
(2002) 09 SC CK 0031

In the Supreme Court Of India

Case No : Criminal Appeal 166 of 1996

Lt. Governor of Delhi and Others

APPELLANT

Vs

Mohd. Sahid

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 21, 226
Code of Criminal Procedure, 1973 — Section 428

Citation : (2003) 1 ACR 604 : (2003) 1 ALD(Cri) 195 : (2002) 8 JT 66

Hon'ble Judges : U. C. Banerjee, J; Ashok Bhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petition under Article 226 of the Constitution read with section 428 of the Code of Criminal Procedure was filed before the High Court at Delhi for quashing an order of detention dated 24th February, 1993 passed against the respondent herein by the Lt. Governor of the National Capital Territory of Delhi u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (for short, 'the Act' of 1974).

2. The contextual facts depicts that the respondent on arrival from Dubai on 20th November, 1992 at the Indira Gandhi International Airport, New Delhi, crossed the green channel along with a blue zipper bag but the respondent's movement being suspicious he was intercepted near the exit gate of the arrival hall and was questioned for which he replied in the negative. Two independent witnesses were called and the respondent's bag was searched wherefrom 16 gold pieces were recovered which collectively weighed at 580 grams valued at Rs. 2,34,400/-. It is being the prosecutors case that inspite of the repeated opportunities the respondent could not produce any documentary evidence to show the lawful import of the above noted 16 pieces of gold coins in his possession and the same thus were seized u/s 110 of the Customs Act, 1962. Proceedings commenced and

respondent's passport was also seized wherefrom it appears that on 13th March, 1989 to 17th November, 1992, the respondent was out of country in particular to Bangkok and Dubai at least on 10 different occasions and it is on the basis of this factual score, as noticed above, that the Lt Governor of the National Capital Territory, that the Lt. Governor of the National Capital Territory of New Delhi came to the conclusion that the respondent had the inclination and the propensity for indulging in smuggling activities in an organized and clandestine manner and unless prevented the respondent was likely to indulge in such smuggling activities in future as well.

3. Prosecution and adjudication proceedings under the Customs Act, 1962 have already been initiated separately and the respondent was also detained under the provisions of the Act of 1974. It is this detention which stand challenged before the High Court in the petition under Article 226, as noticed hereinbefore.

4. The key reason foe such a challenge raised has been the issue of delay. Admittedly, the impugned order under the Act of 1974 was passed on 24th February, 1993 and the order was not served on to the respondent till 27th October, 1993- a delay of more than eight months; the explanation sought to be given by the concerned authority, however, is not convincing and as a matter of fact cannot be ascribed to be an explanation at all for such a gross delay in the matter of the nature as the present one. It is on this score, the High Court relying upon two separate decisions of this Court in, Sk. Nizamuddin Vs. State of West Bengal, and Thailammal and Others Vs. Janardhan Raju and Others, came to the conclusion that in the event of there being an inordinate delay, question of sustaining an order of detention would not arise. The High Court in this context stated:

"Preventive detention is serious invasion on the personal liberty of the individual. The state under the provisions of COFEPOSA Act can circumscribe or take away individual's liberty for the time being only in extremely exceptional case, where in the larger public interest it becomes imperative to do so otherwise the individual would continue his nefarious activities in future. When the state decide to dispense with the personal liberty of the individual then it becomes the bounden duty and obligation of the state to serve the detention order with the greatest promptitude. At least, all possible efforts must be made by the state to serve the detention order. The entire purpose of issuing the detention orders is totally frustrated or defeated when it is not served with promptitude. Delay in execution of the detention order would obviously cause serious reflection on the credibility and genuineness of the subjective satisfaction of the detaining authority responsible for passing such a detention order. Detention order cannot be permitted to be used as a lever to keep individuals under great mental agony and pressure for extraneous considerations."

5. Incidentally, Article 21 of the Constitution itself postulates depriving of life and personal liberty except, however, according to the procedure established by law, Admittedly, the protection of personal liberty stands expanded to make the right

to life under Article 21 more meaningful and the language of the Article itself records the same. The state of facts in question without much dilation cannot but be termed to be in contravention of the salutary principles as enshrined in Article 21. Liberty of a citizen cannot but be duly safeguarded by the law courts and entire justice delivery system of the country is poised enough to dispense justice in the manner as is required under the law.

6. Delay for a period of more than 8 months cannot be ascribed to be a delay ordinarily to be condoned. It is a special right conferred on to the competent authority to detain a person without trial and as such it would be a bounden obligation on the part of the law courts to interpret the provisions rather strictly since the cherished right of human beings otherwise stand affected.

7. We do record our concern in the matter but we do share our views in the same way as that of the High Court. We do not find, thus, any error or erroneous approach of the High Court. This appeal, therefore, fails and is dismissed. Let it be recorded that we are not expressing any opinion on the proceedings which are pending or intended as against the respondent herein.