
(1996) 10 DEL CK 0075

In the Delhi High Court

Case No : Criminal Writ Petition No. 621 of 1995 and Criminal Miscellaneous Petition No's. 1606, 1819 and 4225 of 1996

Jamila Begum

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Customs Act, 1962 — Section 104, 108
General Clauses Act, 1897 — Section 3(8)

Citation : (1996) 39 DRJ 714

Hon'ble Judges : M. Jagannadha Rao, C.J; Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : S. Bhayana, B. Babbar, S.K. Agarwal and L.R. Luthra, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.

(1) The petitioner is questioning an order of detention under the Cofeposa dated 4.12.1992 passed by the Administrator, National Capital Territory. The order was served on the petitioner on 27.9.1995 while in judicial custody, she having surrendered on 26.9.1995. She was on parole from 21.6.1996 and surrendered again on 10.9.1996. The 1st respondent is the Union of India, while the 2nd respondent is the Lt. Governor. The Jail Superintendent is the 3rd respondent.

(2) The case of the respondents in the grounds of detention is that the petitioner was booked for going to Dubai via Muscat on 8.6.1992 by Gulf Airways, that petitioner when asked if she was carrying any Indian and foreign currencies replied in "the negative, that she passed the Customs and at the stage of security check, she was intercepted. The checked-in baggage was inspected and 3 packages of tea, which were unusually heavy were recovered, and they contained Indian and foreign currencies worth Rs. 11,39,682, Pakistan Rs. 2000.00 and 82 Kuwaiti Dinars. They were seized. Petitioner gave a statement u/s 108 of the Customs Act on 8.6.1992. She stated that she was a graduate

from Jamia University. She had previously travelled 10- 12 times to Dubai, Lahore, Karachi and Kathmandu. She was also bringing gold into India. At the instance of one Aziz Khan she deposited her old passport with the Passport Office and got another passport on 9.4.1991 so that her earlier visits could not be noticed. On the present passport, she had visited Dubai 4 times during April, May 1992. She was arrested on 8.6.1992 u/s 104 of the Customs Act and remanded to judicial custody same day. On 16.6.1992, she applied for bail. On 3.7.1992 she applied for interim bail on medical grounds. She was granted bail on 5.8.1992. She filed another bail application on 31.7.1992 which was rejected on 18.8.1992. She got extension of interim bail till 12.10.1992 when she was asked to surrender. She moved another application on 12.10.1992 which was rejected on 14.10.1992. She filed a fresh application on 29.10.1992 and was granted bail on 30.10.1992. The case under Customs Act and the adjudication proceedings are continuing. Then the order of detention was passed on 4.12.1992. Petitioner surrendered before A.C.M.M. on 26.9.1995. The detention order was served on 27.9.1995. Writ petition was filed on 3.11.1995.

(3) Replies were filed by the respondents. Petitioner pressed for a decision on the point of alleged delay in disposal of representation dated 6.10.1995. We passed an order on 12.4.1996 rejecting the said contention after referring to various rulings of the Supreme Court. On 15.4.1996, petitioner filed an affidavit with some medical certificates.

(4) Petitioner filed Crl.M. 1606/96 on 27.3.1996 raising additional grounds. Reply was filed thereto on 17.4.1996 by the 2nd respondent. The 1st respondent Union of India, filed reply on 26.4.1996. Petitioner filed rejoinder on 26.4.1996. Reply was filed by the Assistant Commissioner (IGI) Airport on 10.5.1996.

(5) Petitioner raised additional grounds by filing Crl.M.P. 4225/96 on 7.9.1996 and filed written submissions on 27.9.1996. Respondent I filed reply to additional grounds in CrI.M.P. 4225/96 on 1.10.1996 and written submissions on 4.10.1996. Judgment was reserved. Petitioner filed fresh list of authorities on 5.10.1996 and submissions, without leave but seeking leave.

(6) We shall turn to some more facts. The detention order dated 4.12.1992 was served on 27.9.1996. Petitioner made representation dated 6.10.1995 to the Union of India and to the detaining authority. This according to respondents is really dated 9.10.1995. Writ petition was filed on 3.11.1995. Petitioner sent fresh representation on 13.1.1996 to the Finance Minister. Petitioner was on parole from 21.6.1996 to 10.9.1996. In Cr.M.P. 1606/96 dated 30.1.1996, it is stated that on 6.10.1995, a representation was sent to the Advisory Board and the same was rejected by the detaining authority on 19.12.1995 and the detention was confirmed on 19.12.1995 and that the said authority had not considered the representation dated 6.10.1995 addressed to the Advisory Board, independently. (This point was not raised in the writ petition). In this CrI.M.P., petitioner says her sister residing at Delhi sent a representation dated 13.1.1996 to the Finance Minister (i.e. after filing of the writ petition) and the same was not disposed of. It

was also urged that there was delay in the disposal of the earlier representation dated 6.10.1995. The Union of India, in its additional reply served on the petitioner on 24.4.1996 and filed on 26.4.1996 stated that the Finance Ministry sent the representation which was in Urdu, for translation and after translation, it was realised that it was one relating to Cofeposa and was sent to the Cofeposa Unit and the Central Government rejected it on 2.4.1996. In the rejoinder filed on 26.4.1996, petitioner complains of delay in translation and also refers to another representation dated 29.3.1996 in Urdu by petitioner's sister staying at Delhi again addressed to the Finance Minister.

(7) Petitioner filed CrI.M.P. 4225/96 on 18.9.1996 raising another new ground that the petitioner requested in the another representation dated 13.8.1996 which was in English, signed by counsel, and addressed to the 2nd respondent (detaining authority) stating that in some other case one Smt. Misra Begum was released even though the detention was accepted by the Board and was confirmed. Certain health grounds of petitioner's daughter were also raised. It was also prayed that a copy of the representation dated 13.8.1996 be sent to the Central Government. The said representation dated 13.8.1996 was rejected by the detaining authority on 26.8.1996. Central Government filed a reply on 1.10.1996 stating that the representation dated 13.8.1996 was rejected by Central Government on 23.9.1996 after the same was received from the detaining authority.

(8) Synopsis of submissions was directed to be filed on 25.9.1996.

(9) In the written submissions dated 27.9.1996, it was firstly, contended that the representation sent by the petitioner's counsel on 13.8.1996 to the detaining authority raised grounds not raised in earlier representations dated 6.10.1995 and 13.1.1996, and also that there was delay on part of the detaining authority in forwarding the representation dated 13.8.1996 to the Central Government and it was sent only after CrI.M.P. 4225/96 was filed on 18.9.1996. Hence the rejection by Central Government on 23.9.1996 is said to be belated. The second point was that there was undue delay in disposal of the representation dated 13.1.1996 addressed to the Finance Minister. Permission was sought to argue another new point, namely, that the "proposal" for detention should have been supplied to the petitioner. Fourthly, it was contended that the Hindi translation of the detention order and grounds was not a true translation. Fifthly, the retraction in the bail application dated 31.7.1992 was not reflected in the grounds of detention. It is stated in para 5 of the written submissions that the first two of the above grounds are the main grounds and the rest will be raised, if permitted.

(10) Judgment was reserved on 4.10.1996. Fresh submissions were filed on 5.10.1996, as stated earlier, without any leave.

(11) We shall deal with the various submissions, one after the other.

(12) Taking up the first "main" submission, it would be noticed that the representation dated 13.8.1996 in English was signed by the petitioner's counsel

and was addressed to the detaining authority, with a request that the same be sent to the Central Government. It refers to the illness of the detenu's daughter as a ground for release. The detaining authority rejected the same on 26.8.1996 and the Central Government on 23.9.1996. Petitioner's contention is regarding delay on the part of the detaining authority in sending the same to the Central Government. (It was sent only after CrI.M.P. 4225/96 was filed). We have set out the events which have taken place after the filing of the writ petition. Question is whether any additional points were raised in the representation dated 13.8.1996 which were not there in earlier representation. We shall go back to the earlier representation. On 13.1.1996 a representation in Urdu was sent on behalf of the petitioner (page 88 of the paper book) addressed to the Finance Minister and there it was clearly averred in para I that the representation was being sent at the instance of petitioner, that the 2 year old daughter of the petitioner is "very ill" and there was no one to look after her. It was again averred in para 5 that the child was very ill. The same was rejected by the Central Government on 2.4.1996 by the Joint Secretary, as the delegate of the Finance Minister. The reply filed by respondent 1 also refers to the rejection of another representation of the petitioner's sister dated 29.3.1996, by the Central Government on 18.4.1996. That representation dated 29.3.1996 speaks of delay in disposal of the representation dated 13.1.1996 and again speaks of the illness of the petitioner's child. It is, therefore, clear that the ground relating to the alleged "illness" of the petitioner's child was already taken in the representations dated 13.1.1996 and 29.3.1996 and they were rejected by the Central Government on 2.4.1996 and 18.4.1996 respectively and it was not a contention which was not raised earlier.

(13) Therefore, the contention that when the question of illness of the child raised in the representation dated 13.8.1996 sent to the detaining authority (with request to forward it to the Central Government) and when the Central Government rejected the same on 23.9.1996, there was undue delay (inasmuch as the detaining authority forwarded the same to the Central Government only after CrI.M.P. 4225/96 was filed) loses all its force. It is clear that the "illness" question raised in the representation dated 13.8.1996 is not a new one. The basic assumption underlying this submission, that the representation dated 13.8.1996 raised new grounds and there was delay in its disposal, is not correct at all.

(14) Coming to the other question raised in the said representation dated 13.8.1996, sent by the petitioner's counsel, it is true it is a new one. It was rejected by the detaining authority on 26.8.1996 and the Central Government on 23.9.1996. In fact, the ground is a legal one, namely that in some other case, one lady by name Smt. Misra Begum connected with some other offences, was released even though the detention in her case was upheld by the Advisory Board and confirmed. When we asked counsel, details about that lady, counsel admitted that it was a different incident and no details were forthcoming even to say if it was a similar incident. In this context, it is worthwhile to remember that

the Supreme Court in Prem Kumar's case (1994 Vol.II Scale 113) has held that release by the High Court of the petitioner before it on the ground that another co-detenu was released by the Advisory Board, both being concerned with the same transaction, was not a good ground for the release of the petitioner before the Court. If that be the legal position,- the point raised in the representation dated 13.8.1996 that some other lady not connected with the transaction in which the petitioner is involved, has no legs to stand. Even if there was some delay in considering such an issue, there is no prejudice caused for the point is concluded by a decision of the Supreme Court as stated above. The first point is, therefore ,rejected.

(15) The second submission is that there is undue delay in disposal of the Urdu representation dated 13.1.1996 by the petitioner's sister addressed to the Finance Minister. We have stated that the same was rejected by the Central Government on 2.4.1996. Before we go into the issue, we would set out some more facts. As already stated, the said representation was received in the office of the Finance Minister on 22.1.1996. It being in Urdu, it was marked to the Section Officer (Ad-1), Dept. of Expenditure for English translation and for ascertaining the subject matter. It was received back in the office of the Secretary (Revenue) on 10.4.1996. A little before that, a copy of the CrI.M.P. 1606/96 filed on 27.3.1996 was received by the Department. In that CrI.M.P., it was complained that representation dated 13.1.1996 sent by petitioner's sister was not disposed of. Along with the copy of the CrI.M.P., copy of representation dated 13.1.1996 with English translation, as filed in Court, was enclosed. This CrI.M.P. was received on 29.3.1996. On the same day, remarks were called from the sponsoring authority, without waiting for the communication from the office of the Finance Ministry where the original of the representation dated 13.1.1996 in Urdu had been received. The sponsoring authority sent its remarks on 2.4.1996 which were received, in the Cofeposa Unit on 2.4.1996, submitted to Joint Secretary (Cofeposa),the empowered officer and he rejected the same on 2.4.1996. It will be noticed that there was no delay on the part of the empowered officer at all. It was processed immediately. The practice of sending representation to the President of India which was very common and which enabled counsel to raise a question of delay (in translation) at the President's Secretariat, has stopped, after certain observations from this Court. The grounds indicate that the representations will have to be addressed by or on behalf of the detenu, to the Secretary concerned, whose designation and address are clearly set out in the grounds of detention. There is, therefore ,no justification in sending some latter representations to the President or the Finance Minister while earlier representations were sent to the Secretaries concerned, unless it be to raise an issue of delay in transmission of the same to the Cofeposa Department.

(16) In Raghavemira Singh vs. Superintendent, District fail, Kanpur AIR 1986 S.C. 350 the representation was sent to the President of India on 14.3.1985. It was a case under the National Security Act. It was rejected on 31.5.1985. It was

argued for respondents that the representation was received in the Home Ministry only on 25.5.1985 and was rejected on 31.5.1985. The Court while rejecting the contention of the respondent held that Central Government included u/s 3(8) of the. General Clauses Act, the President of India and that "some allowance" should of course be given for the delay in the President's Office, where thousands of representations are received every day. But, on facts, there was no Explanation at all for delay in the President's Secretariat. But here, before us, that is not the position. The representation was in Urdu and it had to be sent by the recipient for translation to another department, and the delay occurred there. But even before that, respondents received a translated copy of the same along with Crl.M.P. 1606/96 and no sooner it was received, it was dealt with expeditiously. In Raghavendra Singh's case, no question of translation of the representation in the President's Secretariat arose and there was no question of sending the document for translation for finding out as to what subject it related. In fact, in the Supreme Court case, it was pointed out that that was not a case of sending repeated representations as was the case in State of Uttar Pradesh Vs. Zavad Zama Khan, . In the latter case, it was held that once the Central Government has rejected one representation, it was not obliged to consider another representation sent to the Prime Minister. We, therefore ,reject the contention regarding delay in the disposal of the representation dated 13.1.1996 addressed to the Finance Minister.

(17) A new point was raised that the papers relating to the "proposal" of the sponsoring authority ought to have been supplied to the petitioner. Reliance is placed on the Judgment of the Allahabad High Court in Uma Shankar vs. Superintendent Jail 1990 Crl.L.J. 2114 and also on Veena Kapoor vs. M.L. Wadhawan and others (31) 1987 D.L.T. (SN) 9). We are unable to agree that the sponsoring authority's "proposal" is a relied upon document. In our view, it is the documents relied upon which are sent up by the sponsoring authority that contain the basic facts and they are the ones that are taken into account by the detaining authority. The said authority does not "rely" upon the proposal by the sponsoring authority. The proposal is only a mode by which the documents, which the detaining authority deems relevant to arrive at its subjective satisfaction. The proposal, in our view, is Therefore not part of the "grounds". The grounds consist of the "basic facts" referred to in the documents (which list is annexed to the grounds of detention) and the "inferences" drawn there from by the detaining authority. The proposal is not a document which is relied upon. We, therefore ,respectfully dissent from the above rulings. The point is accordingly rejected. Even otherwise. Section 5A of the Act, is an answer to the point.

(18) Coming to the fourth contention regarding translation, it was argued as follows. It is said that in the original order of detention in English, the reason for detention given was "with a view to preventing her from smuggling goods and also preventing her from engaging in transporting, concealing and keeping smuggled goods". It is said that however, the words "keeps smuggled goods" are

missing in the Hindi translation and the latter only refers to "prevention of smuggling in future". Now the petitioner admitted .in her Section 108 statement that she was a "graduate". It is, Therefore, clear that, even if there was some mistake, in the Hindi translation, no prejudice was caused.

(19) Lastly, the contention is that the retraction in the bail application dated 31.7.1992 was not reflected in the grounds of detention. It is admitted that this document is at SI.No. 17 of the list annexed to the grounds. We find that para 5(ii) of the grounds of detention does refer to this bail application and to the reply dated 4.8.1992 filed by the Customs Department thereto and also to the order dated 18.8.1992 rejecting the bail. Para Ii refers to the list of relied upon documents appended. The grounds, therefore ,reflect consideration of this document. Hence, this contention has no force.

(20) In the result, the writ petition is dismissed.