

(1990) 04 DEL CK 0031

In the Delhi High Court

Case No : Criminal Writ Petition No. 52 of 1990

Joga Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-04-1990

Acts Referred:

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

Citation : (1990) 41 DLT 529 : (1990) 19 DRJ 28

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : N.C. Chawla, Rekha Agarwal, D.N. Sawhney, Vimla Pinto, R.P. Lao
and Kamini Lao, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This petition has been brought under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, seeking quotient of the detention order dated October 27, 1989, made u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA Act") with a view to preventing the petitioner from smuggling goods or transporting or concealing or keeping with him smuggled goods and declaration dated December 22, 1989. issued u/s 9(1) of the Cofeposa Act.

(2) The facts, in brief, are that during the intervening night of March 11/12, 1989, the petitioner had arrived at Igi Airport from Singapore and after collecting his checked in baggage which comprised of one black suitcase and one cardboard carton, he made declaration of the goods valued at Rs. 4,000.00 and paid Customs duty amounting to Rs. 5.337/50P and as he was proceeding for going out of the Arrival Hall, he was intercepted at the exit gate by Customs Officer and on suspicion, he was detained for examination of his baggage and person and in presence of two independent witnesses, on minute examination of RC.R. and

electric fan it was found that screws of the same stood tampered with and they were subjected to X-ray examination and which indicated concealment of some heavy density metal and thus, they were opened and two pieces of gold were found concealed in the transformer of R.C.R. and four pieces of gold found concealed in motor portion of the electric "fan and they were found wrapped in black adhesive tapes and were found to be of 24 carat purity weighing 349.500 gms valued at Rs. 1,05,549.00

(3) In his voluntary statement recorded on the same day given in his own handwriting in Punjabi, the petitioner is stated to have admitted the recovery and seizure of the aforesaid gold and stated that the same was given to him by one Suresh at Singapore after the gold was concealed by him in the above-mentioned manner and he was to deliver the same to a person outside Delhi Airport who was to hand over Rs. 4,000.00 to him as remuneration. He also stated that he had visited Singapore 14 times and on previous visits he used to buy electronic goods from M/s. Pahwa Electrical (Suresh being the Proprietor of the said firm) and he was agriculturist by profession and did not have any sufficient income to make his both ends meet and it is only on account of lure of money which led him to do this smuggling. He also stated that he had not brought gold on his previous visits and he knew that import of gold into India is prohibited under the law. He was arrested and was remanded to judicial custody. He filed a bail application in which he mentioned that he was tortured and was forced to give that statement in his own handwriting and he was innocent and he was granted bail on his furnishing bail bond in the sum of Rs. 50,000.00 -with one surety on the condition that he was not to leave country without prior permission of the court and a complaint under the Customs Act for prosecuting him for commission of the criminal offence under the Customs Act had been filed on May 11, 1989 and the cognizance of that complaint had already been taken by the Magistrate. It was mentioned in the grounds of detention that during the period December 27, 1987 to March 11, 1989, the petitioner had visited foreign countries 14 times for short durations as was revealed from the passport of the petitioner which was taken into possession. The detaining authority reached the subjective satisfaction on perusing the aforesaid facts and circumstances that the petitioner has been knowingly engaging himself in the smuggling of goods and if not prevented, he is likely to engage himself in the smuggling of goods and also engage in transporting or concealing or keeping the smuggled goods and even though prosecution and adjudication proceedings had been initiated, the detaining authority felt satisfied and considered it necessary to detain the petitioner. It was also mentioned in the grounds of detention that the petitioner has been supplied with copies to all the documents relied upon freely translated into Punjabi language, a language known to the petitioner and Punjabi translations of pages 5 to 28 mentioned in the list of documents were not being supplied.

(4) The first contention raised by the learned counsel for the petitioner is that there has taken place an undue and unexplained delay in passing the detention order inasmuch as the occurrence took place in March 19, 1989, whereas the

detention order came to be made in October 1989 and thus, the ground subject-matter of detention order had become stale and there appears no nexus between the passing of the detention order and the object sought to be achieved by detaining the petitioner. He has placed reliance on *Anand Prokash v. The State of U.P. & Others*. Jt 1989 (4) S.C. 557 In the cited case the facts were that on February 15, 1989, it was found that certain electric wires had been cut and stolen away and a case was registered u/s 379 of the Indian Penal Code On March 3, 1989, the house of one Jagdish was searched and two bags filled with the electric wires were recovered. On the information of Jagdish, the factory of the detenu was raided and the detenu's servant was found in possession of 20 kgs melted electric wire and the same was seized and the detenu was arrested on May 2, 1989. Thereafter, the detention order was made. The Supreme Court held that no satisfactory Explanation had been given for the delay caused in making the detention order and the ground on which the detention order had been made could not be the approximate cause for detaining the petitioner under the National Security Act. So, on facts the court came to the conclusion that nexus between the object and the passing of the detention order stood broken and the detention became bad. He has also placed reliance on *Yogendra Murari Vs. State of U.P. and Others*, . In the cited case, the facts, in brief, are that the petitioner had allegedly fired with his revolver at one Sri Azam with the intention to kill him on December 7, 1986, which according to the detaining authority had led to spread of "error over the entire area and all the shop-keepers had closed their shops on account of fear and panic which created & public order problem It was alleged that on June 21, 1987, he again made an attempt to kill another person named Aziz and also on July 27, 1987, the petitioner Along with his companions killed Aziz and criminal cases were registered against the petitioner. A plea was taken before the Supreme Court that there had occurred a delay in passing the detention order on December 7, 1987. The Supreme Court held that although the grounds for passing the detention order became available in July while the order was passed in December but it is not right to assume that an order of detention baa to be mechanically struck down if passed after some delay. It was observed that it is necessary to consider the circumstances in each individual case to find out whether delay has been satisfactorily explained or not and it was found that it was clear from the affidavit of the District Magistrate that there has been no undue delay on his part in taking action. Then, the Supreme Court referred to the judgment of *Rajendra Kumar Natvarlal Shah v. State of Gujaral & Others* 1983(3) Scc 153 and opined that besides the distinction between such delay and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution is to be kept in view and the petitioner's antecedents taken into account by the detaining authority showing his propensity for prejudicial acts, the delay in passing the order of detention would no? be material The Supreme Court has now reiterated the ratio of law on the question of delay in *M. Ahamedkutty Vs. Union of India (UOI)* and Another, and after making reference to the various judgments on this subject, it was held that the question to be seen in such cases is whether the nexus had snapped or not and

whether the ground the basis of passing of the detention order had become stale or not ? In the case of Rajendra Kumar Natvorlal Shah (supra) there was unexplained delay of five months in making the order under the Cofeposa Act and it was held that the same was not sufficient to vitiate the order if the grounds were not stale and the nexus between the grounds and the order of detention still existed. It was observed that the distinction must be drawn between the delay in making of an order of detention under the law relating to preventive detention like Cofeposa Acs and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution of India, It was laid down that rule as to unexplained delay in taking action is not inflexible and mere delay in making of an order of detention under a law like Cofeposa Act enacted for the purpose of dealing effectively with persons engaged in smuggling in foreign exchange racketeering who, owing to their large resources and influence, have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of the delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached Keeping in view the ratio of law laid down by the Supreme Court, it is to be considered whether in the present case, it could be said or not because there has taken place a delay in passing the detention order, the nexus stood .snapped or the ground on which the order of detention had been passed has become stale.

(5) The facts enumerated above, in the grounds of detention, on the face of themselves indicate the propensity of the petitioner to indulge in smuggling activities According to the statement made by the petitioner himself, he has hardly any sufficient income from his work as agriculturist and he was attracted by lure of money and he had visited foreign countries 14 times in a very short span and each visit being of very short duration. It is true that he had made an exculpatory statement that on earlier occasion he had not smuggled gold but could it be said that a person with hardly any income of his own could visit foreign countries so frequently and for such short periods and no inference can be drawn from such facts that such a person had been on earlier occasions also indulging in prejudicial activities of the nature of smuggling ? The mere fact that he has not been detected on earlier occasions and no proof or material had been collected of his earlier prejudicial activities would not mean that no reasonable person could have drawn the inference from the facts enumerated above that the petitioner had been inducing in nefarious prejudicial activities of smuggling even on earlier occasions The past antecedents of "he petitioner, which are self-evident from the facts, were not required to be culled out in so many words in the grounds of detention as the same were so evident from the facts. The petitioner with such past antecedents obviously, in my opinion, was the right person to be detained and it cannot be said that mere fact that there had occurred un-explained delay in passing the order of detention, the object of

passing the detention order had become stale or the nexus had snapped.

(6) In the counter-affidavit filed by Mr. A, Dagar, Deputy Secretary (Home), Delhi Administration it has been mentioned that there were many cases which came up for consideration for passing the detentions order and the sponsoring authority also took time in putting forward the proposal and thus, the delay had occurred in passing the detention order. I assume that the delay has not been properly explained in passing the detention order still I come to the conclusion that keeping in view the facts mentioned above, it cannot be held that there was no nexus between the object of passing the detention order and the order of detention.

(7) Counsel for the petitioner also contended that there has been no prejudicial activity of the petitioner since he was released on bail and thus, no material was collected that the detenu had still the propensity to indulge in any prejudicial activity. The petitioner has been granted bail and a condition has been imposed that he is not to visit any foreign country without the permission of the court and thus, it cannot be said that the petitioner has lost his propensity to indulge in nefarious activity of smuggling on the grounds that he is constrained to follow the straight path because of stringent conditions imposed in the bail order. I, hence find no merit in this particular contention.

(8) It was also argued that although the detention order was dated October 27, 1989. but it could be executed only on November 22, 1989 and thus, there has been a delay in this respect. In the counter-affidavit, it has been mentioned that the detenu is resident of Punjab and after passing his detention order the steps were taken through proper channel for executing the detention order and there was no laxity on the part of the authorities in executing the detention order. I do not find any unreasonable delay taking place in executing the detention order and thus, I negate this ground as well.

(9) Counsel for the petitioner has urged that there is no proper procedure prescribed in the Cofeposa Act which has to be followed in passing the detention order and thus the Cofeposa Act is unconstitutional. Counsel for the petitioner forgets that the constitutionality of the similar detention law has been upheld by the Supreme Court, in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, . The learned counsel for the petitioner has argued that the procedure followed by the officials of Delhi Administration and by the Administrator in just approving the draft order of detention and the grounds of detention is not consonance with law and it should be held that the detaining authority did not apply its mind and has not followed the procedure laid down by any law. The requirement of Article 21 of the Constitution is that liberty of a person cannot be curtailed except by a procedure established by law. On the touch-stone of Article 21, the Cofeposa Act has to be held to be valid because the procedure has been laid down in this statute for passing the detention order and it is not the contention that the procedure laid down in this statute has not been followed for passing the detention order. The Administrator who has passed

the detention order, has to take the help of his officials and officers so that he comes to the right conclusion. The mere fact that grounds of detention and their translations and the draft order of detention have been prepared at the lower level and later on have been duly considered by the Administrator, who had passed the order of detention, would not mean that some illegal procedure had been adopted by the Administrator in passing the detention order. A Screening Committee is also constituted by the Administrator through which the case is processed. The recommendations of the Screening Committee are also placed for the Administrator, who has to consider all the facts and circumstances and the recommendations of the Screening Committee before deciding whether he should pass the detention order or not. I have gone through the record and find that the Administrator had passed somewhat speaking order in the file after perusing the material and the office notes and the draft grounds of detention and the draft detention order placed before him. There appears to be nothing wrong, in my opinion, in Administrator adopting such a procedure which facilitates his job as Administrator in dealing with multifarious duties and powers being exercised by him. In the case of *Thaneshwar Singh Vs. Union of India and Others*, this aspect was considered and it was opined that each official in the hierarchy contributes to the decision making process of the Administrator and similar contention, as raised before me, was also highlighted before the Division Bench of this Court but the same was negatived. So, I do not find any merit in this contention.

(10) It has been also argued by the learned counsel for the petitioner that the grounds of detention dated October 27, 1989, were not approved by the detaining authority and the grounds of detention, which had been approved by the detaining authority, in fact had not been served on the detenu. I have run through the original record of the case and find that the Administrator had taken the decision for detaining the petitioner on October 19, 1989 and had approved the draft grounds of detention and the draft order of detention already placed before him. However it was thereafter that the file was put up before Mr. A. S. Dagar, Deputy Secretary (Home), who authenticated the order of detention and the grounds of detention on October 27, 1989. Comparison of the grounds of detention on October 27, 1989 and the draft grounds of detention do not show any difference of any sort. So, it cannot be said that the grounds of detention, which had been approved by the Administrator, were different from what had been served on the detenu. So, I find no merit in this contention as well.

(11) Another contention raised by the learned counsel for the petitioner is that some of the documents which had been relied upon for passing the detention order have not been served on the detenu in the language known to the detenu. It is not disputed that the detenu is conversant with Punjabi language written in Gurmukhi script. The documents like Panchnama, passport, boarding card, baggage tags, baggage receipt, detention receipt, front portion of Customs Clearance Form, passenger manifest of the air flight and the air-ticket were admittedly not given to the detenu in Punjabi language. Counsel for the

petitioner has argued that in law it was incumbent upon the detaining authority to have supplied Punjabi translations of all these documents to the detenu. Along with the grounds of detention and this fact of the constitutional safeguard has not been adhered to in the present case and thus the order of detention stands vitiated. He has cited *Nainmal Partap Mal Shah Vs. Union of India (UOI) and Others*, *Surjeet Singh v. Union of India & Others*. Air 1981 Sc 115, *Haji Zoffar v Union of India & Others* 1984 (1) Cri 886 (decided by a Division Bench of this Court) and *Andrew Simon King v. Union of India & Others* 198 DL 50, in support of his contention that it is incumbent upon the authorities to serve the grounds of detention and copies of the documents relied upon the language understood by the detenu. There is no dispute about this legal proposition. 34 However, in *Mohd. Soleem v. Union of India & Others* 1989 (2) DL 109, I had considered the case law on this aspect and particularly relying on the case of *Sheopujan Prasad v. Union of India & Others*, decided by the Supreme Court, had held that in case the grounds of detention contain the substance of the documents relied upon, then if a copy of a particular documents has not been supplied to the detenu. Along with the grounds of detention, the same does not vitiate the detention order. In the aforesaid case, the grievance was made that copies of the boarding card, and the Customs Clearance Form which were relied upon documents having been not supplied to the detenu in the language known to him, the detention order stood vitiated. It was found that in the grounds of detention supplied to the detenu in the language known to him the contents of the said two documents stood substantially reproduced. It was held that the contents of the said documents stood duly communicated to the detenu *pari passu* the grounds of detention when he was supplied the grounds of detention in the language known to him, and this ground was negatived. In the present case also, the contents of the aforesaid documents have been substantially reproduced in the grounds of detention which admittedly stood served on the detenu in the language known to the detenu and thus, it cannot be held that the detenu has not been communicated and served with all the material facts and documents relied upon by the detaining authority in passing the detention order in the language known to the detenu. I negative this ground as well.

(12) The learned counsel for the petitioner has then urged that it was a solitary incident of smuggling indulged in by the petitioner and though there was no cogent material disclosed in the grounds of detention which could have enabled the detaining authority to reach the subjective satisfaction that the petitioner has any propensity to indulge in such prejudicial activity in future. Ac has argued that in the grounds of detention the detaining authority has not at all recorded his inferences from the various frequent visits of the detune to foreign countries for short durations that the petitioner was indulging in smuggling activity during those visits as well and as no such inference is drawn and even communicated to the detenu, hence, the detenu is deprived of his right to make an effective and purposeful representation in that regard. In support of this contention, he has placed reliance on *Mohd Saleem v. Union of India & Others* 1989 (3) DL 77. a Full

Bench judgment of this Court. It is true that the grounds of detention do mean the material facts and the documents being relied upon for passing the detention order and the same have to be communicated to the detenu to enable the detenu to make an effective representation against the order of detention. But, in the present case, as already discussed above, the facts which have come out from the statement of the detenu duly reproduced in the grounds of detention and copies of the same being also supplied to the detenu which is also relied upon for passing the detention order leave no room for doubt that the petitioner in his frequent visits to foreign countries in short span for short durations was not having pleasure trips keeping in view his economic conditions as divulged by himself in his statement, no other inference could be possible than that he was indulging in smuggling activities in fills previous visits. His mere ipse dixit in his statement that he was not smuggling gold during his earlier visits could not be given any credence.

(13) A similar question arose for decision of this Court in Criminal With Petition No. 792/89. Gurmeet Singh v The Administrator, decided on March 12, 1990. There also the detenu had made frequent visits to foreign countries in short span and for short durations and it was held that inference from such facts was obvious that he was indulging in smuggling activity. So, it was totally unnecessary for the detaining authority to have mentioned his inferences in so many words in the grounds of detention. He has recorded his satisfaction from these facts that the petitioner has been indulging in smuggling activities earlier also and that satisfaction stood communicated to the detenu.

(14) Counsel turn the petitioner cited Shaik Hanif and Others Vs. State of W.B., , but the same has no applicability lo the facts of the present case. So, nothing said in this judgment is of any help to the detenu in the present case in support of the above said contention. Counsel for the petitioner tried to distinguish the case of Gurmeet Singh (supra) by urging that in that case the detenu bad not disclosed the purpose of his precious frequent visits. I do not understand how anything turns on this in reaching the necessary subjective satisfaction. In the said case also the detenu had not made any statement that in his previous visits he was Indulging in any smuggling activity, still it was held that inference could be drawn from the facts that the detenu having very poor source of income was visiting the foreign countries for short durations and so frequently in such short periods and the only inference possible was that he was indulging in prejudicial activity of smuggling in his previous visits as well Similar are the facts of the present case. So, I do not find any merit in this contention of the learned counsel for the petitioner.

(15) The learned counsel for the petitioner has also argued that as passport of the petitioner stood seized and nothing has been mentioned in the grounds of detention that the petitioner could still indulge in smuggling of goods despite his passport having been seized, hence, the subjective satisfaction reached by the detaining authority for passing the detention order is vitiated and he has placed

reliance on a Full Bench judgment of this court in the case of Mohd. Saleem (supra). There is no merit in this contention because the Supreme Court has now clearly laid down in the case of M. Ahamedkutty v. Union of India & Ann., Jt 1990 (1) Sc 143. in para 18 that seizure of the passport is one of the factors which the detaining authority should have taken into account but it was for the detaining authority to assess the weight to be attached to such circumstances in arriving at his final decision and it is not open to the court to interfere with the merits of this decision. In the present case also, the factum of seizure of "the passport was very much brought to the notice of the detaining authority and stands mentioned in the grounds of detention and the details of 14 visits of the petitioner to the foreign countries have been also enumerated in the grounds of detention which have been taken out from the passport and thereafter the detaining authority has reached its subjective satisfaction and so, the said subjective satisfaction now cannot be questioned by the court on the ground that as the passport of the detenu stood seized, the detenu was effectively prevented from indulging in smuggling activity. I negate this ground as well.

(16) It has been then urged that the petitioner has not been supplied copy of the application for bail dated March 30, 1989, moved by the petitioner in the High Court for reduction of the bail amount in the Punjabi language and thus, the order of detention stands vitiated. There is no merit in this contention. Similar question came up for consideration in Abdul Sattar Abdul Kadar Shaikh Vs. Union of India (UOI) and Others, A contention was raised that as copies of the bail applications have not been served on the detenu. he was prevented from making effective representation. The Supreme Court held that in fact, the bail applications were filed by the detenu himself and thus, he was very much aware of the contents of those 36 bail applications and the orders made thereon and it cannot be held that the detenu is in any way handicapped in making an effective representation by refusal of the authority to supply copies of bail applications and the orders made thereupon. In the present case, the petitioner had been released on bail and copy of that bail application and copy of the order granting bail already stood supplied to the detenu. The petitioner had approached the High Court for getting the amount of the bail reduced. It is settled law that any modification of the bail order is not such a material fact which could sway the mind of the detaining authority in considering whether the detention order should be made or not. At any rate, the petitioner was very well aware of the contents of the bail application moved in the High Court and the order made thereupon. Thus, he cannot be stated to have been deprived of his right to make any effective representation on account of non-supply of copies of the bail application and the order made thereupon by the respondents.

(17) No other point has been urged before me.

(18) Hence, I find no merit in this petition which I hereby, dismiss and discharge the rule.