
(1993) 08 DEL CK 0056

In the Delhi High Court

Case No : Criminal Writ Appeal No. 538 of 1992

Hussain Erumban

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-1993

Acts Referred:

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

Citation : (1993) 3 AD 683 : (1993) 27 DRJ 377

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

Bench : Single Bench

Advocate : Sangeeta Nanchaha, V.K. Shall and Haridayjot Singh, for the
Appellant;

Judgement

Anil Dev Singh, J.

(1) This is a petition under Article 226 of the Constitution of India, whereby the petitioner challenges the order of his detention dated September 10, 1992 passed u/s 3(1) read with Section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 for short "COFEPOSACT").

(2) The allegations against the petitioner briefly stated are that on April 13, 1992 he was arrested on his arrival at the Indira Gandhi International Airport from Abu Dhabi by Flight No. GF-018 as on search by the custom authorities he was found to be in possession of 1749 grams of gold of foreign marking valued at Rs. 1,78,024.00. The petitioner on the same day was produced before the Metropolitan Magistrate, who remanded him to judicial custody. On completion of the investigation a complaint was filed against him on April 123, 1992 u/s 132/135 of the Customs Act, 1962. Subsequently on August 6, 1992 the petitioner was admitted to bail by the High Court in the customs case. Ultimately the impugned order of detention dated September 10, 1992 was passed by the detaining authority, respondent No. 2 against the petitioner. Along with the detention order the petitioner was also served with grounds of detention. On

September 28, 1992 the petitioner is alleged to have filed a representation before respondent No. 1 through the Superintendent, Central Jail. Learned counsel for the petitioner submits that there has been delay in disposing of the representation which has not been explained by the respondent.

(3) It is not disputed by the learned counsel for the respondent No. 1 that the petitioner filed the representation on September 28, 1992, which was forwarded by the Superintendent, Central Jail Tihar to the Ministry of Finance, Cofeposa Branch on September 30, 1992, and the same was rejected by the Government on October 13, 1992. According to the learned counsel for the respondent No. 1 there was no delay in disposing of the representation. I do not see how the submission of the learned counsel for the respondent that there has been no delay on the part of the Government in disposing of the representation, can be accepted. As per claim of the respondent the representation was sent through a special messenger to the sponsoring authority for letter's comments on September 30, 1992 i.e. the same day when it was received in the Ministry. However, according to the affidavit of Mr. Somesh Arora, Assistant Collector of Customs, representation reached the department on October 8, 1992. No Explanation has been given by respondent No. 1 for the intervening delay. It is surprising that the representation, which was sent through a special messenger reached the sponsoring authority after eight days. This shows that the claim of the said respondent that the representation of the petitioner was attended to without delay is completely without force and has no substance whatsoever. In a detention matter the Government is required to deal with the representation of a detenu expeditiously without any avoidable delay. Undue and unexplained delay in disposing of the representation vitiates the detention order. It may be pointed out that the office of the Ministry of Finance (COFEPOSA Branch) and the office of the sponsoring authority are located in Delhi and there seems to be no discernible reason for the representation to reach the sponsoring authority after eight days of its alleged dispatch on September 30, 1992 by the Ministry of Finance, (COFEPOSA Branch), especially when it is claimed that the representation was transmitted to the sponsoring authority through a special messenger.

(4) In Yogesh Kumar Sharma Vs. Union of India & others (Cr.W. No. 377 of 1989 decided on October 23, 1989) this court in absence of any Explanation as to why it took seven days for a copy of the representation to reach the sponsoring authority from the detaining authority, held as follows: "8. The learned counsel for the respondents on the other hand contended that there has been no undue delay made by the Cofeposa Section of the Ministry in dealing with the representation and if 7 days time had been spent in sending copy of the representation to the Collector of Customs, Delhi the same should not vitiate the detention of the petitioner. 379 9. It is settled law that the representation made by the detenu for seeking revocation of the detention order must be dealt with promptly and in right earnest by the Authorities concerned and they are not supposed to deal with the representation in a casual manner and allow the same

to remain unattended for any period of time. If there occurs any undue delay in dealing with the representation it is incumbent upon the authorities to explain the such delay. It is unimaginable that copy of a representation which was to be sent to the Collector of Customs in Delhi from the Cofeposa Section of the Ministry of Revenue located in Delhi, it would take more than one or two days, in copy of the representation being received from one office to another office, both located in Delhi. It is also to be emphasised that in the counter-affidavit it is not at all explained as to in what manner the copy of the representation was sent to the Collector of customs. Was it sent through any special messenger or was it sent through the post?. In absence of any Explanation as to why it took about seven days in copy of the representation being received by the Collector of Customs, Delhi, the court has no option but to hold that there has taken place undue and unexplained delay in considering the representation of the detenu.

10. In *Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and others* Jt 1989 (2) SC34, a representation was given by the detenu to the Superintendent, Jail where it remained unattended for about seven days and no Explanation was given with regard to the said delay and the detention of the detenu was quashed on that ground alone. The Supreme Court further observed that the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the representation by the Government and thus this avoidable and unexplained delay has resulted in rendering the continued detention of the detenu illegal and constitutionally impermissible.

11. In: *Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others*, , the Supreme Court has laid down that there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the words "as soon as may be" occurring in Article 22(5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. It was observed that in case the gap between the receipt of the representation and its Consideration by the authority is so unreasonable and the Explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention. In the cited case the authorities had failed to give any satisfactory Explanation with regard to the delay for the period from October 17,1989 to October 27,1988." 380

(5) Having regard to the legal position adumbrated above, the indifference exhibited by the Ministry of Finance (COFEPOSA Branch) to the representation of the petitioner for about eight days, vitiates the detention order. No Explanation is forthcoming from respondent No. 1 for the extraordinary time taken by the special messenger, who was allegedly assigned the job of delivering the representation of the petitioner to the sponsoring authority.

(6) In view of the aforesaid discussion, the petition succeeds. The detention order dated September 10,1992 is set aside and the detaining authority is directed to release the petitioner forthwith, if not wanted in any other case.