
(1992) 12 DEL CK 0011

In the Delhi High Court

Case No : Criminal Writ Appeal No. 640 of 1991

Gurmeet Kaur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-12-1992

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 2, 3(1)
Customs Act, 1962 — Section 135

Citation : (1993) 1 Crimes 558 : (1993) 25 DRJ 421

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Harjinder Singh and N.K. Handa, for the Appellant;

Judgement

Usha Mehra, J.

(1) The detention order was passed against Smt. Gurmeet Kaur, the petitioner herein by the respondent u/s 3 read with Section 2 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called as the "COFEPOSA ACT"). The said order was passed by Mr. M.U. Siddiqui, Deputy Secretary (Home) Delhi Administration, dt.23.9.1991. This order was passed with a view to preventing her from smuggling goods. Along with the detention order, the grounds of detention were also served on her of the same date.

(2) The facts of case are that Smt. Gurmeet Kaur arrived at I.G.I. Airport on the intervening night of 21st/22nd April, 1991. She was apprehended because she was found in possession of gold weighing 1399.500 grams. She was booked u/s 135 of the Customs Act. She made a statement u/s 108. She was produced before the Magistrate on 22nd April 1991 and was remanded to judicial custody. While in custody the order of for detention u/s 3 sub section I and Section 2 of the Act was serviced and communicated to her while she was in custody at Tihar Jail, Delhi.

(3) The order of detention has been assailed, by the petitioner on various grounds but at the time of arguments, Mr. Herjinder Singh, learned counsel for the petitioner, restricted his arguments on two grounds namely: i) Long delay in passing the detention order when the petitioner was already in custody since 22nd April, 1991 and ii) Delay in supply of documents which were supplied after the final meeting of the Advisory Board.

(4) Taking the second ground first Mr. Herjinder Singh contended that the documents asked for by the petitioner had a direct nexus with the detention and that is the reason the Administrator passed the order for supplying the same. But till the final hearing of the Advisory Board these documents had not been supplied as a result of which the fundamental right of the petitioner has been infringed. Therefore, any proceedings against her stands vitiated. He further contended that on 28th October, 1991 the petitioner made a representation to the detaining authority. The said representation was dispatched by jail authority on 6th September, 1991. There is no Explanation for this delay. In the said representation the petitioner had asked for legible copies of the documents, as the documents supplied were not legible. Her representation was rejected on 12th December, 1991. However while rejecting the representation the detaining authority passed the order for supply of some of the legible copies of the documents. The Advisory Board meeting was held on 3rd December, 1991 whereas the legible copies of the documents which were ordered by the detaining authority were supplied on 12th December, 1991, i.e. after the final meeting of the Advisory Board. The Advisory Board never met after 3rd December, 1991. Due to non-supply of the documents before the final meeting of the Advisory Committee, the right of the petitioner to make an effective and purposeful representation stood infringed and deprived.

(5) Beside being deprived of legible copies, she was also not supplied the documents asked by her. Those documents demanded by her had a direct bearing to her arrest and nexus with her detention. That is the reason the Administrator though rejected other demands of her but in the Memorandum dated 12th December, 1991 the Administrator was pleased to direct the Department to supply the documents as asked for in para 11(1) to (VII) and the punjabi translation of documents as asked for in para 8 of her representation through the Customs Department. The documents and the translation till date had not been supplied to the petitioner. The legible copies which were supplied on 12th December, 1991 ought to have been supplied before the final meeting of the Advisory Board, so that the petitioner could make a proper and effective representation. The petitioner demanded the documents vide letter dated 6th November, 1991 which fact find mention in para 15 of the petition and in the reply which is reproduced as under shows that the respondent has not cared to supply the documents. Instead of supplying the documents by itself the detention authority left the follow up action on the Customs Department who till date did not supply those documents nor has filed any affidavit to indicate what follow up action done. The reply to para 15 by the respondent reads as under:-

"IN reply to para 15, it is submitted that all the documents considered relied upon by the Administrator were supplied to the petitioner along with grounds of detention. However, on a representation made by the petitioner, the Administrator of the Union Territory of Delhi directed the Customs Department to supply the documents asked for in his representation and reproduced in this para. Regarding follow up action, customs Department may reply."

(6) It was not for the petitioner to chase after the Customs Department for supply of the documents, or to find out what follow up action was taken by the said department. Mr. Herjinder Singh's contention that the right of the petitioner has been deprived has a force. Respondent has miserably failed to explain why the documents asked by the petitioner and as directed by the Administrator were not supplied to her much before the final meeting of the Advisory Board. This to my mind deprived her valuable right thereby making her detention illegal and order of detention stand vitiated on this ground itself. In this regard reliance can be had to the decisions of our own High Court in the cases of Haji Sayyed Ahmed Mansoor Vs. Union of India & Ors. decided on 9th August, 1985 in CrI.W.No.1? 6/85, Shri K. Rajendran Nair Vs. the Union of India & Ors. reported in 1986 (1) Crim 705 , toriyli Alias Jabbar Vs. Union of India, and Ramchandra A. Kamat Vs. Union of India (UOI) and Others,

(7) The submission of the petitioner that the direction of the Administration vide Memorandum dated 12th December, 1991 to the Customs Department to supply her documents to enable her to make an effective representation was of no consequences. The Advisory Board to whom she had a right to make an effective representation had already met and disposed of her case much before 12th December, 1991. Even otherwise those documents till date have not been supplied to the petitioner and this fact is admitted by the respondent in its reply to para 15 quoted above. The follow up action is alleged to have been left over to the Customs Department and the Customs Department has not cared to file any reply as to what follow up action has been taken by them. The protection of fundamental rights granted under Article 22 of the Constitution has thus been deprived and denied to her. The reply affidavit of the respondent is quite vague as to why the documents which were directed by the Administrator to be supplied to the petitioner had not been supplied. Therefore, Mr. Herjinder Singh is right when he contended that till such time the representation of the petitioner was decided on merits after supplying her the documents asked for by her the decision should not have been taken against her. The petitioner thus could not have made an effective representation to the Advisory Board as the Advisory Board had already met and taken the decision on 3rd December, 1991 thereby frustrating and infringing her fundamental right.

(8) Now coming to the first point raised by the petitioner, that there was a long delay in passing the detention order, to my mind this also has a force. Respondent has not been able to render any Explanation for the delay in passing the detention order. The complaint was filed on 6th June, 1991. As per

respondent's own showing and the order of detention was issued only on 23rd September, 1991 and was served on the petitioner on 29th September, 1991. No Explanation has been rendered by the respondent as to why the detention order was passed on 23rd September, 1991 particularly when proposal was received on 6th June, 1991, there is three months delay. For this long delay there is no Explanation .This is also one of the fad which renders the detention bad in law.

(9) In view of my above discussion I allow the writ petition and declare to detention and the continuous detention bad in law and order that the petitioner set at liberty forthwith if not required to be detained in any other case.