel is correct. In catena of decisions of the Supreme Court and this Court it has been held that before passing an order of detention in respect of a person in judicial custody, the detaining authority must be satisfied that bail is likely to be granted and on grant of bail the detenu is likely to engage in nefarious activities. The detaining authority can reach this subjective satisfaction on these two aspects provided there is some material available to the detaining authority. In the present case the detaining authority has not filed return in answer to the petition and so it is not possible to gather whether any material was available to the detaining authority independent of the grounds furnished to the detenu. On perusal of the grounds it is clear that the detaining authority was conscious of the fact that the detenu was in judicial custody. The detaining authority observed that there is a possibility of the detenu being released on bail. We inquired from Mr. Agrawal, learned Counsel for the detaining authority, as to what is the basis for such assumption and learned Counsel could not give any satisfactory answer. We also inquired from Mr. Agrawal that whether there is any material available to indicate that the detenu had engaged himself in transporting smuggled goods on any previous occasion and again the answer was in the negative. The detaining authority had no material available at the time of passing the order of detention to reach the conclusion that on being released on bail the detenu would engage in transporting smuggled goods. In absence of any material the detaining authority was not right in exercising powers of detention when the detenu was in judicial custody. On this ground it is necessary to strike down the order of detention.

3. Accordingly the petition succeeds and the order of detention is quashed and

the detenu is directed to be released forthwith. It is made clear that this order would not entitle the detenu to be released in respect of the criminal offence which is pending before the Metropolitan Magistrate.

4. Petition allowed.