

(1990) 02 DEL CK 0038

In the Delhi High Court

Case No : Criminal Writ Petition No. 758 of 1989

Laurence Vignard

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-02-1990

Acts Referred:

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

Citation : (1990) 40 DLT 539

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

Bench : Single Bench

Advocate : Harjinder Singh, Rohit Kochhar and L.K. Bhushan, 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 19, 1989 passed by respondent No. 2 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short Cofeposa Act") with a view to preventing the petitioner from smuggling goods.

(2) The petitioner admittedly is a French national and had been apprehended on September 20, 1989 and 26 foreign marked gold biscuits of 10 tolas each and two foreign marked gold slabs of one kg. each had been recovered from her possession. Mr. Barski Marek had been also arrested Along with her. He is also a foreigner and a detention order was also passed against Mr. Barski Marek. No bail application has been moved by this petitioner and admittedly the petitioner is in judicial custody. One Brij Mohan Sethi was also apprehended Along with the petitioner and Mr. Barski Marek and later on it appears that bail order had been passed in favor of Brij Mohan Sethi while the bail application moved by Mr. Barski Marek had been rejected on October 19, 1989. The impugned order was served on the petitioner in Jail on October 27, 1989.

(3) In the grounds of detention after narrating the facts resulting in apprehension of the petitioner and the co-detenu, the detaining authority has recorded that he was aware that the petitioner was in judicial custody but every possibility of the petitioner filing bail application and getting bail could not be ruled out.

(4) Various grounds of challenge have been raised in the petition seeking quashing of the detention but it is not necessary to refer to all those grounds as this petition is liable to succeed on a very short point.

(5) The learned counsel for the petitioner has argued vehemently that the petitioner being a foreigner and having not moved any application for bail, there appears no cogent material in the grounds of detention from which the detaining authority could come to the conclusion that there was possibility of petitioner being released on bail in near future. He has argued that the grounds of detention must show that the detaining authority, was aware of the fact that the detenu is already in detention and also there must be some material to show that the detaining authority could be satisfied from such material that the detenu is likely to be released from custody in near future and in the absence of any cogent materials shown in the grounds of detention the satisfaction reached by the detaining authority on this point stands vitiated. He has made reference to various judgments of the Supreme Court dealing with this point but it is not necessary to refer to all those judgments because they all stand now considered by the Supreme Court in the latest judgment in the case of Dharmendra Suganchand Chelawat and another Vs. Union of India and others, of the said judgment reads as follows:

"THE decisions referred to above led to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities, and it is necessary to detain him in order to prevent him from engaging in such activities."

(6) It is, hence, clear that "the grounds of detention must show the cogent material from which the detaining authority could be satisfied that a particular detenu, who is in judicial custody, is likely to be released from custody in the near future. In the present case, except for ipse dixit of the detaining authority that there is every possibility of the petitioner moving bail application and getting released on bail, there is no material referred at all in the grounds of detention

from which such satisfaction could be reached rather it is a matter of common knowledge that foreigners, who are apprehended for commission of such serious offences, are normally not granted bail. As laid down by the Supreme Court in the aforesaid judgment the expression "compelling reasons" comprises of now two aspects, firstly, "that there must be cogent material before the detaining authority to show" that detenu is likely to be released from custody in the near future, and secondly taking into account the nature of the antecedent activities of the detenu" it is likely that after his release from custody he would indulge in prejudicial" activities. The first pre-requisite of the "compelling reasons" indicated by the Supreme Court is not complied with in the present case. The detention order, thus, stands vitiated.

(7) I may mention that a contention was also raised that as the petitioner has been effectively prevented from indulging in smuggling activity i.e. after her passport had been seized, there was no good reason for passing the detention order for preventing her from indulging in smuggling activity in the near future and reliance was placed by the learned counsel . for the petitioner on a Full Bench judgment of this Court in Mohd. Saleem Vs. Union of India and Others, However, the Supreme Court in the latest judgment in the case of M. Ahamedkutty Vs. Union of India (UOI) and Another, has ruled otherwise. I quote the Supreme Court in this respect :

"THE next submission of counsel was that the detaining authority should have realised that the seizure of the detenu's passports was itself sufficient to restrain the detenu's smuggling activities, if any and refrained from passing the order of detention. We see no force in " this contention. This was no doubt one of the factors that the detain" authority should have taken (and did in fact take) into account but it was for him to assess the weight to be attached to such a circumstance in arriving at his final decision and it is not open to us t " interfere with the merits of his decision. We, Therefore raiser this .contention of Mr.Vaidyanathan."

(8) In the grounds of detention, which have been reproduced in the judgment, there was no other material showing that despite the passport having been seized the detenu could still indulge in smuggling activity. Still the Supreme Court has clearly held that the detaining authority has to be only apprised of the factum of seizure of passport and the subjective satisfaction reached by the detaining authority keeping in view the aforesaid factum is not r open to question.

(9) Be that as it may, I allow this writ petition, quash the detention order in view of my finding on the first point and make the rule absolute and direct that the petitioner be released from Jail, if not required to be detained in any other case.