
(1986) 09 PAT CK 0020
In the Patna High Court

Jugal Kishore Chopra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-09-1986

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3, 7

Criminal Procedure Code, 1973 (CrPC) — Section 82, 83, 84, 85

Citation : (1987) CriLJ 1474

Hon'ble Judges : Ram Chandra Prasad Sinha, J

Bench : Single Bench

Judgement

Ram Chandra Prasad Sinha, J.—This application by a detenu who is under detention pursuant to an order dt/- 18-3-1981 (Annexure 2) passed by the Government of Bihar in exercise of the powers conferred by Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, COFEPOSA) and confirmed by order dt/- 15-4-1986 (Annexure 1) after the receipt of the opinion of the Advisory Board ordering to keep him under detention for one year from the date of his arrest, i.e. from 26-1-86 to 25-1-87 is for issuance of a writ of habeas corpus after quashing Annexures 2 and 1. The order of detention (Annexure 2) along with the grounds of detention in support of the aforesaid order dt/-, 18-3-1981 (Annexure 3) was served on the petitioner on his arrest on 26-1-1986.

2. The facts leading to the passing of the orders are as follows:- On 12-9-1980 Customs Preventive Officers of Raxaul having collected intelligence that two persons, one of wheatish complexion, tall and well-built and the other of fair complexion were coming from Nepal side with some contraband goods of third country origin secreted in their scooters, organised a party to check vehicular traffic at Ramgarhwa Railway Gumti. In course of checking, the petitioner with a scooter bearing No. BHQ-2748 was intercepted at 8.30 a.m. on 13-9-1980. Shortly thereafter, another scooter bearing BHQ-5722 driven by Gurdip Singh Arora was also intercepted at the aforesaid Gumti. At the first instance no

contraband foreign goods could be detected from the possession of any of the aforesaid persons, but a slight loose fitting in the plates of petrol tanks of the scooters prompted the custom authorities to get the plates removed for further checking. The petitioner and Mr. Arora expressed their inability to remove the same. Thereafter they were brought to Raxaul with their scooters and the plates were removed by a mechanic, namely, Hasan and contraband foreign goods worth Rs. 42,473/- and Rs. 33,099/- were recovered from the cavities of scooter No. BHQ-2748 and BHQ-5722 respectively in presence of independent witnesses and the Superintendent of Customs and seizure memo No. 176/80 dt/-13-9-1980 was prepared. A report was also prepared by the Inspector of Customs (Preventive) Units, Raxaul.

The petitioner in his statement and interrogation dt/-13-9-1980 admitted that he had gone to Birganj (Nepal) on 12-9-1980 and stayed at Diyalo Hotel and had purchased goods from Anupam Store, Sharwan Store and other shops and that he had put all the goods in the body of the scooter in the night and had left Birganj at about 7 hours in the morning of 13-9-1980 for India and was apprehended by the customs officials at Ramgarhwa Railway Gumti and subsequently contraband goods were recovered. He also confessed that he had smuggled goods from Birganj to Patna secreted in scooter BHQ-2748 and then to Delhi 7-8 times in the past and sold the contraband goods at Delhi through his brothers Ramswaroop and Kalu Ram. He has also stated that he had also smuggled from Birganj about ten days before and carried the same to Delhi. The petitioner identified his companion Mr. Arora as his brother-in-law (wife's brother) and had also confessed that he had initiated him into smuggling. The aforesaid facts are mentioned in the grounds dt/-18-3-1981 (Annexure 3) which was served on the petitioner on his arrest on 26-1-1986.

3. learned Counsel appearing on behalf of the petitioner has challenged his detention on two grounds, firstly, that the petitioner could not have been detained on the solitary act and secondly that in pursuance of the order of detention dated 18-3-81 (Annexure 2) the petitioner was arrested in Jan. 1986 which shows that no genuine effort was made on the part of the authority to arrest him and the aforesaid facts show that the detention of the petitioner was not at all essential.

4. Two counter-affidavits in opposition, one on behalf of respondents 1 and 2 and Anr. on behalf of the Union of India (Department of Central Excise and Customs), have been filed. In the counter-affidavit of respondents 1 and 2 it has been stated, inter alia, that the order contained in Annexure-2 was sent to the D.I.G. (C.I.D.), Bihar, for immediate service on the petitioner. On receipt of the aforesaid order, the C.I.D. men kept strict vigilance around petitioner's residence in mohalla Anandpur, Patna to apprehend him but he could not be located. On receipt of the information from the C.I.D. that he was not being located, action under Sections 7(1)(a) and 7(1)(b) of the COFEPOSA Act was taken against him and a report was sent to the Chief Judicial Magistrate, Patna, on 10-8-1982 for

action under Sections 82, 83, 84 and 85 of the Code of Criminal Procedure. Simultaneously a notice was published in the extraordinary issue of the Bihar Gazette dt/-11-8-1982 asking him to present himself before the Deputy Inspector General of Police, C.I.D., Bihar, in the old Secretariat on or before 8-9-1982 failing which he would make himself liable for punishment u/s 7(1)(b) of the COFEPOSA Act (vide Annexure-A to the counter-affidavit of respondents 1 and 2). In spite of that the petitioner did not appear before the D.I.G., (C.I.D.), Bihar by the aforesaid date.

On 20-11-1982 the Chief Patna, was intimated of the non-appearance of the petitioner before the Deputy Inspector General of Police, C.I.D., Bihar, who was also requested to continue the efforts for service of the detention order on the petitioner. The Customs Department, Patna was also requested for necessary action in the matter. The District Magistrate, Patna, reported to the Government on 25-10-1983 that in case No. 498(M)2/82-Trial No. 1686/83 against the petitioner a non-bailable warrant of arrest and processes were issued by the Chief Judicial Magistrate, Patna and the Senior Superintendent of Police had been requested for its execution. The C.I.D. also reported to the Government that Senior Officers were deputed to serve detention order on the petitioner who was absconding and efforts were continuing to arrest him. On 29-11-1984 the District Magistrate, Patna was also requested to institute a case u/s 7(2) of the COFEPOSA Act. On 21-1-1986 the Customs (Preventive) Department, Patna informed the State Government that it had reliably been learnt that the absconding petitioner was residing at Rajgir in the district of Nalanda at the place of Ramji Upadhyay since 18-3-1981 and then the petitioner could be arrested on 26-1-1986.

5. In the counter-affidavit filed on behalf of the Union of India it has, inter alia, been stated that after the release of the petitioner on bail he did never appear before the adjudicating authority for personal hearing in spite of repeated notice sent to him with the result that the adjudication order had to be passed against the petitioner ex parte. A copy of the adjudication order has been annexed as Annexure-A to this counter-affidavit.

6. So far as the first point that no order of detention can be passed on a solitary instance of smuggling is concerned, it appears to be without any merit. The contention of learned Counsel for the petitioner is that though the petitioner was apprehended on 13-9-1980 and contraband goods of third country were recovered from his scooter, but it is the solitary instance and that is not sufficient to warrant an inference that the petitioner would repeat his activities in future also and hence there is no question of his detention to prevent him from repeating the same offence in future, from perusal of Annexure-3 and the statement made by the petitioner before the Custom Officer on 13-9-1980 (a copy of which is Annexure-B to the counter-affidavit filed on behalf of respondents 1 and 2) it would appear that the petitioner had indulged in such activities in the past also and there were sufficient material before the detaining

authority to come to the conclusion that if the petitioner was not detained he would repeat his activities in future also. The manner in which the contraband goods were kept concealed in the scooter and the manner in which the petitioner behaved before the custom authorities were sufficient for the detaining authority to come to the conclusion that the aforesaid act was pre-planned and pre-meditated which fully justified the detaining authority to come to the conclusion that the detenu might repeat his illegal act in future also and that his detention was necessary to prevent him from repeating the same in future.

7. Besides, passing of order of detention is a question of subjective satisfaction of the authority making the order of detention and it is not for the Court to question the sufficiency or otherwise of the ground. The case of Mrs Saraswathi Seshagiri Vs. State of Kerala and Another, negatives the submission made on behalf of the petitioner.

8. As mentioned above, the second ground on which the order of detention has been challenged is that there is a big gap between the passing of the order of detention and the arrest of the petitioner. As mentioned above, the order was passed on 18-3-1981 and the petitioner was arrested on 26-1-1986. At first sight it appears that the delay in arresting the detenu is sufficient to presume that the detention of the petitioner for preventing him from indulging smuggling activities was not essential, but from close scrutiny of the facts it appears that the petitioner was himself responsible for not allowing his arrest the delay was caused by his abscondence. From the facts given herein below it will also appear that the petitioner was himself evading arrest and the delay in his arrest has sufficiently been explained by the authorities.

9. From Annexure-2 it is clear that after the passing of the order of detention on 18-3-1981, the same was forwarded to the Deputy Inspector General, C.I.D., Bihar, for immediate service on the petitioner. From para. 8 of the counter-affidavit it appears that the same was sent on 18-3-1981 to the aforesaid officer and the C.I.D. men kept strict vigilance around the petitioner's residence in mohalla Anandpur, Patna. On receipt of the information from the C.I.D. that the petitioner was not arrested and he was absconding, action contemplated under Sections 7(1)(a) and 7(1)(b) of the COFEPOSA Act was taken against the petitioner and a report was sent to the Chief Judicial Magistrate on 10-8-1982 for action under Sections 82, 83, 84 and 85 of the Criminal P. C. and simultaneously Gazette notification (Annexure-A) was issued in the extraordinary Gazette dt/-11-8-1982 directing the petitioner to appear on or before 18-9-1982 before the Deputy Inspector General of Police, C.I.D., Bihar. It was also mentioned in the notification that his failure to appear, the petitioner would make himself liable for punishment u/s 7(1)(b) of the COFEPOSA Act. That notification was published in English as well as in Hindi but in spite of that the petitioner did not present himself before the Deputy Inspector General, C.I.D. though, according to his own case, he was at Rajgir.

In support of his contention, learned Counsel for the petitioner has drawn my

attention to para. 5 of the writ application wherein it has been stated that after having been released on bail by order dt/- 8-11-1980, he remained in contact with the custom officials and he always appeared on the dates fixed in the case at Motihari. It has also been asserted in that paragraph that the petitioner had duly intimated the custom officials about his changed address for correspondence. The allegation made in para. 5 has been replied to in para. 6 of the counter-affidavit filed on behalf of the Union of India sworn by the Assistant Collector of Central Excise and Custom wherein it has been asserted that after release on bail the petitioner did never appear before the adjudicating authority for personal hearing in spite of repeated notice sent to him with the result that the adjudicating authority had to pass the adjudication order ex parte. In support of the aforesaid fact true copy of the order of adjudication has been filed as Annexure-A to the counter-affidavit. The aforesaid order is dated 13/21-7-1982 wherein it has been mentioned as follows : ?

Repeated opportunities extended for personal hearing on 5-12-81, 14-1-82, 6-2-82. The party through his Advocate prayed for adjournment on the ground of illness. Next date for personal hearing granted to the party on 24-2-82. He further sought for adjournment and prayed for one more date for personal hearing. His request for the same granted and accordingly the last date for personal hearing fixed on 31-3-82. But the party neither appeared in person nor he sought for adjournment.

Hence, the order contained in Annexure-A was passed ex parte.

10. The fact that he had intimated the custom officials about the change in his address has been denied in the counter-affidavit filed on behalf of the Government of India. In the aforesaid para. 5 of the writ application the petitioner has merely stated that he had intimated about the change of address but he has not stated that he had intimated the authority that he was living at Rajgir.

11. From the assertions made in paras. 8(v), (vi), (vii) and (viii) of the counter-affidavit filed on behalf of the State it appears that in spite of vigorous attempts the petitioner could not be arrested and he remained absconding till he was arrested on 26-1-1986 at Rajgir on getting information from the Custom Department on 21-1-1986.

12. From what has been discussed above, the assertions made by the petitioner that he had always attended the adjudication proceeding and that he was not absconding is incorrect. From the facts stated above, it is further clear that the authorities had taken all possible and necessary steps for apprehending the petitioner and they also acted promptly and in a vigilant manner, but he could not be arrested before 26-1-1986. The aforesaid facts clearly prove that the petitioner remained absconding and he himself was responsible for the delay. It is well-settled that nobody can take advantage of his own fault. As mentioned above, the petitioner himself was responsible for not making himself available for

his arrest and service of the grounds and no grievance can be made regarding this as held in the case of Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another, and I feel tempted to quote the relevant passage from that decision :?

It is true that the purpose of detention under the COFEPOSA is not punitive but preventive. The purpose is to prevent organised smuggling activities and to conserve and augment foreign exchange. It is true that the maximum period for which a person may be detained under the COFEPOSA is one year. It is further true that there must be a "live and proximate link" between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is "snapped" if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the "link" not snapped but strengthened.

In the aforesaid case there was delay of about four years and still the order of detention was upheld.

13. In the present case the delay has satisfactorily been explained by respondents as the petitioner could not be arrested before 26-1-1986 in spite of all the efforts made and in my opinion there is no merit in this application.

14. In the result the application is dismissed.