

(1990) 06 BOM CK 0065

In the Bombay High Court

Case No : Criminal Writ Petition No. 433 of 1990

Keshav Jaru Salian

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-06-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3
Constitution of India, 1950 — Article 226

Citation : (1991) 54 ELT 55

Hon'ble Judges : S.P. Kurdukar, J; R.G. Sindhakar, J

Bench : Division Bench

Advocate : Shri M.G. Karmali and Mrs. A.M.Z. Ansari, for the Appellant; Shri Liladhar Vyas and Smt. R.P. Desai, Public Prosecutor, for the Respondent

Judgement

Kurdukar J.

1. This habeas corpus petition is filed by Keshav Jaru Salian, who claims to be the father of one Bhaskar Keshav Salian, the detenu. The petitioner has filed this petition under Article 226 of the Constitution of India challenging the legality and validity as also correctness of the detention order dated 22nd February 1990 issued by the 4th Respondent in exercise of powers u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (No. 52 of 1974). The impugned order was served upon the detenu on 19th March 1990.

2. The contention raised by Mr. Karmali, learned counsel appearing in support of this writ petition, although does not require us to state the facts in detail, but suffice it to state that despite the seriousness of the seizure of substantial quantity of contraband gold on 22nd May 1989, the detaining authority took nearly 9 months to issue the impugned order of detention. The incident in question took place on 21st May 1989 when the Customs Officers at the Sahar Airport intercepted the detenu alongwith two panchas. The detenu came by the Aircraft which arrived from Tokyo - Bangkok - Delhi as Air India flight AI 301 and

was berthed at Bay No. 50 of Sahar Airport. 120 gold bars which were hidden in the cloth bag were removed from the roof panelling above the aluminium rack was used for keeping toilet requisites. It is needless to refer to the various stages of investigation as reflected in the grounds of detention. Suffice it to say that the seizure resulted into recovery of 240 gold bars totally weighing about 27.984 Gms. and were valued at Rs. 56,52,768 I.M.V. and Rs. 91,50,768/- L.M.V.

3. From the index of the documents it appears that the investigation was completed by the end of May 1989. Some of the documents which are referred to in the index of documents relate to July and August 1989. The show cause notice issued by the Customs department is dated 7th November 1989.

4. Mr. Karmali, learned counsel appearing in support of this petition urged that the incident in question and the seizure took place as far back as on 22nd May 1989. The investigation was over by 24th May 1989. The detenu who was arrested was produced before the Metropolitan Magistrate and ordered to be released on bail on 28th June 1989. The fact that the detenu availed the bail was very much known to the detaining authority. If this be so, counsel urged that the detaining authority ought to have issued the detention order as expeditiously as possible and there was no need whatsoever to wait until the show cause notice dated 7th November 1989 under the Customs Act was issued by the Customs department. The counsel urged that if the activities of the detenu were found to be prejudicial under the COFEPOSA Act and if the detaining authority was subjectively satisfied that the detenu should be prevented from repeating such prejudicial activities under the COFEPOSA Act, surely the detaining authority could not have waited until 22nd February 1990. Mr. Karmali therefore rightly urged that the live link, if any, having been snapped and the credible chain, if any, having been broken, the detaining authority ought to have refrained from clamping down preventive detention on the detenu. Mr. Karmali further urged that no seriousness whatsoever has been shown by the detaining authority in its grounds of detention as to why the detention order was necessitated after the lapse of 9 months. Mr. Karmali also urged that the approach of the detaining authority while issuing the detention order suffers from the vice of non-application of mind as also casual and cavalier exercise of powers and consequently the satisfaction arrived by the detaining authority is thus sham and not genuine. The counsel finally urged that the impugned order of detention must be struck down on this short ground alone. These contentions are found in paragraphs 5(i), (ii) and (iii) of this petition.

5. The detaining authority has filed its affidavit in reply to this petition. The reply to this averment contains in paragraphs 5, 6 and 7 of the said affidavit. Reading of this reply is very much amusing inasmuch as except by repeating time and again, some additional documents were called for and therefore, there has been delay. We have carefully gone through the affidavit in reply and in particular paragraphs 5, 6 and 7 and we are satisfied that the delay sought to be explained by the detaining authority is nothing but a whitewash and such explanation can

hardly be accepted in cases where preventive orders are sought to be issued on the footing that the detaining authority was subjectively satisfied that the detenu is likely to indulge in prejudicial activities under the COFEPOSA Act and with a view to preventing him the detention order must be issued. In our opinion the delay in issuing the detention order in the present case must vitiate the subjective satisfaction of the detaining authority as regards the preventive action sought to be taken against the detenu.

In the result petition succeeds. Rule is made absolute. The impugned order of detention dated 22nd February 1990 passed against the detenu is quashed and set aside. The detenu be set a liberty forthwith, if not required in any other case. No order as to costs.