
(1989) 03 MAD CK 0081
In the Madras High Court
Case No : Writ Petition No. 14084 of 1988

Droupadhi Devi

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 28-03-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3
Constitution of India, 1950 — Article 22

Citation : (1990) 29 ECC 12

Hon'ble Judges : Sivasubramaniam, J; P.K. Sethuraman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sivasubramanian, J.—This writ petition has been filed for the issue of a writ of habeas corpus directing the first respondent to produce the body of Satishchandra Gupta, now detained, under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act) at Central Prison, Madras, before this court and set him at liberty.

2. The impugned order of detention has been made by the first respondent in exercise of the powers conferred u/s 3(1)(iv) of the Act with a view to preventing the detenu from dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods.

3. The impugned order of detention contains detailed grounds on which the detenu has been detained. It is unnecessary for us to refer to the same in detail for the purpose of disposal of this petition.

4. Mr. S. Doraisamy, learned counsel for the petitioner, raised various contentions challenging the impugned order of detention. However, he laid stress on the main ground that there is inordinate delay in passing the order of detention. In paragraph 9 of the affidavit filed in support of this writ petition, it has been

stated that the alleged seizure was made on 29-12-1987, and the detenu was detained on 7-11-1988, nearly ten months after the date of the alleged occurrence, and during the said period of ten months, even according to the respondents, the detenu did not involve in any smuggling activities, and hence there is absolutely no scope for apprehension that he is likely to involve in any smuggling activities in future.

5. In reply to the said allegation, a counter affidavit has been filed on behalf of the first respondent. In paragraph 8 of the counter affidavit, it has been stated that in view of the fact that elaborate investigation had to be done not only in Madras, but also at Bombay, it took considerable time for the sponsoring department to finalise the proposals for detention. It has been further stated that mere delay in issuing the order of detention will not vitiate the continued detention.

6. On a careful consideration of the facts placed before us, we find that there was considerable delay of eight months between the date of the alleged occurrence on 29-12-1987 and the date of the detention order on 11-7-1988. Apart from that, again there was unaccountable delay of nearly four months in arresting the petitioner in pursuance of the order of detention. We have gone through the counter affidavit filed on behalf of the first respondent. We are unable to find any satisfactory explanation for the delay occasioned in this regard. Except baldly stating that investigation took considerable time, there is no satisfactory explanation as to the cause of delay of nearly eight months. The authorities ought to have furnished the details setting forth the cause for the delay in order to satisfy the court that the authorities were justified in delaying the issue of the detention order for a period of eight months.

7. That apart, there is absolutely no whisper about the delay that had occasioned between the date of the order of detention and the date of arrest. It is not the case of the respondents that the detenu was absconding and, therefore, the order of detention could not be executed. Even if it is so steps ought to have been taken as provided under the Act. Therefore, we are not satisfied with the explanation offered by the respondents for the delay.

8. Learned Counsel for the petitioner relied on a number of decisions in this connection, and it is unnecessary to refer to all of them, as the principle is well established by now. The Supreme Court has repeatedly held that the delay in passing an order of detention after the incident by itself is not fatal to the detention of a person, for in certain cases delay may be unavoidable and reasonable; and what is required by law is that the delay must be satisfactorily explained by the detaining authority. The dictum has been consistently followed by the Supreme Court and by all other High Courts. In a recent decision of the Supreme Court in Shiv Ratan Makim Vs. Union of India (UOI) and Others, it has been held that where an unreasonably long period has elapsed between the date of the incident and the order of detention, an inference may legitimately be drawn that there is no nexus between the incident and the order of detention,

and the order may be liable to be struck down as invalid. We are conscious of the fact that mere delay by itself may not be of much significance, but once we find that there is no satisfactory explanation for such a long delay, we have to hold that there is no nexus between the alleged occurrence and the order of detention. Such a long unexplained delay would take away the rational nexus between the ground on which the subjective satisfaction is sought to be reached and the objects to be served by the detention, as pointed out by the Supreme Court in a number of cases.

9. A Bench of this court in *Hyder Ali v. The State of Tamil Nadu* 1988 L W C 13 considered this question elaborately and came to the abovesaid conclusion. There, the learned Judges held that the lapse of time of nearly 7 1/2 months in passing the order of detention and more significantly the delay of six months in securing the detenu, have not at all been satisfactorily explained in the counter affidavit filed on behalf of the first respondent. A similar view has been taken by this court in decision reported in *Rajagopal Chettiar v. The Union of India* 1988 L W C. 122

10. Learned Government Advocate appearing for the respondents, submitted that there is sufficient explanation for the delay in passing the order of detention. According to him, the investigation of the case took considerable time, and, therefore, the order of detention could not be passed earlier. As regards the delay in apprehending the detenu, he submitted that he was not available for arrest. We are unable to accept the said contentions, as none of these explanations are sustainable in view of the absence of such averments in the counter affidavit. He relied on the decision of the Supreme Court in *Rajendrakumar Natvarlal Shah v. State of Gujarat* 1988 SCC 575 wherein it has been held as follows:

Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that distinction must be drawn between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely

reached. Taking of such a view would not be warranted unless the court finds that the grounds are "stale" or illusory or that there is no real nexus between the grounds and the impugned order of detention. The decisions to the contrary by the Delhi High Court in *Anil Kumar Bhasin v. Union of India* [Cri. W No. 410 of 1986 decided on February 2, 1987 (Del. H.C.)] *Bhupinder Singh v. Union of India* 1985 DLT 493, *Anwar Esmail Aibani v. Union of India* [Cri. W. No. 375 of 1986, decided on December 11, 1986, (Del. HC)], *Surinder Pal Singh v. M.L. Wadhawan* [Cri. W.No. 444 of 1986, decided on March 9, 1987 (Del. HC)], and *Ramesh Lal v. Delhi Administration* [Cri. W.No. 43 of 1984, Decided on April 16, 1984 (Del. H.C)] and other cases taking the same view do not lay down good law and are accordingly overruled.

On going through the said judgment of the Supreme Court, we find that it may not strictly apply to the facts of the present case. There the Supreme Court considered the question whether the delay by itself would be a ground for submitting that there was no sufficient material for the subjective satisfaction of the detaining authority or what the subjective satisfaction was not genuinely reached. But that is not the case here. We are only concerned with the long unexplained delay between the date of the alleged occurrence and the order of detention, and the further delay in apprehending the detenu. As we have come to the conclusion that the explanation offered by the respondent is not satisfactory in this regard, we have to come to the conclusion that the impugned order of detention is not sustainable, and the detenu is not liable to be detained under the said order and longer.

11. In the result, the writ petition is allowed, the impugned order of detention is quashed and the detenu is directed to be set at liberty forthwith.