

(1997) 12 DEL CK 0053

In the Delhi High Court

Case No : Criminal Writ Petition No.240 of 1995

George Kutty Kuncheria

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 24-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Extradition Act, 1962 — Section 24

Citation : (1998) 2 AD 842 : (1998) CriLJ 1871 : (1998) 71 DLT 726 : (1998) 44 DRJ 627 : (1998) 1 ILR Delhi 170

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Mr. T.S. Arunachalam, Mr. R. Sathish and Ms. Anne Mathew, for the Appellant; Mr. A.K. Vali, Mr. Pushkarna and Ms. Mini Mehta, for the Respondent

Judgement

Anil Dev Singh, J.—This is a habeas corpus petition for the release of the petitioner from detention. Briefly stated the facts giving rise to this petition are as follows:.

2. The petitioner who is an Indian citizen was working in the Chase Manhattan Bank (for short "the Bank"), New York (United States of America) from the year 1982 to 1985. He resigned his job and returned to India in January, 1986. On 20th September, 1988, the Government of United States of America through its Embassy in New Delhi sent a letter of request to the Ministry of External Affairs, Government of India for extradition of the petitioner u/s 4 of the Extradition Act, 1962 (for short "the Act") to United States of America on the ground that the petitioner embezzled \$ 1.5 million out of the funds of the Bank while he was working for it and caused the funds to be transferred by Wire out of the United States of America to the United Arab Emirates where he claimed the alleged ill gotten gains. A warrant for the petitioner's arrest was issued on 16th August, 1988 by the Magistrate of United States District Courts for the Southern District of New York, Manhattan. On 5th December, 1988, the Central Government on consideration of the material received by it from United States of America in

exercise of its powers u/s 5 of the Act requested Mr. Bharat Bhushan, Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi, to conduct an enquiry into the matter under the Act. The documents received from United States of America were placed before him on 7th December, 1988 by the Deputy Secretary, Ministry of External Affairs, Government of India. On perusal of the documents, the Additional Chief Metropolitan Magistrate issued a warrant of arrest against the petitioner. Consequently, on 12th April, 1989, the petitioner was arrested in Ernakulam (Kerala). He was brought to Delhi and produced before the Additional Chief Metropolitan Magistrate on 17th April, 1989. He was remanded to judicial custody and was lodged in Tihar Jail, where he continues to be. It appears that the petitioner's wife Rosiline filed a writ petition in the Delhi High Court being Writ Petition No. 693 of 1993 challenging the constitutional validity of the Extradition Act, 1962. It was also, inter alia, pleaded that no valid extradition treaty existed between the Government of India and the Government of United States of America and the invocation of the Extradition Act, Therefore, was illegal. The Delhi High Court on 7th December, 1989, stayed the extradition of the petitioner. However, on 14th December, 1990, the writ petition of the petitioner was dismissed by the High Court. The petitioner as well as his wife Rosiline filed appeals by way of special leave petitions against the judgment of this Court. Besides, a writ petition under Article 32 was also filed before the Supreme Court challenging the extradition proceedings. On February 20, 1991 the Supreme Court was pleased to stay further enquiry before the Extradition Magistrate. Ultimately, on October 11, 1993 the Special Leave Petitions as well as the writ petition were dismissed by the Supreme Court, thus clearing the decks for the Chief Metropolitan Magistrate to proceed with the enquiry. On 19th November, 1993, the Additional Chief Metropolitan Magistrate finding the existence of a prima facie case in support of the requisition of the United States of America committed the petitioner to prison to await the orders of the Central Government. It is the case of the petitioner that he made representation to the Central Government u/s 8 of the Act read with Section 29 thereof. Even some of the Members of Parliament interceded in the matter and requested the Government of India to refuse the extradition of the petitioner. It appears that on 30th December, 1993, Mr. Atal Bihari Vajpayee had also made a similar request to the Government of India. In response, the Minister of External Affairs on 9th August, 1994, communicated to Mr. Atal Bihari Vajpayee the decision of the Government refusing extradition of the petitioner. Similar letters were addressed by the External Affairs Minister to several Members of Parliament and also to Ms. Nirmala Deshpandey, President of Akhil Bharat Rachanatmak Samaj. On 3rd October, 1994, the Ministry of External Affairs also informed the US Embassy in New Delhi of the Government's decision not to extradite the petitioner. While communicating this decision, the US Embassy was also informed that the prosecution of the case against the petitioner was being considered in India itself. Despite this decision, the petitioner was not released from custody. On 1st November, 1994, the petitioner gave notice to the Government of India of his intention to make an application to the High Court seeking his discharge u/s 24

of the Extradition Act. This application was received by the Government of India, but the petitioner was not released. On 21st December, 1994, the wife of the petitioner filed a writ petition in the Kerala High Court. While the writ petition was pending before the Kerala High Court the decision earlier reached by the Central Government regarding request of the United States of America to extradite the petitioner was re-opened at the request of the Indian Ambassador to United States of America. On 27th October, 1994, the External Affairs Minister agreed to the extradition of the petitioner to the United States of America. Thereafter on 10th February, 1995 the Prime Minister of India also approved the extradition of the petitioner. On 10th March, 1995 the Kerala High Court stayed the extradition proceedings. However, on 18th April, 1995, the Kerala High Court dismissed the writ petition on the ground that it had no jurisdiction in the matter as the cause of action, if any, had arisen within the territorial jurisdiction of the Delhi High Court. Thereupon, on 22nd April, 1995, the petitioner filed a writ petition before the Delhi High Court against his extradition. On 26th April, 1995, this Court stayed the extradition of the petitioner.

3. At the outset it would be convenient to notice certain provisions of Chapters II and V of the Act as the said provisions have a bearing on the controversy raised in the writ petition. First the outline of Chapter-II which contains section 4 to 11 out of which, for our purposes, sections 4 to 9 are relevant.

4. Section 4 of the Act makes a provision for a requisition by a foreign state or a commonwealth country to the Central Government for the surrender of a fugitive criminal to the former by the latter. It lays down that the request for surrender of a fugitive criminal is to be made to the Central Government by a diplomatic representative of the foreign State or commonwealth country at Delhi or by the Government of the foreign State or a commonwealth country communicating with the Central Government through its diplomatic representative in that State or country. In case neither of the modes is convenient, the requisition is to be made in such other mode as is settled by the arrangement of the foreign State or commonwealth country with the Government of India. After the requisition is made to the Central Government, the Central Government u/s 5 of the Act, if it thinks fit, can issue an order to any Magistrate who would have had jurisdiction to enquire into the offence if it had been an offence committed within the local limits of his jurisdiction, directing him to enquire into the case. u/s 6 of the Act, the Magistrate, on receiving the order of the Central Government u/s 5 of the Act, is required to issue a warrant for the arrest of the fugitive criminal. When the fugitive criminal appears or is brought before the Magistrate, Section 7 of the Act authorises the Magistrate to enquire into the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a Court of Sessions or the High Court. Under sub-clause (ii) of Section 7 of the Act the Magistrate can take such evidence as may be produced in support of the requisition of the foreign State or commonwealth country and on behalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal has been accused of or has been convicted, is an

offence of a political character or is not an extradition offence. Upon consideration of evidence which is brought before him, if the Magistrate is of the opinion that a prima facie case is not made out in support of the requisition of the foreign State or commonwealth country, he is required to discharge the fugitive criminal under sub-section (3) of Section 7 of the Act. But in case the Magistrate is of the opinion that a prima facie case is made out in support of the requisition of the foreign State or commonwealth country, he may under sub-section (4) of Section 7 of the Act commit the fugitive criminal in prison to await the orders of the Central Government and shall report the result of his enquiry to the Central Government and shall forward together with such report the written statement which the fugitive criminal may desire to submit for the consideration of the Central Government. If upon the receipt of the report and written statement, the Central Government is of the opinion that the fugitive criminal ought to be surrendered to the foreign State or commonwealth country, it may issue a warrant u/s 8 of the Act for the custody and removal of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant.

5. In Chapter V, sections 24 and 29 need to be noticed. Section 24 falling in Chapter-V of the Act provides for the discharge of the fugitive criminal committed to prison to await his surrender or return to any foreign State or commonwealth country if he is not conveyed out of India within two months after such committal. At this stage it would be convenient to extract Section 24 of the Act :.

"24. Discharge of person apprehended if not surrendered or returned within two months. If a fugitive criminal who, in pursuance of this Act, has been committed to prison to await his surrender or return to any foreign State or Commonwealth country is not conveyed out of India within two months after such committal, the High Court upon application made to it by or on behalf of the fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Central Government may order such prisoner to be discharged unless sufficient cause is shown to the contrary."

6. Section 29 authorises the Central Government to discharge any fugitive criminal. This Section reads as follows:.

"29. Power of Central Government to discharge any fugitive criminal. If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive criminal not being made in good faith or in the interest of justice or for political reasons or otherwise. It is just or inexpedient to surrender or return the fugitive criminal. it may, by order at any time stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been used or endorsed to be discharged.

7. Thus, it is clear from the above that in India extradition proceedings are

governed by the above said statutory provisions.

8. In a nutshell the procedure under the Act is that the Central Government, on receiving a requisition from the foreign state or a commonwealth country for surrender of a fugitive criminal to it, authorises any Magistrate, having jurisdiction to enquire into the offence, if it had been an offence committed within the local limits of his jurisdiction, to enquire into the case. u/s 6, the Magistrate on receiving the order from the Central Government, is required to issue a warrant for the arrest of the fugitive criminal. u/s 7 if the Magistrate on consideration of the evidence is satisfied that a prima facie case is made out against the fugitive criminal, he is required to commit him to prison and forward the result of his enquiry to the Central Government together with his report and written statement which the fugitive criminal may have submitted for consideration of the Central Government. In case the Magistrate is of the opinion that prima facie case is not made out in support of the requisition of the foreign state or commonwealth country, he is under an obligation to discharge the fugitive criminal. In the former eventuality the Central Government is required to take a decision as to whether the fugitive criminal should be extradited and if the decision is in the affirmative, the Central Government is required u/s 24 of the Act to convey him out of India within two months after his committal by the Magistrate to prison. In case the fugitive criminal is not conveyed out of India within the stipulated time, the High Court upon application made to it and upon proof of the fact that a reasonable notice of the intention of the fugitive criminal to make such an application has been given to the Central Government, order the discharge of the fugitive criminal unless sufficient cause is shown to the contrary.

9. Learned senior counsel for the petitioner submitted that the petitioner must be discharged in view of Section 24 of the Act as the petitioner was not conveyed out of India within two months of his being committed to prison to await his surrender or return to the United States of America. To appreciate this argument, it would be necessary to notice the sequence of events on following two dates :-.

19.11.1993. The learned Additional Chief Metropolitan Magistrate concluded the extradition proceedings and passed an order u/s 7(4) of the Act recommending to the Union of India that the petitioner may be ordered to be extradited as he was of the opinion that a prima facie case was made out against him and at the same time committed him to prison to await the orders of the Central Government.

1.11.1994. The petitioner gave a notice to the Government of India of his intention to make an application to the High Court seeking his discharge u/s 24 of the Act as he was not conveyed to the United States of America within two months after his committal to prison.

10. There is no dispute with regard to either the date of committal of the petitioner to prison u/s 7(4) of the Act or to the factum of notice given by the

petitioner to the Central Government. It is also not disputed that the petitioner was not conveyed out of India within two months of the passing of the order of committal of the petitioner to custody by the Additional Chief Metropolitan Magistrate & even after the issuance of the notice by the petitioner to the Central Government u/s 24 of the Act.

11. The question which arises for determination is as to what is the true import of Section 24 of the Act. It seems to me that this Section does not authorise the detention of a fugitive criminal beyond two months after his committal unless sufficient cause is shown to the contrary. Learned counsel appearing for the respondent submitted that the word "may" occurring in Section 24 of the Act shows that the provision is directory. It was contended that the court has discretion to refuse the request of the fugitive criminal even if no sufficient cause is shown by the Central Government for failing to convey him out of India to the foreign state within two months of his committal to prison. I regret my inability to subscribe to the view advanced by the learned counsel for the respondent. Section 24 mandates discharge of the fugitive criminal out of prison in case he is not conveyed to the foreign state, seeking his extradition, within two months after his committal unless sufficient cause is shown to the contrary. If the submission of the learned counsel for the respondent is accepted, then in that event the words "unless sufficient cause is shown to the contrary" would be unnecessary. In case it were to be held that the legislature had intended to confer complete discretion on the court, in that event, the words "unless sufficient cause is shown to the contrary" would be rendered completely useless and otiose. In *Re Shuter (No.2)*, 1959 (3) All E.R. 481, the fugitive criminal was committed to prison by the Chief Metropolitan Magistrate under the Fugitive Offenders Act, 1881, on 15th July 1959 to await his return to Kenya in connection with commission of serious offence in that country. Section 7 of the Fugitive Offenders Act, 1881, which is some what similar to section 24 of the Indian Extradition Act, 1962, provides that if a fugitive, who has been committed to prison in any part of Her Majesty's dominion to await his return, is not conveyed out within one month after such committal, a superior court upon an application by or on behalf of the fugitive may unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody. Since the fugitive was not conveyed out of Brixton Prison, where he was committed, within one month of his committal, the applicant moved for an order for his discharge pursuant to Section 7 of the Fugitive Offenders Act, 1881. The Queens Bench Division constructing the word "may" observed as follows :.

"The first matter which arises here is as to the true construction of s.7. Counsel for the applicant maintains that it is a section which does not permit the detention of a fugitive for more than one month unless sufficient cause is shown to the contrary. As against that, two arguments are put forward. First, it is said that that is not the effect of the section, and that the reference there to one month is merely a reference to the time when an application may first be made, i.e., the application can be made at any time after a month. It is also said that

the words "may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody" are not to be read as counsel for the application would have them read, namely, as "shall, unless sufficient cause is shown to the contrary, order the fugitive to be discharged." It is submitted that there is a complete discretion: anything may be taken into consideration, save only that, if sufficient cause is shown to the contrary, then the discretion is cut down to that extent. I can well see the force of those two arguments, the argument in regard to the month and the argument as to the words "may, unless"; but I have come to the conclusion that by far the most natural interpretation of this section is the interpretation for which counsel for the applicant contends.

We were referred also to s. 5 and 6 of the Act of 1881. I need not refer in detail to those sections, but, reading them with s. 7, I can see no reason for reading the period of one month in s.7 as referring merely to the time when the application can be made. It seems to me that, in ordinary language, s. 7 is saying that there is no jurisdiction for holding a man beyond one month unless sufficient cause is shown. As regards the meaning of the word "may", I confess that at one time I was influenced by the argument of counsel for the Governor of Brixton Prison, but, if the discretion is completely at large and "may" means "may", then it would be quite unnecessary to have the words "unless sufficient cause is shown to the contrary". Secondly, it is a case where what is sufficient cause in any particular case may well depend on opinion and discretion. I think that the natural meaning is "shall, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody".

12. A similar question arose in the High Court of Justice Queen's Bench Division in the matter of Akbar CO 3690/96. with regard to the interpretation of paragraph 10 of Schedule-1 of the Extradition Act, 1989. The said paragraph reads as follows:.

"If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or, if a writ of habeas corpus is issued, after the decision of the court upon the return to the writ, it shall be lawful for any judge of the High Court, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.".

13. The Queen's Bench Division proceeded on the basis that the word "may" means "must". In that case the fugitive criminal was arrested on 1st September, 1995 and under the above said provision was required to be conveyed out of the country within two month of his committal and since he was not conveyed out of the country within that period he was discharged from custody. In this regard, the Court held as follows :.

"During the last two months the Home Secretary has personally displayed an interest in this case. Had he done so 12 months ago, it is to be hoped that matters would more speedily have been resolved. For my part, I find it wholly unacceptable that a man presumed to be innocent, having been arrested for extradition on an inadequate basis, should be detained in custody for 14 months, during at least half of which period, from September to January and from May to July, nothing was done by the Home Office to clarify the basis of that detention or to bring it to an end. Accordingly, I am wholly unperceived that sufficient cause has been shown in this case. Once the applicant was arrested on 1st September, 1995 it was incumbent on the Home Office to take reasonably expeditious steps to surrender and convey him out of the United Kingdom. That is what the two-month provision in paragraph 10 expressly contemplates. But it is not what the history of this case shows. I recognise the gravity of the allegation against the applicant. That is all the more reason for getting on with his case. To my mind the time has come to say "enough is enough", for, in my judgment, no sufficient cause is shown. I would grant this application and so far as the applicant's detention for the purposes of extradition is concerned, discharge him from custody forthwith."

14. Having regard to the above said discussion, I am of the opinion that the compulsive force of Section 24 of the Act mandates the High Court to discharge the fugitive criminal out of custody, on an application made by him when he without any sufficient cause is not conveyed out of India within two months of his committal to prison by the Magistrate u/s 7(4), upon proof that reasonable notice of the intention to make such an application had been given to the Central Government.

15. The question which has now to be considered is whether the respondent has been able to show sufficient cause for not conveying the petitioner out of India within two months of his committal to prison by the learned Additional Chief Metropolitan Magistrate. It cannot be denied that the petitioner continued to be in jail right from 12th April, 1989 till this date. This period includes the period from 19th November, 1993, the date of his committal to prison as ordered by the learned Additional Chief Metropolitan Magistrate u/s 7(4) of the Act. From 11th October, 1993 till 26th April, 1995 there was no stay order or any order of any other authority restraining the respondent from conveying the petitioner out of India. It was only on 26th April, 1995 that in the instant writ petition an order restraining the respondent from removing the petitioner out of the jurisdiction of this Court was passed.

16. Learned counsel for the respondent however, pointed out that the report of the Magistrate Along with the written statement of the petitioner contemplated u/s 7(4) of the Act was sent to the Central Government on 16th December, 1993. This may be so. But it hardly makes any difference to the situation as the petitioner continued to be in jail for more than fifteen months even from 16th December, 1993 till 26th April, 1995, up to which time there was no order

restraining the Central Government from surrendering the petitioner or conveying him out of India. Learned counsel for the respondent explaining the delay contended that the petitioner could not be conveyed out of India as the representations on behalf of the petitioner including those by the Members of Parliament were received by the Central Government. The argument does not appeal to me. As disclosed from the letters of Minister of External Affairs dated 9th August, 1994 addressed to Shri A.B. Vajpayee, P. Kurien, Ramesh Chennithala, K.M. Mathew, P.C. Thomas, Ms.Nirmala Deshpande, the representations by these persons on behalf of the petitioner were sent to the Central Government on 30th December, 1993 & 22nd December, 1993, 20th December, 1993, 18th November, 1993, 17th January, 1994 respectively. The Minister of External Affairs informed the MPs on 9th August, 1994 about the decision of the Central Government that the petitioner will not be extradited to the United States of America. On 3rd October, 1994 the same decision was communicated to the U.S. Embassy in New Delhi. It is note worthy that the Central Government had taken a decision not to extradite the petitioner and Therefore it did not issue an order u/s 8 of the Extradition Act which contemplates the issuance of a warrant for the custody and removal of a fugitive criminal and for his delivery to a person to be named in the warrant after receipt of the report and statement under sub-section 4 of section 7 from the Magistrate directed to hold the enquiry. Thus having taken a decision not to extradite the petitioner, the Central Government did not convey him out of the country. The above said representations & the decision of the Central Government thereon cannot be pleaded as a cause much less sufficient cause for the delay in conveying the fugitive criminal when the Central Government alters its earlier view & decides to extradite him. Since the petitioner was not conveyed out of the country within two months of his committal to prison, there was no justification to keep him in custody especially after the Central Government had taken a decision not to extradite him, which decision was even communicated to the United States Embassy. Therefore, in view of the provisions of section 24, the petitioner is entitled to be discharged out of prison as the respondent has failed to show sufficient cause to the contrary.

17. The next question for determination is as to whether the Central Government could review its earlier decision refusing to extradite the petitioner. In this regard it was submitted by learned counsel for the respondent that earlier the Central Government had not taken any final decision with regard to the question of extradition of the petitioner. Learned counsel for the respondent while advancing the submission has missed the language and tenor in which the view of the Central Government was expressed to the Members of Parliament and the U.S. Embassy in the letters of the External Affairs Minister dated 9 August 1994 (Annexure 2 collectively to the petition). The decision of the Central Government as communicated to the Members of Parliament reads as follows :.

"Government have decided not to extradite him. Prosecution of the case against Shri Kuncheria in India is being considered."

18. The communication dated October 3, 1994, made to the Embassy of the United States of America by the Ministry of External Affairs reads as follows :-

"The Ministry of External Affairs presents its compliments to the Embassy of the United States of America and with reference to the latter's Note No. 228 dated 4 May, 1994, has the honour to state that the Government of India do not propose to extradite Mr. George Kutty Kuncheria. The possibility of prosecuting Mr. Kuncheria in India is being examined.

The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America in New Delhi the assurance of its highest consideration."

19. Thus, it is clear from the communication to the M.Ps. that the decision of the Central Government was not a tentative, preliminary or provisional one. Where a statute confers power on the Government to decide and determine any question which affects the rights of the subject, such decision or determination, made and communicated in terms which are not expressly preliminary or provisional is final and conclusive. Though extradition is granted in implementation of international commitments of the state, the procedure to be followed in extraditing a fugitive criminal on the basis of which it is decided, whether extradition should be granted or not is determined and controlled by the statute. The Courts are duty bound to protect the right of the individual by insisting upon strict compliance with the statute which lays down the conditions precedent to the surrender of a fugitive criminal.

20. There is no provision in the Act which permits the Central Government to overturn its earlier decision declining to extradite a fugitive criminal and to convey him out in violation of section 7(4) of the Act. The Central Government has no right to change its mind in the absence of an express statutory power in this behalf. The policy of legislation appears to be to introduce certainty in the matter of extradition and to rule out uncertainty and vacillations. It is well settled that unless power of review is conferred by a statute, the same cannot be exercised as it does not exist. In case any authority is needed in support of the proposition, a reference can be made with advantage to the following decisions :-

1. R. Chitralekha and Another Vs. State of Mysore and Others, .
2. Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others,
3. Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, and.
4. Re: War Damage Act, 1943, 1952 (2) All E.R. 799.

21. At this stage, it must be noticed that the learned counsel for the respondent relied upon a decision of the Supreme Court in State of West Bengal Vs. Jugal Kishore More and Another, , and urged that. power of the State to order extradition of a fugitive criminal is a political and sovereign power and Therefore

such a power can be exercised to review its earlier decision. This authority is of no avail to the respondent. In this case the Extradition Act was not applicable as the fugitive criminal was to be extradited from Hong Kong, which state was not included in the list of countries from which offenders could be extradited u/s 3 of the Act. Notwithstanding this fact, it was held by the Supreme Court that the Government of India was not prohibited from securing through diplomatic channels the extradition of an offender for trial of an offence committed in India. It was in that context, that the Supreme Court made the observation that the power of extradition was of a political nature. The observation, however, cannot be construed to mean that once a decision is taken by the Central Government declining extradition of a fugitive criminal, it can be reviewed even though no such power is conferred by the Act which lays down detailed statutory procedure and time limit for extradition of a fugitive criminal.

22. There is another aspect of the matter which needs to be mentioned. The petitioner has been in continuous custody from 19th April, 1989 till this date. That means the petitioner has been in detention for the last more than eight and a half years. It will be highly unjust and oppressive to extradite the petitioner out India at this stage. In a situation where extradition of a fugitive criminal is unjust and oppressive, the courts have not allowed their return to the foreign state. [See (1) *Kakis Vs. Govt. of the Republic of. Cyprus*, 1978 (2) All E.R. 634 *Narajan Singh Vs. Fugitive Offenders Act*, 1961 (2) All E.R. 565; and *Re. Handerson v. Secretary of State*, 1951 (1) All E.R. 283 . As already seen, section 29 of the Act confers power on the Central Government to discharge a fugitive criminal in case it finds that it would be unjust to surrender or return a fugitive criminal to the requisitioning state. The extradition of a fugitive criminal can be unjust if it is oppressive. If the petitioner is allowed to be extradited after being in custody for eight and half years, it would be certainly unjust, unfair and highly unreasonable. It may be that the petitioner and his wife by filing writ petitions and Special Leave Petitions delayed the proceedings launched by the Central Government before the Magistrate u/s 7 of the Act, but the fact remains that even after the writ petitions and Special Leave Petitions were finally dismissed, the petitioner was not conveyed out of India within two months of the order of committal passed by the learned Additional Chief Metropolitan Magistrate. This not having been done, if the petitioner is now permitted to be conveyed out of India in violation of section 24 of the Act, it would also amount to violation of Article 21 of the Constitution which interdicts the state from taking away the life and liberty of a person without procedure established by law.

23. One more point remains to be dealt with. It is to be noted that the Central Government before taking a decision to review its earlier order, has not given any opportunity to the petitioner to have his say in the matter. Undoubtedly, the decision of the Central Government to extradite the petitioner affects him adversely. It visits him with penal consequences. Therefore, the principles of natural justice should have been complied with by the Central Government before altering its decision. It ought to have heard the petitioner before passing

an order extraditing him.

24. Therefore, I conclude as follows :-.

1. Since there is an elaborate scheme under the Act providing for time limit within which the fugitive criminal has to be conveyed out of India, the court is required to discharge him from prison for the failure to abide by it in case no sufficient cause is shown to the contrary. As the respondent has not shown any sufficient cause for not conveying out the petitioner out of India within two months of the committal of the petitioner to custody, he is required to be discharged from prison.

2. The Central Government having taken a decision in the first instance declining to extradite the petitioner, was not competent to review the same subsequently.

3. Assuming that the Central Government was competent to review the decision, the petitioner not having been heard by the Central Government before approving his extradition, the decision is violative of the principles of natural justice.

4. The extradition of the petitioner after eight and half years of his arrest is unjust and oppressive.

25. In view of the above discussion, rule is made absolute and the petitioner is directed to be discharged from custody forthwith. However, it is clarified that it will be open to the Central Government to prosecute the petitioner in India in accordance with law.

26. This order will be communicated to the Superintendent, Central Jail, Tihar, for compliance.

27. A copy of this order be given duly to learned counsel for the petitioner and the Union of India.

28. Certain typographical mistakes have crept into the judgment dated 24th December, 1997. At page 19, line 11, the word "contrary" has appeared instead of the word "country". After correction the sentence will read as follows :.

"Since the petitioner was not conveyed out of the country within two months of his committal to prison, there was no justification to keep him in custody especially after the Central Government had taken a decision not to extradite him, which decision was even communicated to the United States Embassy."

29. At page 25, para 1 beginning with line 4, will read as follows :.

"1. Since there is an elaborate scheme under the Act providing for time limit within which the fugitive criminal has to be conveyed out of India, the court is required to discharge him from prison for the failure to abide by it in case no sufficient cause is shown to the contrary. As the respondent has not shown any sufficient cause for not conveying out the petitioner out of India within two months of the committal of the petitioner to custody, he is required to be

discharged from prison."

30. The above said corrections will be deemed to have been carried out in the judgment dated 24th December, 1997. The Office will issue copies of the judgment to the concerned with the above said corrections. Copies of this order be sent to the learned counsel for the parties and the Superintendent, Tihar Jail.