

(2000) 12 DEL CK 0083
In the Delhi High Court
Case No : Criminal W. 352 of 2000

Gurdev Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-12-2000

Acts Referred:

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

Citation : (2001) CriLJ 772 : (2001) 76 ECC 443 : (2001) 2 RCR(Criminal) 224

Hon'ble Judges : Dr. Arijit Pasayat, C.J; Manmohan Sarin, J

Bench : Division Bench

Advocate : G.L. Rawat and Kuljit Rawal, for the Appellant; H.S. Phoolka Jayant Bhushan and Neeraj Jain, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, C.J.—Order of detention passed by the Joint Secretary to the Government of India u/s 3(1) of the Conservation of Foreign Exchange and Prevention of smug Smuggling Activities Act, 1974 (in short, the Act), pursuant to which Swaran Singh Sandhu, hereinafter referred to as the detenu," is interned in the Central Prison Nasik, is as sailed in this Habeas Corpus Petition by his father Gurdev Singh. Detention of the detenu was considered necessary by the Det'aining Authority with a view to preventing him from smuggling goods in future. The grounds of detention dated 2.3,2000, inter alia, stated various objectionable activities of the detenu. The conclusions of the detaining authority are in the following terms:-

"Taking into consideration the foregoing facts and the material on record. I am reasonably satisfied that your activities amount to smuggling of goods as defined in Section 2(39) of the Customs Act, 1962 and as adopted in the COFEPOSA Act, 1974 via Section 2(e) thereof since your acts and omissions have rendered the goods involved liable to confiscation under Sections 111 and 113 of the Customs

Act, 1962 read inter alia with Rule 11 and Rule 14 of Foreign Trade (Regulation) Rule 1993, framed under Foreign Trade (Development and Regulation) Act, 1992.

In view of the facts mentioned above. I have no hesitation in arriving of the conclusion that you have been engaging in smuggling goods. Considering the nature and gravity of the offence, the well-organized manner in which the prejudicial activities have been indulged in by you, your role therein as well as your dubious conduct as brought out above all of which reflect your high potentiality and propensity to indulge in such prejudicial activities in future, I am satisfied that there is a need to prevent you from indulging in such prejudicial activities in future by detention under the COFEPOSA Act, 1974. In view of the above, and further having regard to the chronological sequence of events and your high propensity and potentiality to indulge in such activities in future. I am satisfied that the proximity between dates of incident and issue of this Detention Order as well as the object and purpose of your detention have been maintained.

I am aware that you were released on conditional bail. However, you were produced before the Hon'ble Additional Chief Metropolitan Magistrate, Mumbai on 26.2.2000 after you were off loaded from Jet Airways flight leaving Mumbai for Delhi as narrated above and you were ordered to be released on furnishing an additional P.R. Bond of Rs. 2 lakhs and also one solvent surety. In the meantime you were kept in J.C. considering. The above circumstances, I am satisfied that there is immediate possibility, of your release from J.C. considering your antecedents and high propensity and potentiality to indulge in such prejudicial activities in future. I am satisfied that when released you are likely to continue to indulge in activities in future unless detained under the COFEPOSA Act, 1974.

I am also aware that adjudication and prosecution proceedings are likely to be initiated against you under the Customs Act, 1962 in due course . These proceedings are punitive in nature. Considering you high potentiality and propensity to indulge in such prejudicial activities in future. I am satisfied that you should be detained under the COFEPOSA Act, 1974 with a view to preventing you from smuggling goods in future.

While passing this Detention Order under the COFEPOSA Act, 1974, I have considered and relied upon the documents mentioned in the enclosed.

I consider it against the public interest to disclose the source of intelligence referred to at the relevant paragraphs of the grounds above."

2. Detenu was intimated about his right to make representation to the Detaining Authority, Central Government as well as the Advisory Board. Eighty four documents were considered and relied upon for coming to the conclusions as aforesaid Representations made to the authorities were rejected.

3. Detention is primarily assailed on several grounds, and are mainly as follows:-

(1) Documents running into more than thousand pages are stated to have been considered by the Detaining Authority within a very short space of time. This

shows non-application of mind. Further, the documents were not considered in a continuous process of perusal. In fact, after framing of grounds of detention, some materials came which" were taken note of.

(2) There are materials to show that Sponsoring Authority and Detaining Authority were acting in unison and Therefore, there was no independent application of mind.

(3) Some of the relied upon documents are not in a language which is known either to the detenu or the detaining authority and Therefore the order of detention is vitiated.

(4) Before the order of detention was passed, proposal for detention was placed before the Screening Committee, which did not consider it necessary to suggest detention. Without any further material, only after lapse of few days order of detention has been passed.

(5) Certain materials which could have weighed with the Detaining Authority while arriving at the subjective satisfaction were not placed by the Sponsoring Authority on the ground that they were not relevant. It is not for the Sponsoring Authority to decide as to what material is relevant. He should have placed all material which is linked with the subjective satisfaction, before the Detaining Authority as it is the subjective satisfaction of the Detaining Authority and the Sponsoring Authority had no right to withhold the materials. By way of illustration, it is stated that the documents which relate to three Panchnama or the seizure memos were running in 200-300 pages were not placed before the Detaining Authority. Similarly, GR forms which are prescribed by RBI and contained various details were not placed for consideration by the detaining Authority. Though reliance was placed by the Detaining Authority on the remand application and the statement of Satnam Singh and Megar Singh, their statements are in respect of Mate receipts. These Mate receipts are not on record. These should have been placed for consideration of the Detaining Authority. This having not ben done, the Sponsoring Authority has withheld material evidence.

4. By way of reply, it is submitted by the learned Counsel for the Detaining Authority that the consideration of materials was a continuous process and there was no peace-meal consideration. Records would indicate that subjective satisfaction was not formed on a consideration of documents in installments but on consideration by a continuous process. So far as paucity of time, as contended by the petitioner is concerned, there was process of familiarization with documents with continuity Representations had been received from the detenu and others running into around 857 pages which had been gone through by the Detaining Authority and Therefore there was familiarization with various materials. Total number of pages which were considered and relied upon are 2629. Break up of this figure are as follows:-

Pre-decisional representation 32 DEP B Fill 858

(documents of repetitive nature) Shipping Bills 445

(documents of repetitive nature) 400

Memorandum of Articles & Association 72

Bail applications 166

Summons 18

The period during which the consideration was made was from 28th Feb. to 22nd March, 2000. Material documents required to be read reckoning process of familiarization and omitting the repetitive ones, or ones not of any consequence were actually only about 494 pages. Therefore, there was no paucity of time. It may be noted here that the detenu had referred to passing of detention order in two cases. Learned counsel for the Detaining Authority has highlighted that detention orders with respect to other detenu Ajay Vaish was on identical grounds and materials.

5. So far as the submission regarding non-supply of English translation of Arabic Documents is concerned, it has been submitted that the documents in question related to receipt of goods by foreign buyer and contained a Bill of Lading. The documents on which the detenu relied related to variety of Shipping Bills a small portion of which is in Arabic. There was no allegation by detaining authority that export was not made at all Detention Order was based on the allegation that Shipping Bills were forged after export was made and the documents were submitted by the detenu himself along with his representation. Therefore, non-supply of translation did not in any way vitiate the order of detention. Further it has not been shown as to what prejudice has been caused due to non supply of translation. It does not in any manner cause prejudice to him in making an effective representation. There is no reference to or reliance on any document in Arabic. At the most it could be said that a passing reference was made to the document. In any event, even if it is conceded for the sake of argument that English translation ought to have been furnished, that does not vitiate the entire order of detention as it may at the most relate to a non-vital ground and does not affect other grounds. So far as the non-reference by the Sponsoring Authority to the cargo receipts, it is submitted that the petitioner has not been able to show as to in what way they were documents of vital nature and would have changed the mind of the Detaining Authority. Reference has been made to Section 5(3) according to which each and every fact is an independent ground. At the most, the document will effect the grounds pertaining to them and not to all other grounds.

7. So far as the argument about the non-consideration of rejection of proposal by the Sponsoring authority, it is submitted that rejection was of the first proposal sent by the Sponsoring Authority. In fact, two separate proposals were received by the Detaining Authority i.e. Nhava sheva and Mumbai. The earlier proposal was only from Mumbai and does not affect the other proposal from Nhava sheva

8. So far as the stand that the Detaining Authority merely lifted the grounds from the proposal of the sponsoring authority, it is submitted that the grounds were prepared after careful examination of documents and was done leaving no stone unturned. The records were produced to show that the grounds were prepared in the office of the Detaining Authority who had made extensive corrections in his own handwriting. In any event even if some repetition of materials from the proposal is done that does not per se show non-application of mind.

9. Legal position with regard to issuance of writ of habeas corpus in preventive detention cases and the petitioner's entitlement to relief in the light of the foregoing statements as noted above need to be considered carefully. The writ of habeas Corpus called by Blackstone as the great and efficacious writ in all manner of illegal confinement. It really represents another aspect of due process of law. As early as 1839 it was proclaimed by Lord Denman that it had been for ages effectual to an extent never known in any other country. Lord Halsbury L.C. Stated in *Cox v. Hakes*, (1890) 15 AC 506 that the right to an instant determination as to the lawfulness of an existing imprisonment is the substantial right made available by this writ. Article 22 of the constitution confers four fundamental Rights on every persons, except in two cases mentioned in Clause (3), as essential requirements and safeguards to be followed when it is necessary to deprive any person, for any cause whatsoever and for, however, brief a period of his personal liberty by placing him under arrest or keeping him in detention. Those are (i) to be informed, as soon as may be, of grounds of such arrest; (ii) not to be denied the right to consult and to be defended by a legal practitioner of his choice, (iii) to be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate (iv) not to be detained in custody beyond the said period of twenty four hours without the authority of a Magistrate Clauses (1) and (2) contain the guarantee of the four Fundamental Rights enumerated above. Clause (3) contains two exceptions and provides that the constitutional guarantees do not apply to (a) enemy aliens, and (b) persons arrested or detained under any law providing for preventive detention. Clauses (4) and (7) are devoted to laying down certain fundamental principles as to preventive detention and guaranteeing certain Fundamental Rights to persons who are arrested under any law for preventive detention. The Fundamental guaranteed by Clauses (4) to (7) to persons detained under any law for preventive detention relate to the maximum period of detention, the provisions of any Advisory Board to consider and report on the sufficiency of the cause for detention and the right to have the earliest opportunity of making a representation against the order of detention, Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the Executive is convinced that such detention is necessary in order to prevent the person detained from

acting in a manner prejudicial to certain objects which are specified by the law the action of Executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct, the failure to conform to which should lead to detention. The satisfaction of the detaining authority, Therefore, is a purely subjective affair. The detaining authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. In case of preventive detention of citizen, Article 22(5) of the Constitution enjoins the obligation of the appropriate Government or of the detaining authority to accord the detenu the earliest opportunity to make a representation and to consider that representation speedily. The right to make a representation implies right of making an effective representation. It is the constitutional right of the detenu to get all the ground on which the order has been made. As has been said by Benjamin Cardozo. "A Constitution states or ought to state not rules for the passing hour but the principles for an expanding future." The concept of grounds used in the context of detention in Article 22(5) has to receive an interpretation which will kept it meaningfully in tune with contemporary notions of the realities of the society, and the purposes of the Act in the light of concepts of liberty, and fundamental freedoms. While the expression grounds for that matter includes not only conclusions of fact but also all the basic facts on which those conclusions were founded, they are different from subsidiary facts or further particulars or the basic facts. The detenu is entitled to obtain particulars of the grounds which will enable him to make an effective representation against the order of detention.

10. Personal liberty protected under Article 21 of the Constitution is held so sacrosanct and so high in the scale of constitutional values that Courts have shown great anxiety for its protection and wherever a petition for writ of habeas corpus is brought up it has been held that the obligation of the detaining authority is not confined just to meet the specific grounds of challenge, but is required to show that the impugned detention meticulously accords with the procedure established by law. Indeed the English courts a century ago, echoed the stringency and concern of this judicial vigilance in matters of personal liberty in the following words :

"Then comes the question upon the habeas corpus. It is a general rule which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue." [Per Thomas Pelham Dales case 1881 (6) QBD 376 at 461

It has been said that the history of liberty has largely been the history of observance of procedural safeguards. The procedural sinews strengthening the

substance of the right to move the Court against executive invasion of personal liberty and the due dispatch of judicial business touching violations of this great right is stressed in the words of Lord Denning as follows :

"Whenever one of the Kings Judges takes his seat, there is one application which by long tradition has priority over all others, counsel has but to say; My Lord, I have an application which concerns the liberty of the subject and forthwith the Judge will put all other matter aside and hear it. It may be an application for a writ of habeas corpus, or an application for bail but whatever form it takes, it is heard first."

(Freedom under the Law, Hamlyn Lectures, 1949)

11. Personal liberty, is by every reckoning the greatest of human freedoms and the laws of preventive detention are strictly constructed and a meticulous compliance with the procedural safeguards however technical is strictly insisted upon by the Court. The law on the matter did not start on a clean slate. The powers of Courts against the harsh incongruities and unpredictability's of preventive detention are not embodied in merely a page of history, but a whole volume. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty would lose all their meaning are the true justifications for the laws of preventive detention. The pressures of the day in regard to the imperatives of the security of the State and of public order might, it is true require the sacrifice of the personal liberty of individuals. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State provides grounds for satisfaction for a reasonable prognostication of a possible future manifestations of similar propensities on the part of the offender. This jurisdiction has been called a jurisdiction of suspicion, but the compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment for individual liberty. "To lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs. "This, no doubt, is the theoretical jurisdiction for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other. But the realities of executive excesses in the actual enforcement of the law have put the Courts on the alert, ever ready to intervene and confine the power within strict limits of the law both substantive and procedural. The paradigms and value judgments of the maintenance of a right balance are not static but vary according as the pressures of the day and according as the intensity of the imperative that justify both the need for and the extent of the curtailment of individual liberty. Adjustments are consistently to be made and reviewed. No law is an end in itself. The Inn that

shelters from the right is no journey's end and the law, like the traveler must be ready for the morrow.

12. As to the approach to such laws which deprive personal liberty without trial the libertarian judicial faith has made its choice between the pragmatic view and the idealistic view and the idealistic or doctrinaire view. The approach to the curtailment Of personal liberty which is an axiom of democratic faith and of all civilized life is an idealistic one for, loss of personal liberty deprives a man of all that is worth living for and builds up deep resentments. Liberty belongs what correspond to man" innermost self of this idealistic view, in the judicial traditions of free worlds Justice Douglass said.

"Faith in America is faith in her free institutions or it is nothing. The Constitution we adopted launched a daring and bold experiment. Under the compact we agreed to tolerate even ideas we despise. We also agreed never to prosecute people merely for their ideas of beliefs." (see. On misconception of the Judicial function and the Responsibility of the Bar. Columbia Law Review, Vol 59 p232).

13. Judge Stanley H. Fuld of the New York Court of Appeals said ; " it is a delusion of think that the nation's security is advanced by the sacrifice of the individual's basic liberty. The fears and doubts of the movement may look large, but we lose more than we gain if we counter with a resort to alien procedures on with a denial of essential constitutional guarantees." (Quoted by Justice Douglas at p. 233 On Misconception of the Judicial Function and the Responsibility of the Bar, Columbia Law Review, Vol 59).

14. It was a part of the American Judicial faith that the Constitution and nation are one and that it was not possible to believe that national security did require what the constitution appeared to condemn. Under our Constitution also, the mandate is clear and the envoy is left under no dilemma. The Constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of States security public order disruption of national economic discipline etc being envisaged as a necessary evil to be administered under strict constitutional restrictions. Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, Bhagwati, J spoke of this judicial commitment:

"The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade."

"This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirement of the law and even where a requirement of the law is breached in the slightest measures, the Court has not hesitated to strike down the order of detention."

In Vijay Narain Singh Vs. State of Bihar and Others, Justice Chinnappa Reddy in his concurring majority view said:

".....I do not agree with the view that those who are responsible for the national

security or for the maintenance of public order must be the sole judges of what the national security or public order requires. It is too perilous a proposition. Our Constitution does not give as carte blanche to any organ of the State to be the sole arbiter in such matter....."

[Page 1336(of AIR)]

".....There are two sentinels, one at either end. The legislature is required to mark the law circumscribing the limits within which persons may be preventively detained and providing for safeguards prescribed by the Constitution and the Courts are required to examine, when demanded, whether there has been any excessive detention , that is whether the limits set by the Constitution and the legislature have been transgressed....."

In Hem Lall Bhandari Vs. State of Sikkim and Others, ; it was observed:

"It is not permissible in matters relating to the personal liberty and freedom of a citizen to take either a liberal or a generous view of the lapses on the part of the officers....."

15. As indicated above, the first ground of challenge is the alleged non-application of mind . It is stated that there was piecemeal consideration and even a document which was placed before the detaining authority on 1.3.2000 consisting of 45 pages was also considered for the purpose of passing detention order. Reliance on several judgments has been placed to submit that subjective satisfaction should be arrived at by consideration of all the materials at one time not by a piecemeal consideration. According to the detaining authority there has to be consideration of the materials and it is preposterous for the petitioner to submit that there should be one time consideration and there should not be what is termed as piecemeal consideration. According to us, the whole issue has to be looked at pragmatically. It is not clear to us as to what the petitioner means by one time consideration. There should be continued consideration and the relevant materials should be considered together. There can be no straight jacket formula for this purpose. There is no bar for the detaining authority to consider a material which comes to its possession before the final decision regarding detention is arrived at or the subjective satisfaction that detention is necessary is arrived at. In a given case, during the period of consideration there may be holidays. Can it be said that there was snag in the process of consideration.? The answer is definite no. What in essence was sought to be submitted was that there should be consideration of all the documents together. Though there are some observations to this effect in Ashwinkumar B. Halari Vs. State of Maharashtra and others, , we do not think that the observations made therein are of general application. As indicated above, sponsoring authority while considering a question whether order of detention is to be passed is under consideration and before a final decision has been taken can place some materials before the detaining authority. If he feels that they would reinforce his satisfaction about the necessity of detention order it may be the final straw for

subjective satisfaction. There can be no illegality on the material being considered. There may be cases where a subjective satisfaction has already been reached and subsequently some materials come, which provide additional grounds for detention, the position may be somewhat different, but that question does not arise in the present case. It is not possible for detaining authority while considering large volume of documents on a single day to take a decision. If that happens the usual plea is taken, as has been done in the present case that a large number of documents could not have been considered on a single day and it is practically and physically impossible. As a corollary to this issue we have also to consider whether the detaining authority had the time to consider more than 2000 pages during the admitted period taken for the purpose. This aspect has been explained by the detaining authority as to how he could do it. Though learned counsel for the petitioner submitted that the concept of familiarization is unknown, we do not agree with it. A person who has an occasion to read a document or consider at a reasonably close point of time it is familiar with it and would not take much time to consider the relevance thereof, if after a short time if he is required to consider the relevance of the document for the purpose of detention. In the instant case, major portion of the documents were available for consideration of the detaining authority while dealing with the representations made by the detenu and/or other persons in closely linked matters. Learned counsel for the detenu highlighted that even if process of familiarization is accepted to be in order, yet the detaining authority could not have considered more than 500 pages and that too in the case of more than one person. The plea needs careful consideration. It would be appropriate to take note of what has been stated by the Apex Court in *A.K. Gopalan Vs. The Government of India*, In that case 1.14 detention orders were passed in a single day. Contention that this indicated non-application of mind was rejected by the Apex Court. On the basis of the material placed before it, it was held that effect that cases were under consideration of the detaining authority for quite some time before the orders were actually passed, in *Tarapada De and Others Vs. The State of West Bengal*, also the Apex Court observed that where the authorities have already applied their mind to the suspected activities of detenu and were satisfied that with a view to prevent them from doing some prejudicial activities it is necessary to pass detention order against them, there was no question of non-application of mind. This in essence is what can be described as familiarization with the materials. The pleas of the petitioner are Therefore rejected.

16. Coming to the plea that certain documents were in Arabic language and non supply of English translation caused prejudice, it is to be noted that these documents had been annexed to the representations made earlier to the order of detention. It is relevant to take note of representations made on behalf of the detenu S.S. Sandhu, Ajay Vyas and it is by one Kartar Lal Vaish. Initial representations were made on 20.12.1999, 20.1.2000 and finally on 21.2.2000. These related to the apprehended detention of Ajay Vaish, Rajeev M. Pathak and S.S. Sandhu and others. Along with the said representation several documents

were annexed including the documents in Arabic language. In the representation dated 21.2.2000, it was indicated that the Customs Authorities have been provided with proof in relation to overseas buyer that the foreign buyer has received the materials and bills of entry at the foreign port. Letter from foreign buyer was also annexed. A recent Judgment of Apex Court is of great relevance in this regard. In *B. Mahalingam v. Dist Magistrate and District Collector and Anr.*, AIR 2000 SCW 2029, it was observed by the Apex Court.

"The petitioner, brother of a detenu, under the provisions of Tamil Nadu Act 14 of 1982 filed a petition for Habeas Corpus before the High Court of Madras challenging the legality of the order of detention as well as the continued detention of the detenu. Several grounds had been urged in support of the challenge and the Division Bench of the High Court on consideration of the same rejected all the contentions raised and dismissed the petition for Habeas Corpus. The brother of the detenu, Therefore, approached this Court. In this Court essentially three grounds have been urged that the detenu being a non-English knowing person the Tamil version of the relevant documents have not been given and as such he was denied of the opportunity of making an effective representation which constitutes an infraction of Article 22(5) of the Constitution. It is also urged that the relevant material has not been considered by the detaining authority and the opinion of the Advisory Board has not been obtained before continuing the detention of the detenu.

Pursuant to the notice issued from this court, a counter affidavit has been filed on behalf of the respondents refuting each of the assertions made and on going through the said counter affidavit, we see no infirmity with the order of detention as well as the continued detention of the detenu so as to be inferred with by this Court. The petition is accordingly dismissed."

17. As noted above the plea before Apex Court was non-supply of translation of relevant documents. After considering the plea along with other relevant aspects plea was rejected. After considering the plea along with other relevant aspects. The major ground on which detention has been directed related to falsification of documents for purposes of smuggling. Even if one of the grounds which weighed with the authorities for detention is found to be invalid yet that does not effect the order of detention in toto. That is statutory prescription as contained in Section 5A of the Act. For the same of convenience we quote the provision which reads as follows:-

5A. Grounds of detention severable - Where a person has been detained in pursuance of an order of detention under Sub-section(1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly -

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-

(i) vague

- (ii) Non-existent
- (iii) Not relevant
- (iv) Not connected or not proximately connected with such person, or
- (v) Invalid for any other reason whatsoever,

And it is not, Therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of detention ;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said Sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds."

18. The provision, stipulates when detention order is based on two or more grounds then such order of detention shall be deemed to have been made separately. Thus Such detention order shall not be deemed to be invalid on the ground one of such grounds is vague, non-existent, not relevant or not proximately connected.

Reliance is placed on Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, was a case where retraction of confession made by the detenu not referred to in the grounds of detention. The Apex Court in view of Section 5A held that detention order should not vitiate on the ground of non-application of mind if subjective satisfaction arrived at on the basis of other independent objective factors enumerated in the grounds. The Court held:

"If even ignoring the facts stated in the confession by the detenu the inference can still be drawn from other independent and objective facts mentioned in the grounds then the order of detention cannot be challenged merely by the rejection of the inference drawn from confession. In the present case the authorities came to the conclusion that the detenus were engaged in smuggling relying on several factors viz. the search and seizure in detenu's room and recovery of gold biscuits, the detenu's failure to explain the importation of those gold biscuits, the secretive manner in which the gold biscuits were kept, the connection with various dealers and the statements of the employees of the dealers that the detenus used to come with gold bars etc. These materials were in addition to the statements and confessions made by the detenus u/s 108 of the Customs Act. So even if those statements which were retracted as such could not be taken into consideration, there are other facts independent of the confessional statement as mentioned hereinbefore which can reasonably lead to the satisfaction that the authorities have come to. In view of Section 5-A of the COFEPOSA Act there was sufficient material so sustain other grounds of detention even if the retraction of confession was not considered by the authorities."

19. Madan Lal Anand v. UOI, AIR 1990 SC 174 also is with reference to non-placement of retraction and with reference to Section 5A and relying on the Prakash Chandra's case it was held as follows:-

"In the instant case, even assuming that the ground relating to the confessional statement made by the detenu u/s 108 of the Customs Act was an inadmissible ground as the subsequent retraction of the confessional statement was not considered by the detaining authority, still then that would not make the detention order bad, for in the view of this Court, such order of detention shall be deemed to have been made separately on each of such grounds. Therefore, even excluding the inadmissible ground, the order of detention can be justified. The High Court has also overruled the contention of the detenu in this regard and in our opinion rightly."

20. In Vashisht Narain Karwaria Vs. State of U.P. and another, it was held as under:

"What Section 5A provides is that where there are two or more grounds covering various activities of the detenu, each activity is a separate ground by itself and if one of the ground is vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention."

21. Abdul Sathar Ibrahim Manik Vs. Union of India and others, is a case under the Act where detenu was already in jail. The question was whether the bail application made by the detenu and an order of its rejection, if not placed before the detaining authority, what would have its effect. It was held , it would not amount to the suppression of relevant material on the facts of this case as the detaining authority was aware of the actual custody of the detenu. It also held non-supply of the said two documents to the detenu would also not vitiate the detention order since they were only referred to and not relied on by the detaining authority. The Apex Court held.

In the instant case, the facts are different, In the counter affidavit it is clearly stated that the bail application and the order refusing bail were not there before the sponsoring authority. Therefore, they were not. placed before the detaining authority. The grounds do not disclose that the detaining authority has relied upon any of. these two documents. On the other hand as already noted the detaining authority mentioned in the grounds that it was aware that the detenu was in custody but there is every likelihood of his being released on bail. This itself shows that these documents were not before the authority. Therefore it cannot be said that the documents referred to and relied upon in the grounds were not supplied to the detenu. It is not necessary to refer to in detail various decisions of this Court wherein it has been clearly laid down that the documents referred to or relied upon in the grounds of detention only are to be supplied.....

It will Therefore be seen that failure to supply each and every document merely referred to and not relied upon will not amount to infringement of the rights

guaranteed under Article 22(5) of the Constitution. We may of course add that whether it has also formed the material for arriving at the subjective satisfaction, depends upon the facts and grounds in each case. In the instant case, we are satisfied that these two documents were not placed before the detaining authority nor they were placed before the detaining authority nor they were referred to as relied upon."

22. Above being the position, we find that the order of detention is not to fall because of non supply of translation of the documents in Arabic language.

23. A plea has also been taken that some of the materials which have been inferentially referred to in the order have not been supplied. It is for the detaining authority to find out as to what is relevant piece of material and it is not for the sponsoring authority to withhold any thing on the ground that it may not be relevant for the detaining authority's subjective satisfaction. A question would then arise what would be the sponsoring authority place before the detaining authority. In the normal course it would place materials which, according to him, can form the basis of subjective satisfaction. In the case at hand the sponsoring authority has not withheld any material on the ground that it is not material for consideration of the detaining authority. It is not a case where he has screened out materials. Merely because some materials which have been referred to in the statements recorded and /or indicated in seized documents have not been place before the detaining authority that cannot per se show that the sponsoring authority did not think it material for consideration of the detaining authority. We shall deal with documents specifically referred to by petitioner. Grievance is made relating to certain documents which were, seized during search on 17.11.1994 in the office premises of M/S. Pragat Sales Corporation, M/S. Knomo Exports and residences of Directors of the said M/S. Knomo Exports at Nepean Sea Road were not forwarded to the detaining authority. All the documents mentioned in Panchnamas which were seized were not relied upon by the Detaining Authority. Reference may be made to some of the forms non-supply of which has been highlighted. It is stated that GR forms were not fully supplied. These forms are prescribed by the RBI for limited purpose of bank related formalities. These forms contain details like value, weight, quantity, description which have been fabricated/manipulated in the Shipping Bills. This appears to have been established by the Forensic Science Examination report which was placed before the Detaining authority and is also incorporated in the list of documents. It could not be shown as to how non supply of GR forms caused prejudice to the petitioner. It was also submitted that Mate receipt has not been supplied. It has been submitted by the counsel for the respondent that the said receipts is a document evidencing loading of container in the vessel. Many entries in the Mate receipts are reflected in the shipping bills. Therefore, when the entries made in the basic and primary document i.e. the shipping bills are forged, manipulated and altered the corresponding entry in the Mate receipts show incorrectness. When the Forensic examiner's report is placed before the Detaining Authority, there was no necessity of placing Mate receipt

also. Reference was made to the statement of Satnam Singh Sahi and Mangesh in relation to documents at SI No. 27 (at pages 555-559) and SL. No. 29 (at pages 575-582). The Mate receipt books No. 18 and 88 referred to by Shri Mangesh do not contain any Mate receipt relating to exports by M/S Pragati Sales Corporation, M/S Sharps Medical and M/S Samarth Enterprises. Further the three Mate receipt books are the same which were referred to in the statement of Shri Satnam Singh Sahi. It has been clarified that Mate receipt books No. 1701 to 1800 referred to in the statement of Satnam Singh Sahi actually connote the numbers of the Mate receipt book No. 18. Mate receipt book from 8701 to 8800 refer to page number of the Mate receipt book No. 88. As regards Mate receipt book No. 61 (it is same as Mate receipt book from 6001 to 6100). There are 9 Mate receipts of M/S Pragati Sales Corporation (No. 6065 to 6073) which were issued in duplicate by M/S Sitara Shipping Ltd. (as referred to in the statement dated 26.11.1999 of Shri Satnam Singh Sahi (at page No. 555 to 559) of relied upon documents). One copy of which has already been supplied to the detenu. As regards Cargo receipt, same is a document which primarily evidences the receipt of cargo in the Customs area for exportation and as a consequence gives the basic details of the cargo as reflected in the shipping bills. Copies of the shipping bills had been presented to the Detaining Authority for perusal. Petitioner has referred to only a part of the statement of Shri Raju. In his statement Shri Raju has categorically stated that the entries made in the Cargo receipts are merely on the basis of party's declaration and not on the basis of the actual inspection. He further stated that only 1/6th of the space of the container was occupied by cargo. The gross weight in Consumer Load Plan (in short CLP) and in challan copies is in quintals and not in metric tones. On visual inspection each container had approximately 800 Kgs of cargo only, and also that each carton had 6-8 kgs weight. All these facts indicate that the details mentioned therein are all false and the Cargo receipt details become redundant. The CLP does not contain any detail which do not figure in the shipping bills and the CLP evidences the loading of cargo in the containers. Present case pertains to manipulation/forgery done in the entries in the shipping bills which have already been submitted to the detaining authority. All the shipping bills have been placed for consideration of the detaining authority. It was pointed out that duplicate copies of the shipping bills bearing mark AC(X) below the examination order have already been submitted as part of the forensic examination report dated 31.12.1999/4.1.2000. It may be noted that the detaining authority had relied upon the statement of Mangesh Mudras and not on the documents referred to by Mangesh in his statement. The matter can be looked from another angle. Shipping bills containing all material details appearing in EGM have been supplied. The detaining authority has considered forensic examiner's report for the purpose of concluding alteration of material details on the shipping bills. The forensic examination report has been relied upon and is supplied to the detenu. One Srivastava has stated that his signature were forged and a copy of his statement is supplied to the detenu. There does not appear to be any necessity of placing the signatures of Srivastava before the detaining authority.

Additionally, forensic report indicate that entries to which reference was made by Rabello were forged and it has been clearly brought on record that they were forged, manipulated and altered. We do not find any substance in the plea that relevant documents were not placed before detaining authority. The High Court does not sit in appeal on the order passed by the detaining authority. This position was highlighted by the Apex Court in *UOI v. Arvind Shergill and Anr.*, AIR 2000 SCW 3258 as under

"4. The High Court has virtually decided the matter as if it was sitting in appeal on the order passed by the detaining authority. Action by way of preventive detention is largely based on suspicion and the Court is not an appropriate forum to investigate the question whether the circumstances of suspicion exist warranting the restraint on a person. The language of Section 3 clearly indicates that the responsibility for making a detention order rests upon the detaining authority who alone is entrusted with the duty in that regard and it will be a serious derogation from that responsibility if the Court substitutes its Judgment for the satisfaction of that authority on an investigation undertaken regarding sufficiency of the materials on which such satisfaction was grounded. The Court can only examine the grounds disclosed by the Government in order to see whether they are relevant to the object which the legislation has in view, that is, to prevent the detenu from engaging in smuggling activity. The said satisfaction is subjective in nature and such a satisfaction, if based on relevant grounds, cannot be stated to be invalid. The concerned authorities have to take note of the various facts including the fact that this was a solitary incident in the case of the detenu and that he had been granted bail earlier in respect of which the application for cancellation of the same was made but was rejected by the Court. In this case there has been due application of mind by the concerned authority to that aspect of the matter as we have indicated in the course of narration of facts. Therefore the view taken by the High Court in the circumstances of the case cannot be sustained."

For the purpose of exercise of the power of detention it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the main of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keep ing in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the material relied upon should have a reasonable nexus with the purpose for

which the order is passed. From the grounds of detention and the papers enclosed with it copies of which were served on the detenu it is clear that the detaining authority based his subjective satisfaction on a series of contemporaneous incidents in which the detenu was involved. The satisfaction was not based on a single or stray incident. In the in-camera statements separate incidents of criminal activities of the detenu were stated. The assertions are not assailed as untrue nor can they be said to be irrelevant for the purpose of the order. On such materials on record it cannot be said that there was no basis for the detaining authority to feel satisfied that the detenu was either himself or as a member or leader of a gang habitually committed or attempted to commit or abetted the commission of any of the offences stated in Section 2(b-l) was vitiated cannot be accepted. In our view the detention order under challenge does not suffer from any infirmity. This position has been elaborated by the Apex Court in *Phulwari Jagadamba Prasad Pathak v. RH Mendoarea*, AIR 2000 SCW 2727, Plea taken in this regard by the petitioner is Therefore without substance.

24. We shall next deal with the plea about the role played by the Screening Committee. It is fairly accepted by learned counsel for the petitioner that the detaining authority has the option to either agree or disagree with the views of the Screening Committee. Even if Screening Committee suggests detention, it is open to the detaining authority not to direct so. It is another thing that the Screening Committee may suggest detention and in fact the detaining authority directs so. Screening Committee comes at an intermediate stage, What the Screening Committee did on receiving the proposal from Mumbai was to defer decision on the proposal. In fact, the fresh proposal sent by the Sponsoring Authority i.e. the Bombay Port has been duly noted. As indicated above, there were two separate proposals received from Nhava sheva and Bombay. Minutes of all the meetings of the Screening Committee were placed before the Detaining Authority.

25. It is to be noted that Screening Committee had not on the first occasion observed that there was no case made out for detention. It had only deferred the matter. Subsequently, another proposal was received. We find no substance in the plea of the petitioner regarding non-application of mind by the Detaining Authority vis-a-vis the Screening Committee's view in view of the aforesaid decision.

26. Much has been made of the alleged lifting some portions of the proposal submitted by the Sponsoring Authority. We have perused the original records. It is true that some portions of the Sponsoring Authority's recommendations have been incorporated in the final order of detention. But mere fact that some portions of the recommendations were taken from the proposal and incorporated in the final decision does not show non-application of mind. It cannot be laid down as rule of universal application that merely because some portion of the recommendations were incorporated in the Detaining Authority's order that will amount to non-application of mind. On the other hand, it may show that the

detaining authority applied its mind to the recommendations and felt that a portion thereof needs to be incorporated in the final order of detention. This plea of the petitioner also fails.

27. As all the pleas advanced have been found to be untenable, inevitable result is dismissal of the writ petition, which we direct.