

(1996) 11 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Criminal W.P. No. 305 of 1996

Karnail Singh @ Bagiarh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 05-11-1996

Acts Referred:

Citation : (1997) 70 ECR 271

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—The petitioner is detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred as the "COFEPOSA") and has filed this petition for being released. The petitioner was apprehended on 6.4.1995 near Daoke Drain Bridge (Village Daoke, P.S. Sarai, Amanat Khan), at night at about 4 a.m. The petitioner was coming on a scooter and when signalled to stop by the Naka Party, he stopped the scooter and on enquiry disclosed that he had concealed some foreign currency in his scooter. During search, two packets were recovered from the spare wheel of the scooter and they contained the following articles:

- (i) 1570 Canadian dollars;
- (ii) 15345 U.S. dollars;
- (iii) 7720 England pounds; and
- (iv) 4800000 Italian lire.

The petitioner could not produce any documentary evidence for legally keeping the said currency. The above foreign currency was recovered by the Customs staff. The value of the said currency was in all Rs. 10,66,975/- and the scooter was valued at Rs. 12,000/-.

2. The petitioner was arrested by the Inspector of Customs and was produced before the Duty Magistrate, Amritsar on 7.4.1995 who remanded him to Customs custody upto 10.4.1995. He was again produced before the Duty Magistrate on 10.4.1995 and he was remanded to judicial custody. The petitioner was released on bail on 13.6.1995. The petitioner after having been detained, made representation against the same which was rejected.

3. The petitioner has sought his release on the following grounds:

(i) that the order of detention was passed seven months after the alleged incident;

(ii) that the order of detention is void because the satisfaction expressed therein is not real and genuine but is mechanical and casual;

(iii) that the non-consideration of the representation promptly by the Detaining Authority makes the detention illegal;

(iv) that the petitioner was not supplied with the bail application and order passed thereon;

(v) that the petitioner was not supplied the Punjabi version of the Detention order.

4. Regarding the first point, the Deputy Secretary to Government of Punjab, Department of Home Affairs and Justice, Chandigarh has stated in her affidavit that the seizure of foreign currency was effected on 6.4.1995 and the order of detention was passed on 27.10.1995. It is contended that there was no lack of promptitude on the part of Detaining Authority and there was no unexplained delay in framing the grounds of detention and passing the order of detention. Day-to-day delay has been explained by her as under:

On 6.4.1995 seizure was made, statement of Karnail Singh was recorded. On 7.4.1995, goods were deposited in the Malkhana and Karnail Singh was produced before the Duty Magistrate, Amritsar. On 8.4.1995, statement of Karnail Singh was recorded. On 10.4.1995, Karnail Singh was again produced before the Duty Magistrate, Amritsar. On 11.4.1995 to 10.6.1995 photostat of relied upon documents and translation of documents were made. On 12.6.1995 proposal sent to H.Qrs. Office, Chandigarh. On 26.6.1995, the detention proposal was received from the sponsoring authority and it was sent to legal agency for opinion. On 5.7.1995 the detention proposal was received from the Legal Agency with certain observations to be complied with by the sponsoring authority. On 7.7.1995 the observations of the legal agency were conveyed to the sponsoring authority for its compliance. On 20.7.1995 the observations raised by the Legal Agency were complied by the sponsoring authority and again the proposal sent to the legal agency for final checking. On 26.7.1995, the detention proposal was received back from the legal agency with some observations. The compliance report was complete and accordingly the sponsoring authority was informed about it. On 2.8.1995, the objections raised by the Legal Agency were complied

by the sponsoring authority. Again the proposal was sent to the legal agency on 4.8.1995. The proposal was again received back from the legal agency with the remarks, "that the objections raised by it are not fully complied with". On 16.8.1995 again a letter was sent to sponsoring authority on 17.8.1995 stating therein to comply with the objection raised by the Legal Agency. On 22.8.1995, the case file was sent for the translation of grounds of detention into Punjabi version. On 26.8.1995 the case file was sent to the office for typing of grounds of detention. On 30.8.1995, a reminder was sent to sponsoring authority for sending relevant reply. On 30.8.1995, stencil was sent for roll. On 1.9.1995 translated Punjabi version was sent to Punjabi Typist, which was received back on 2.9.1995. On 11.9.1995 reply received from sponsoring authority and sent to Legal Agency on 11.9.1995. Proposal received from Legal Agency on 21.9.1995 after legal examination. On 22.9.1995, the proposal was sent to Director, Prosecution and Litigation, Punjab Chandigarh (State Law Department) who further sent the detention proposal to the Home Department Punjab on 26.9.1995. On 4.10.1995, the detention proposal was sent back by Home Department, Punjab with certain objections, which was sent to Legal Agency for necessary action. On 9.10.1995, the detention proposal was received back from Legal Agency. Again the proposal was sent to the Legal Agency on 10.10.1995 which was received from Legal Agency on 12.10.1995. On 13.10.1995, proposal sent to the Home Department Punjab, Chandigarh for passing the appropriate order. The detaining authority passed the formal order on 20.10.1995 and the fair order was issued on 27.10.1995. On 30.10.1995, the detention order was received in the office which was conveyed to Senior Superintendent of Police, Amritsar, on 30.10.1995. The detention order was executed to the petitioner on 2.12.1995. In addition to above there were holidays on 1.7.1995, 2.7.1995, 15.7.1995, 16.7.1995, 22.7.1995, 23/7, 29.7 to 31.7., 5/8, 6/8, 12/8, 13/8, 15/8, 18/8, 19/8, 20/8, 26/8, 27/8, 2/9, 3/9, 9/9, 10/9, 16/9, 17/9, 23/9, 24/9, 30/9, 1/10, 2/10, 3/10, 7/10, 8/10, 14/10, 15/10, 21/10 to 23.10.1995.

5. Regarding the delay in deciding the representation, it has been stated in the said affidavit that the representation dated 19.2.1996 was forwarded by the Superintendent, Central Jail, Amritsar and it was received in their office on 20.2.1996. Parawise comments were called from the sponsoring authority and Senior Superintendent of Police, Amritsar vide letter dated 23.2.1996. Parawise comments were received in their office on 29.2.1996. The representation was then sent to Legal Agency on 1.3.1996 where it was remained upto 7.3.1996 for examination. On 7.3.1996 the representation was sent to State Law Department, Punjab where it was examined upto 11.3.1996. After examination at various levels, the representation was rejected on 20.3.1996 on merits by the competent authority. The petitioner was intimated through Superintendent, Central Jail, Amritsar and hence it is contended that the representation was decided promptly and without any delay. It is also contended that during the intervening period 21/2, 24/2, 25/2, 2/3, 5/3, 6/3, 8/3, 9/3, 10/3, 16/3 and 17/3 were holidays. It is also contended by the petitioner that immediately after the detention, he

submitted a representation through the Superintendent Central Jail, Amritsar with a request that the same may kindly be forwarded to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi. It is further contended that the said representation was not decided promptly by respondent No. 3 and no decision has been conveyed to the petitioner so far, and that there is unreasonable delay in deciding the representation.

6. Regarding the above contention, the Deputy Secretary to Government of Punjab has stated in her affidavit that the representation of the petitioner was received by the detaining authority and the same was sent to the Under Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi vide letter dated 20.3.1996 and the same is under consideration.

7. The Under Secretary to Government of India in his reply on behalf of Union of India has stated that the representation dated 19.2.1996 was forwarded by the Superintendent, Central Jail, Amritsar vide his letter dated 19.2.1996. This was received in the COFEPOSA Unit on 28.2.1996. On receipt of the representation, the same was placed before the considering authority which directed to call for the comments of the Sponsoring Authority. The comments were called for on 29.2.1996. Parawise comments were received on 12.3.1996. The parawise comments furnished were not legible and some more details were required. The Sponsoring Authority was requested on 14.3.1996 to furnish clear copy of the comments together with additional information. In response to the letter dated 14.3.1996, the Sponsoring Authority furnished the clear copy of the comments which was received in the COFEPOSA Unit on 20.3.1996. The matter was examined and again vide letter dated 20.3.1996 the Sponsoring Authority was asked to obtain additional information from the State Government and send the same to him immediately. In the meanwhile a copy of the same representation was furnished by the Department of Home Affairs and Justice, Government of Punjab vide letter dated 20.3.1996 which was received in the COFEPOSA Unit on 26.3.1996. It is further stated that information in the matter had already been called for. As no reply was received in the COFEPOSA Unit from the Sponsoring Authority, a fax message was sent on 4.4.1996 to send the necessary information. No reply was received till 15.4.1996 when a letter was addressed to Director General of Police, Chandigarh calling for necessary information. As no reply was forthcoming, a fax message was again issued on 14.5.1996 to the Sponsoring Authority to send the required information in order to enable them to consider the representation of the detainee. A reply in the matter was sent by the Sponsoring Authority on 17.5.1996 which was received in the COFEPOSA Unit on 20.5.1996. It is further contended that on receipt of the reply, the case was processed and submitted to the Joint Secretary (COFEPOSA) on 21.5.1996 who considered the representation and rejected the same on behalf of the Central Government on 21.5.1996 itself.

8. Regarding the ground on non-supply of copy of bail application and order passed thereon, it is contended by the Deputy Secretary to Government of

Punjab in her affidavit that the copy of the bail application moved by the petitioner in the Court of Chief Judicial Magistrate, Amritsar was supplied to him along with the relied upon documents. It is also contended that the petitioner had moved the bail application and he must have received a copy along with the order of the Court of Chief Judicial Magistrate, Amritsar.

9. In the light of the above contentions I will consider the rival arguments of learned Counsel for the parties.

10. I would first take up the question of representation being not promptly dealt with. The learned Counsel for the petitioner has cited on this point the case of Shyam Ambalal Siroya Vs. Union of India (UOI) and Others, . It has been held in that case that the petition for revocation of detention should be dealt with expeditiously. It is also observed that there should be a reasonable explanation for the delay. In that case, it was held that the representation was not forwarded to the Central Government for four months and no action was taken even after filing of the petition under Article 32 of the Constitution and that the same was fatal to the detention.

11. He has also cited the case of Smt. Khatoon Begum Ors. Vs. Union of India (UOI) and Others, wherein it has been held that the representation should be decided at the earliest opportunity. It was further held in that case that the delay in that case could not be said to be inevitable.

12. Learned Counsel for the petitioner also cited the case of Mahesh Kumar Chauhan alias Banti Vs. Union of India and others, . In that case it was held that when the delay occasioned on part of the sponsoring authority in sending his comments and when there was no explanation, it was violative of Article 22(5) of the Constitution and the detention order was liable to be set aside.

13. Mr. Gill, learned AAG, Punjab on the other hand cited the case of M. Mohammed Sultan v. The Joint Secretary to Government of India, Finance Department and Ors. AIR 1990 SC 2222. In that case it has been held that considering the question of delay in deciding the representation, excluding the time taken in communicating representation to the sponsoring authority and obtaining comments which was only six days, the same cannot be regarded as unduly long.

14. Mr. Gill has also cited before me the case of Abdul Salam alias Thiyyan Vs. Union of India and others, . That was a case where the satisfactory explanation of delay was given and the delay was reasonably explained. He has also cited the case of Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, . It has been held therein that even in absence of explanation for delay, the inference could not be drawn that subjective satisfaction arrived at by detaining authority was not genuine or that grounds were stale or illusory and the order of detention was held to be not vitiated.

15. Mr. Gill has also cited before me the case of Smt. Panna v. A.S. Samra and

Ors. 1995 SCC (Cr.) 137. In that case the delay regarding representation was not held to be unreasonable.

16. Mr. Sharma learned Counsel for Union of India has cited before me the case of Birendra Kumar Rai v. Union of India and Ors. In that case there was voluminous documentary evidence and it was held in that case that there was no non-application of mind and the delay in dealing with the representation was held to be properly explained.

17. The cumulative effect of the above decisions is that if the delay is reasonably explained, it cannot be said to be fatal to the detention. However, if there is no reasonable explanation for the delay, it would vitiate the detention. Keeping this principle in mind, the question of delay in this case will now be considered.

18. Learned Counsel for the petitioner has stated that he did not suggest that there was delay on behalf of the Punjab Government and that the delay was from the side of Union of India.

19. Regarding the delay in dealing with the representation by the Union of India, from the facts of this case as stated above, it can be seen that the contention of the petitioner is that though the representation was sent to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi, the same was not decided promptly by respondent No. 3 and no decision was conveyed to the petitioner so far. The petitioner has contended that the delay is unreasonable and that the detention stands vitiated because of the same. I have stated in detail the reply given by Union of India on this point. It is admitted that the representation was received in the COFEPOSA Unit of the Ministry on 28.2.1996. The time that was required for processing the representation may be ignored in this case. However, thereafter the representation was required to be determined at the earliest without any unreasonable delay. The comments were called for on 29.2.1996. The same were received on 12.3.1996. Again the said comments were stated to be not legible and some more details were required. The sponsoring authority was requested on 14.3.1996 to furnish clear copy of the comments together with additional information. The clear copy of the comments was received in the COFEPOSA Unit on 20.3.1996. It has been contended that the matter was examined and again vide letter dated 20.3.1996, the sponsoring authority was asked to obtain additional information from the State Government and send the same to the Ministry. As no reply was received from the sponsoring authority, a fax message was sent on 4.4.1996 to send the necessary information. No reply to this message was received till 15.4.1996 and therefore, a letter was addressed to Director General of Police, Chandigarh on 15.4.1996 itself calling for necessary information. However, as no reply was forthcoming, a fax message was again issued on 14.5.1996 to the sponsoring authority to send the required information. The reply was sent by the sponsoring authority on 17.5.1996 which was received in the COFEPOSA Unit on 20.5.1996. On receipt of the reply, the case was processed and submitted to the Joint Secretary (COFEPOSA) on 21.5.1996. The representation was rejected on

21.5.1996. Obviously when the writ petition was filed in the month of March, 1996, the representation of the petitioner was not decided.

20. As observed above, it is not the duration of delay which will be much material, but the material question will be the explanation for delay. The explanation given is clearly the one which cannot be said to be a satisfactory explanation. In view of the above settled principle by various judgments of the Supreme Court, when the delay is not properly explained, the same is fatal to the detention.

21. In view of the above finding, the arguments of learned Counsel for the petitioner on the other points are not required to be considered.

22. In the result, the writ petition is allowed. The order of detention is quashed and the petitioner is ordered to be set at liberty, if no longer required to be kept in custody in any other case.