
(1990) 09 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Crimina Writ Petition No. 1584 of 1990

Kuldip Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-09-1990

Acts Referred:

Citation : (1990) 2 AICLR 683 : (1991) 1 CurLJ 365 : (1991) 1 RCR(Criminal) 221

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

Advocate : Sh. A. Mohunta, Sh. Sukhbir Singh, Advocates for appearing Parties

Judgement

J. S. Sekhon, J.

1. Kuldip Singh petitioner through this writ petition seeks quashment of detention order dated 25.2.1990 (Annexure P. 1) of his brother Jasbir Singh detenu passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as COFEPOSA, by Shri Mahendra Prasad, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. This order of detention was served upon the detenu on 27.2.1990.

2. The brief resume of relevant facts figuring in the grounds of detention is that on 16.11.1989 on the basis of secret information, the officials of Enforcement Directorate, Jullundur searched the residential premises of Lahmbar Singh and recovered Rs. 48000/- and some documents. On the basis of information gathered from those documents, aforesaid Lahmbar Singh was interrogated on that very day under section 40 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as FERA). Lahmbar Singh disclosed that 16 loose sheets seized from his residence, except for pages 10, 11, 13 and 14 related to him and that he has written all the 11 pages of the Note Book in his hand. He further stated that he was engaged in distributing money in India on behalf of Nirmal Singh son of Sadhu Singh residing in England. These loose sheets of paper

revealed the distribution of huge amounts of money ranging from Rs. 9000/ to one lac to 27 persons mentioned therein. Lahmbar Singh further disclosed that five other persons on the instructions given by aforesaid Nirmal Singh had visited his village and took payment of some money ranging from Rs. 10,000/ to Rs. 31,000/. Thereafter, the Enforcement Staff arrested Lahmbar Singh under section 40 of the FERA and also searched the residential premises of aforesaid Nirmal Singh located in village Kala Sangha on 17111989, on the basis of the statement of Lahmbar Singh to the effect that Nirmal Singh of U.K. used to give instructions to Ranjit Singh of Ludhiana and that sometimes he used to collect payments from Ranjit Singh at the premises of M/s Singh Brothers, near D.C. Office, G.T. Road, Jalandhar. The Enforcement Staff also searched the premises of M/s Singh Brothers and Darshan Singh Kohli on 17111989 but only 85,000/ and some documents were recovered from Singh Brothers. On interrogation, Shri Gardip Singh, partner of M/s Singh Brothers inter alia, stated that one Ranjit Singh, employee of M/s Lilly White Studio, Ludhiana came to M/s Singh Brothers on two occasions and gave payment to an agent and another time to a lady inside their shop that aforesaid M/s Lilly White Studio is owned by Shri Vinod Kumar and Pappu. The officials of the Enforcement Directorate as a follow up action then raided the residential premises of Smt. Sneh Lata Ohri, and aforesaid Ranjit Singh and business premises of M/s Lilly White Studio, Ludhiana. Ranjit Singh on interrogation disclosed that he used to distribute money at the instructions of Parmod Kumar and Vinod of M/s Lilly White Studio. Shri Parmod Kumar issued him one certificate dated 1971989 on the pad of M/s Chaman Lal and Sons showing that he was the Manager of the said firm and he used to carry this certificate always with him for showing to the authorities in case he was apprehended. This certificate was also seized by the Enforcement Staff. Ranjit Singh also disclosed having heard Vinod Kumar talking to one Mamaji of U.K. on telephone and that aforesaid Mama Ji used to give details of persons to whom payments were required to be made. Parmod Kumar and his employees used to prepare lists of persons to whom payments were required to be made on the basis of telephone calls and according to these lists, Rs. 70.00.00/ were required to be distributed. Ranjit Singh also disclosed the names of certain persons to whom he distributed about eleven lac rupees. The Enforcement Staff then interrogated some of the persons to whom the money was distributed by these persons. Those persons also supported the version of Ranjit Singh and others. Rajnder Kumar, employee of Vinod Kumar etc. also endorsed the abovereferred version of Ranjit Singh. Rajinder Kumar also disclosed that Vinod Kumar was supplied this money by one person named Jasbir Singh detenu of village Palnau and that he and Ranjit Singh had distributed twenty lac rupees, in different villages under the instructions received from abroad. Aforesaid Parmod Kumar also on interrogation supported the abovereferred version of his employee Rajinder Kumar and Ranjit Singh besides admitting that instructions were conveyed to him by a person named Mama Ji from U.K. and till that date he had received Rs. 50 lacs and had distributed this money through Rajinder Kumar and Ranjit Singh. Aforesaid Parmod Kumar, Rajinder Kumar and Ranjit Singh were

also arrested by the enforcement Staff on 711989 and ultimately released on bail under the orders of the Chief Judicial Magistrate on 23.11.1989. On further interrogation all these persons, made some corrections in their earlier statements besides recognizing some persons to whom they had delivered the money. On the basis of this information, the Enforcement Staff then raided the residential premises of Jasbir Singh on 18111999 in his absence at village Palnau. He was then summoned to appear before the Enforcement Staff on 20111989 but the detenu sent telegram expressing his inability to appear before the Enforcement Staff at Jullundur and ultimately he appeared before the Enforcement Staff on 211990 and during interrogation made a statement that his maternal uncle Joginder Singh had been living in England for the last 2022 years and that in January 1989, came to him and discussed with him distribution of money in India. Jasbir Singh then persuaded Parmod Kumar to distribute the money. I detention Joginder sent him one or two lists containing the names and addresses of the persons to whom the money was to be distributed and later on such instructions were telephonically conveyed to M/s Lilly White Studio, Ludhiana and that money used to be provided on behalf of Joginder Singh by some unknown persons. The detenu was then arrested on that very day and released on bail by the Chief Judicial Magistrate on 411990 on such like allegations. The Enforcement Staff of FERA sponsored the case for detention of the detenu under section 3 (1) of the COFEPOSA and ultimately the Joint Secretary to the Government of India passed the impugned order.

3. The detenu challenges the order of detention through this writ petition on manyfold grounds but during the course of arguments, the learned counsel for the petitioner pressed into service only two grounds, viz., the delay in disposing of the representation and on the ground of nonapplication of mind by the detaining authority to the factum that the detenu was attending the office of the Enforcement Directorate every week as per conditions of his bail order and that there was no necessity of passing the detention order and that the detention order has become punitive in nature rather than preventive.

4. In the return filed by the detaining authority, all the allegations contained in the petition were controverted and in reply to para 8 (1) of the petition it was explained that the representation received on 2931990 was disposed of with due promptitude on 251990. In Para 8 (ix), it was averred that no doubt the detenu used to appear in the office of the Enforcement Directorate at Jullundhur every Monday as per the terms of the bail order dated 411990, but this aspect was looked into by the detaining authority at the time of passing the detention order. It was further explained that the said bail order figures at page 175 of the English version of the documents relied upon by the detenu.

5. I have heard the learned counsel for the parties besides perusing the record of this petition as well as the original record produced by Shri A. Mohunta, the learned counsel for the respondent.

6. The explanation given by the respondent in the return regarding the delay in

disposing of the representation figures in subpara (i) of para 8 which reads :

"Averments made in this para are not true. Representation dated 29.3.1990 addressed to the Secretary, Ministry of Finance & Chairman, Advisory Board (COFEPOSA) was received in the Ministry on 4.4.1990 and forwarded to sponsoring authority for their comments on 11.4.90 (7&8 were closed holidays being Saturday and Sunday). Sponsoring authority submitted their comments, vide letter dated 17.4.90 which was received in the Cofeposa Unit on 24.4.90. The concerned officer submitted the case file to J.S. (Cofeposa) on 25.4.90. J.S. (Cofeposa) forwarded the case file to Dy. Finance Minister on 25.4.1990. Dy. Finance Minister submitted the file to Finance Minister on 26.4.90. Finance Minister considered and rejected the representation of the detenu on 2.5.90 and a Memo intimating the detenu about rejection of his representation was also issued on the same day. Thus the representation was considered expeditiously by the Central Govt."

7. A bare glance through this explanation leaves no doubt that this representation dated 29.3.1990 was received in the Ministry on 4.4.1990 but there is no explanation at all as to what happened to this representation till 11.4.1990 when it was sent for comments of the sponsoring authority except that 7th and 8th April 1990 were closed holidays being Saturday and Sunday. Thus, there was no explanation as to what happened to this representation on 5th, 6th, 9th and 10th of April, 1990. Again, as per this explanation, the sponsoring authority had submitted its comments dated 17.4.1990 which were received in the Cofeposa Unit on 24.4.1990. It is not acceptable that this letter took 7 days for reaching the Cofeposa Unit of the Ministry. Thus, under these circumstances, there is no escape but to conclude that the representation was not disposed of by the concerned authority with utmost expedition as required under Article 22(5) of the Constitution of India. The Apex Court had time and again remarked that the representation filed by the detenu against his preventive detention should be disposed of with utmost expedition and in case of delay there should be plausible explanation for each day of such delay. The Apex Court in *Harish Pahwa v. State of Uttar Pradesh and others*, 1982(1) CLR 65, while dealing with such like controversy has observed towards the end of para 5 of the judgment as under

"We may make it clear, as we have done on numerous earlier occasions that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasize that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not

having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

Again, the Apex Court in *Mahesh Kumar Chauhan alias Banti v. Union of India and others*, 1990(2) RCR 639 : 1990 S.C.C. (Cri.) 434 had observed that unsatisfactory explanation regarding delay in disposing of the representation of the detenu expeditiously would prove fatal to the detention irrespective of the enormity and gravity of the allegations made against the detenu. In that case also, the detention order was passed under section 3 (1) of the Cofeposa and 16 day's delay on the part of the sponsoring authority to send his comments was considered fatal. Reliance was also placed on the earlier judgments of the Supreme Court in *Sk. Abdul Karim v. State of West Bengal*, 1969(1) CC 433; *Khairul Haque v. State of West Bengal*, 1970(3) SCC 696 : 197 PLR 910 and the decision of the Constitution Bench in *Jayanarayan Sukul v. State of West Bengal*, 1970(1) SCC 219 and a number of other authorities.

8. The learned counsel for the respondent, on the other hand, relying upon the decision of the Apex Court in *Mohd. Dhana Ali Khan v. State of Bengal*, AIR 1976 SC 734 contended that the explanation for this delay should be taken as satisfactory as the dealing authority had to examine voluminous record before sending for the comments of the sponsoring authority. No doubt, this case certainly involves the examination of voluminous record, may be more than 175 pages, yet all the same it should have stated in the return itself that the dealing hand in the Cofeposa Unit remained busy in examining (his representation on 5th, 6th, 9th and 10th April, 1990. Thus, this is not a case in which some explanation is given but it is a case of that type in which there is no explanation at all as to what happened to the representation for four days in the concerned Ministry what to say of satisfactory explanation. Thus, the observations of the Supreme Court in *Mohd. Dhana Ali's case* (supra) that the explanation for the delay given by the District Magistrate was satisfactory being on the facts of that particular case is of no help to the respondents in the case in hand.

9. Moreover, there is no explanation at all as to by which mode, i.e. by post or through a carrier the sponsoring authority had despatched its comments through letter dated 17/4/1990 because it was received in the Cofeposa Unit of the Ministry on 24/4/1990. Thus, the unnecessary and unexplained delay in the receipt of the comments of the sponsoring authority would also dislodge the version of the respondents that the representation was disposed of with utmost expedition.

10. However, there is no force in the contention of the petitioner that the detaining authority had not applied its mind to the circumstance that as the petitioner was required to appear before the Enforcement Directorate on every Monday as per the terms of the bail order, there was no necessity to pass the detention order, because this matter was considered by the detaining authority as averred in subpara (ix) of para 8 which reads as under :

"The averments made in this para are not true. The facts are that the petitioner used to appear in the office of Enforcement Directorate, Jalandhar on every Monday as per the Court's order dated 411990 and this aspect was looked into by the Detaining Authority at the time of passing of the detention order. The said order of the Court is at page 175 among the documents (English version) relied upon and served upon the detenu."

Thus, as the bail order was placed before the detaining authority and relied upon and as copy of the same was served upon the detenu, there is no escape but to conclude that the detaining authority had applied its mind to this aspect of the matter. The satisfaction of the detaining authority regarding the passing of the detention order in order to prevent the detenu from indulging in such like prejudicial activities in future can be well imagined as in the remaining six days of the week the detenu could have resorted to this activity or at least helped in the distribution of money on the basis of instructions received from his maternal uncle Joginder Singh from abroad.

11. Consequently, for the reasons recorded above, the order of detention of the detenu is quashed on the ground of delay in disposing of the representation alone. The detenu be set at liberty forthwith from detention if not required in any other, case.

JUDGMENT accordingly.