
(1978) 05 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 27 of 1978

Jaswant Rai

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 24-05-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) 05 P&H CK 0019

Hon'ble Judges : Bhopinder Singh Dhillon, J

Bench : Single Bench

Advocate : G.R. Majithia with Mr. Sudhir Sardana, for the Appellant; D.N. Rampal, D.A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

Bhopinder Singh Dhillon, J.—Petitioner Jaswant Rai, resident of Khanna, District Ludhiana, has filed this petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus or any other suitable writ, Order or Direction of the nature thereof for his release from the alleged unlawful detention. The Petitioner stands detained under the provisions of subsection (1) of section 3 of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Act No. 52 of 1974) hereinafter called the Act, vide an order of the Governor of Punjab dated 22nd March, 1978. Copy of this order is attached as Annexure "P-1" with the petitioner. The petitioner was served with the grounds of detention, in support of the detention order and paragraph 2 of the grounds is as follows:--

On 10th December, 1977 acting on an information the Customs Preventive and Intelligence Officer, Amritsar, laid a naka on G.T. Road near Pingalwara, Amritsar. At about 23.10 hours, the Punjab Roadways Bus No PUR 5054 bound for Chandigarh, reached near Pingalwara which was stopped by Custom "naka" party. You, Jaswant Rai son of Daulat Ram, goldsmith, resident of Khanna District Ludhiana, were noticed sitting in the bus. On your personal search, 10 gold

biscuits with foreign marking and 8 gold strips (patras) each weighing 10 tolas, valued at Rs. 1,35,000/- were recovered from your possession. The said contraband smuggled gold was seized u/s 110 of the Customs Act, 1952.

The detention order is sought to be challenged on various grounds inter alia that the alleged activity of smuggling, in which the petitioner was said to have indulged himself related to as back as December 10, 1977, whereas the detention order was passed on March 22, 1978. Therefore the order is vitiated. Reliance has been placed on Supreme Court decision in *S.K. Serajal v. State of West Bengal* 1975 S.C.C. (Cri.) 425. This contention is without any merit. I have gone through the file and find that the custom authorities after completing all necessary formalities regarding the case under the Customs Act on the allegation that the petitioner was found to be in possession of 10 gold biscuits with foreign marking and scrips (Patras) of gold valued at Rs. 1,35,000/- on December 10, 1977 sent the information to the State Government on February 10, 1978 regarding the arrest of the petitioner in the circumstances mentioned above and it was on the basis of this information that the case against the petitioner was processed at various levels without any delay which ultimately culminated in the passing of the impugned order. The facts of the case of *S.K. Serajul* (supra) are completely different from the facts of the present case. In that case there was no explanation of delay of more than 7 months and on the facts and circumstances of that case their lordships came to the conclusion that the order stood vitiated.

2. There is no merit in the second contention of the learned counsel for the petitioner that the Custom authorities did not forward the material which was favourable to the petitioner, to the State Government, so that the detaining authority did not apply its mind to the whole material. The learned counsel pointed out that on December 19, 1977 after the petitioner was released from judicial custody, he gave a telegram to the Collector of Customs claiming that he has been falsely implicated in the case and that he was innocent. Similarly a telegram was sent to the Chairman of the Central Board of Revenue. These telegrams are Annexures P-3 and P-4. The Collector acknowledged the receipt of the telegram of January 13, 1978 and asked the petitioner to furnish more details in the matter, if available with him. But admittedly no such material was furnished by the petitioner to the Collector. It would thus be seen that except the plea of the petitioner that he was innocent, the petitioner did not give any material or any other detail of the incident dated December 10, 1977 and thus there was nothing worthwhile with the Collector which should have been forwarded to the State Government for consideration. This contention is again without any merit.

3. It was contended by the learned counsel for the petitioner that the impugned order has not been passed by the detaining authority and that the same is without jurisdiction. During the course of argument, the official file was made available to me from which I found that after the communication was received by the State Government from the Customs authorities, the case regarding the

detention of the petitioner was processed at various levels, below the level of the Home Secretary to whom the authority to detain has admittedly been delegated by the State of Punjab. From the file it appears that the case was placed before the Screening Committee and it was this committee which decided that the petitioner be detained. This is so clear from the order of the Deputy Secretary Home (1), dated February 21, 1978 which is in the following words:--

The case was discussed in the meeting of the Screening Committee held today and it was considered to be a fit case for detention. Further action may please be taken accordingly.

After this, the case was marked to S.P./Security who further marked it to the legal Agency to vet the grounds of detention. Consequently, two grounds of detention were recorded by the Legal Agency which are as follows:--

(a) The red handed capture involves recovery of 10 gold biscuits with foreign marking and 8 gold strips (Patras), each weighing ten tolas, valued at Rs. 1,35,000 00.

(b) On the followu--p action thereto, the search of business premises of the proposed detenu yielded recovery of newly made gold ornaments ; weighing 336.05 grams valued at Rs. 20,000.00.

There is a note on the file by some officers below the rank of the Home Secretary wherein it was proposed that ground (b) may be omitted and the detenu detained on the basis of ground (a). That portion of the note is marked "A" with red pencil. At this stage, the file went to the Home Secretary who was the detaining authority and who passed the following order dated March 13, 1978:--

"A" above is approved. Orders of detention should be issued accordingly.

Consequently, the order of detention against the petitioner was issued. From what has been said above, it is clear that the file of this case was placed before the Home Secretary only on March 13, 1978 when he passed the order agreeing with the proposal marked "A". The said proposal only suggested that ground (b) be omitted and the detenu to be detained on the basis of ground (a). Earlier to this, some sort of Screening Committee, which I am told by the State counsel consists of 5 Officers has taken a decision that it was a fit case for the detention of the petitioner. From what has been said above, it is therefore, obvious that the decision of detention was not made by the Home Secretary who was the only competent authority in view of the provisions of section 3 of the Act, but the decision was taken by the so called Screening Committee which consists of 5 officers. The Screening Committee has no status in the eyes of law and has, thus, no authority to arrive at any such decision. From what has been said above, it appears that the Home Secretary abdicated his functions to the so called Screening Committee which has no existence under the statute. It was only for consideration whether both the grounds of detention should be made the basis of detention as proposed at (a) or (b) or whether one of the two be omitted

that the case was put up before the Home Secretary who ordered that ground (b) be omitted. It would, thus, be seen that it is clear from the record itself that the decision regarding the detention of the petitioner has been taken by an authority which has no existence in law. It needs hardly be stressed that the authority competent to detain under the provisions of section 3 of the Act, could be the sole deciding authority to come to the conclusion whether a particular individual be detained or not. The so-called Screening Committee having no statutory existence, is a foreign body to the Act, whose decision is without any authority of law and thus, the detention order based on the said decision cannot be upheld.

For the reasons recorded above, the order of detention passed against the petitioner, having been held to be without jurisdiction, is set aside. The writ petition is allowed and it is ordered that the petitioner be set at liberty forthwith.