
(1991) 01 DEL CK 0032

In the Delhi High Court

Case No : Criminal Writ Appeal No. 364 of 1990

Dhondup Lama

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-01-1991

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 226

Citation : (1991) 1 Crimes 571 : (1991) 43 DLT 377 : (1991) 2 RCR(Criminal) 500

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : U.K. Sharma, Urmil Khanna, P.K. Jain and Ajay Kumar, for the Appellant;

Judgement

V.B. Bansal, J.

(1) Dhondup Lama, has by way of this writ petition under Article 226 of the Constitution prayed that the order dated 25th January, 1990, for his detention may be quashed and he may be set at liberty.

(2) On 25th January, 1990 Shri Mahendra Prashad, Joint Secretary to the Government of India, a specially empowered officer passed an order for the detention of the petitioner with a view to preventing him from engaging in transporting smuggled goods and dealing in smuggled goods otherwise than by engaging in concealing or keeping smuggled goods.

(3) Facts leading to the passing of the impugned order are that 13 packages were found containing smuggled goods and the petitioner was one of the persons who had gone to collect the same and his statement was recorded u/s 108 of the Customs Act and it is thereafter that he was arrested on 26th November, 1989. He was produced before the Metropolitan Magistrate. Calcutta, the same day and was remanded to custody. His bail applications were dismissed by the lower court

as also the High Court of Calcutta. The petitioner was still in custody when the impugned order was passed on 25th January, 1990. This order was served on the petitioner on 2nd February, 1990 when he was still in custody and the grounds of detention were also served upon him along with this order.

(4) A number of grounds have been taken by the petitioner in the writ petition. Ld. counsel for the petitioner has, however, restricted his arguments to only one point i.e. the absence of compelling reasons for passing the order of detention when the petitioner was already in custody and his applications for bail had already been rejected.

(5) Submission of Ld. counsel for the petitioner has been that the bail application of the petitioner filed on 4th January, 1990 was dismissed when the remand period was extended till 18th January, 1990 and on this date the Chief Metropolitan Magistrate had extended the further period of remand till 4th February, 1990 and the bail application moved by the petitioner in the High Court was also dismissed. It is not disputed by Id. counsel for the respondent that even after the dismissal of application for bail by the High Court another application was moved by the petitioner before the Chief Metropolitan Magistrate and it was also dismissed. In the grounds of detention it has been stated in para-10 that:

"Although you are still in jail custody you may be enlarged on bail in the near future, unless prevented the possibility of your indulging in smuggling activities in similar manner or otherwise in future cannot be ruled out."

Submission of learned counsel for the petitioner has been that there ought to have been compelling reasons for passing the impugned order and in coming to the conclusion about possibility of the petitioner being released from the custody immediately. Reliance in this regard has been placed on the case Dharmendra Suganchand Chelawat v. Union of India & others. Judgment Today 1990(1)S.C. 184. It has specifically been held in this Judgment that :

"The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

It has also been observed that the grounds of detention must . show that there were compelling reasons justifying the detention despite the fact that the detenu is already in detention.

(6) LD. counsel for the respondents submits that no doubt the petitioner was in custody on 25th January, 1990 the day on which the order of detention was passed but the order of bail was passed on 30th January, 1990 and, thus, he had

already obtained bail prior to the date on which the detention order was served on the petitioner i.e. 2nd February, 1990. He has in this way submitted that the detaining authority was justified in observing that the petitioner was likely to be released on bail. I am afraid there is no material on record to support this submission. The material date to be considered is 25th January, 1990, the day on which the order of detention was passed and not the date on which the said order was executed. As already indicated the bail application of the petitioner has already been rejected by the Chief Metropolitan Magistrate as also the High Court. In these circumstances there is no material on record to show as to how the petitioner was likely to be released. No doubt the petitioner was ordered to be released on 30th January, 1990 on account of of the non-filing of the complaint within the statutory period. However, there was no mention of the reasons on which the petitioner was likely to be released in the grounds of detention and thus the petitioner was deprived of the material.

(7) Considering all these facts I have no hesitation in coming to the conclusion that there was no compelling reason for the detaining authority to pass the impugned order on 25th January, 1990 when the petitioner was already in custody and his bail application had already been rejected. Thus on account of the absence of cogent material, the subjective satisfaction reached by detaining authority stands vitiated. In this way the impugned order is liable to be quashed.

(8) As a result the writ petition is allowed. Rule is made absolute. The impugned detention order dated 25th January, 1990 is set aside. The petitioner is ordered to be released forthwith, if not required in any other case.