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**(1994) 08 P&H CK 0063**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Writ Petition No. 254 of 1994**

Madan Lal Girdhar

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 18-08-1994

**Acts Referred:**

**Citation :** (1994) 3 AICLR 342 : (1994) 3 RCR(Criminal) 478

**Hon'ble Judges :** V.K.Jhanji, J

**Advocate :** D.D. Sharma, J.S. Gill, H.L. Sibal, S.S. Mattewal, Advocates for appearing Parties

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## **Judgement**

V.K. Jhanji, J. (Oral)

1. This is a petition under Article 226 of the Constitution of India. Petitioner, Madan Lal Girdhar, is seeking a writ, order or direction, for quashing of detention order dated 4.2.1994 (Annexure 10) passed by Joint Secretary to the Government of India. Ministry of Finance (Department of Revenue) New Delhi, under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1947 (in short, the Act).

2. The petition has been filed at the predetention stage.

3. In brief, the facts are that on the basis of specific intelligence collected, developed and processed, the Officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi, raided the business as well as residential premises of the petitioner, at shop No. 138 New Lajpat Rai Market, Delhi and F133, Masjid Moth, Greater Kailash, New Delhi, respectively. The raiding searching of the business as well as residential premises, which was made on 30.8.1993, resulted in recovery of 8000 Pcs. of Liquid Crystal Display (LCD) Modules of foreign origin and 1,90,000 Pcs. of said L.C.D. Modules of foreign origin respectively. During this raid/search of both the premises, petitioner was not available on the spot. At the business premises, an employee of the petitioner, namely Om Parkash, was present who on demand could not produce a document showing the lawful

import, acquisition and possession of the recovered L.C.D. Modules. Similarly, at the residential premises, the wife of the petitioner, namely Shashi Girdhar, on demand, could not produce any such document. Accordingly on the reasonable belief that the L.C.D. Modules of foreign origin recovered from the business and residential premises of the petitioner were liable to be confiscated under the Customs Act, the same were seized under Section 110 of the Customs Act (in short, the 1962 Act). According to the respondents, recovered Modules were valued at Rs. 59 lacs approximately. Petitioner apprehending his arrest, filed a petition in the Calcutta High Court, showing himself to be resident of "29E, Jadu Nath Ukil Road, West Putiari, Calcutta41" and obtained an interim order on 27.9.1993. The said interim order was to the following effect :

"In view of the urgency of this matter requirement of Rule 27 of the writ Rules is dispensed with.

There will be an interim order to the effect that in the event the petitioner is interrogated by the Officers of Directorate of Revenue Intelligence, New Delhi, he shall be accompanied by a lawyer. The lawyer will only be present but will not participate in the proceedings. Such interrogation shall be done during the office hours and the petitioner shall not be arrested without the leave of the Court. In connection with the seizure of LCD Modules made by the officers of Directorate of Revenue, Intelligence, on 30th August 1993, from the residence and shop of the petitioner.

This interim order continue till October 11, 1993. Let this matter be listed for orders on October 11, 1993.

Petitioner is directed to serve copies of the writ petition along with copy of this order upon all the respondents in the meantime and affirm affidavit of service to that effect.

Petitioner is given leave to apply for extension of the interim order on the same application upon notice to the respondents.

The respondents are also given leave to apply for variation and/or vacating of the interim order upon notice to the petitioner.

Let a plain copy of this order duly countersigned by the Assistant Registrar (Court) be handed over to the learned Advocate for the petitioner on his usual undertaking to apply for and obtain certified copy of the same.

Sd/

(Shyamal Kumar Sen, J.)"

On 4th February, 1994, order of detention under Section 3(1) of the Act was passed against the petitioner. The present petition for quashing of detention order was filed in this Court on 19th April 1994. In the petition, petitioner has shown himself to be resident of "771, Mohalla Khail Kalan, Palwal (Haryana )." However, the documents which are attached with the petition, show that the

petitioner, as a matter of fact, is resident, of "E133, Masjid Moth, Greater Kailash3, New Delhi." In the petition, petitioner has not disclosed that previous to this petition, he had filed a petition in the Calcutta High Court. He has also not disclosed about the result/ fact of the petition filed by him in the Calcutta High Court. In the petition, quashing of the detention order, has been sought on the ground that L.C.D. Modules (watch parts) were duly custom paid at Bombay and so, the goods cannot be termed as smuggled goods. Quashing has also been sought on the ground that L.C.D. Modules belonged to M/s Modern Time Industries, who had got it imported from HongKong.

4. On 19.4.1994, this petition came up for hearing before V.K. Bali, J. and on a prayer made by counsel for the petitioner, arrest of the petitioner was stayed subject to his giving an undertaking to the satisfaction of arresting officer that he will not leave the place of his residence. The interim order continues still date. After notice of the petition, Sh. Mahendra Parshad, Joint Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi, has filed written statement on behalf of respondents No. 1 to 3. In the written statement, a preliminary objection has been taken with regard to territorial jurisdiction of this Court. Respondents have stated that the petitioner has misled the Court by giving false address of Palwal. In fact, petitioner is resident of E133, Masjid Moth, Greater Kailash3, New Delhi. Further, it has been stated that the offence was committed at Delhi in the jurisdiction of Delhi High Court, and also that the petitioner had filed a petition in the Calcutta High Court, which fact petitioner has not disclosed in this petition.

Mr. H.L. Sibal and Mr. H.S. Mattewal, Senior Advocates, Counsel for the petitioner, have contended that the order of detention is liable to be quashed on the short ground that the main person namely Har Bhagwan Wadhwa son of Uttam Chand against whom order of detention was passed, has been ordered to be released by the Advisory Board. In answer to the submission made by learned counsel for the petitioner. Mr. D.D. Sharma standing counsel for the Union of India (respondents) has contended that the present petition is nothing but an abuse of process of the Court.

5. Having heard learned counsel for the parties at length, I am of the view that the present petition deserves to be dismissed with exemplary costs. I am in agreement with the contention of learned counsel for the respondents that the present writ petition is nothing but an abuse of process of the Court. Search and seizure was made at Delhi. Petitioner in order to avoid his arrest, filed a petition in the Calcutta High Court showing himself to be resident of Calcutta. There he was successful in obtaining an adinterim order, but probably, finding that his petition, on contest would be defeated, he filed the present petition, without disclosing the factum of filing a petition in the Calcutta High Court, for quashing of detention order which in the meantime had been passed against him. Petitioner in the petition did not disclose that he was a permanent resident of Delhi. The interim order which the petitioner had obtained from the Calcutta High

Court was disclosed only by the respondents. Otherwise too, order of detention at the predetention stage can be quashed only if the case falls within the five categories as described by the Apex Court in *The Additional Secretary to the Government of India v. Smt. Alka Subhash Gadia*, 1991(1) Recent Criminal Reports 677 : JT 1991(1) SC 549 . The said five categories are :

- (i) that the impugned order is not passed under the Act under which it is purported to have been passed;
- (ii) that it is sought to be executed against a wrong person.
- (iii) that it is passed for a wrong purpose;
- (iv) that it is passed on vague, extraneous and irrelevant grounds; or
- (v) that the authority which passed it had no authority to do so.

The case of the petitioner does not fall in any of the aforesaid five categories. I also find no merit in the contention of Mr. Sibal that the order of detention is liable to be quashed on the ground that another person namely Har Bhagwan Wadhwan, who was detained in connection with the matter in which the petitioner is sought to be detained, has since been ordered to be released on the advice of the Advisory Board. The Supreme Court in Criminal Appeal No. 662 of 1993, *The Administrator of the National Capital of Delhi, Raj Niwas, Delhi v. Prem Singh*, had not accepted the view of the Delhi High Court, where order of detention was quashed at the predetention stage on the ground that the Advisory Board had rendered the advice for release of other detenus similarly placed, and held thus :

"We are more than surprised that the High Court in spite of the fact that this ruling was rendered as early as 20th December 1990, yet as late as 16th February 1993, should have chosen not even to refer to this decision and found but that extent of its jurisdiction under Article 226 to interfere at the predetention stage. After all, Article 141 of the Constitution does not exist merely for the glorification of the Constitution. In this case, the three grounds which we have mentioned above, which prevailed with the High Court for interference in our considered view are totally alien. They cannot allow the handle for interference at predetention stage. To put it shortly, the approach the High Court is lay, render legal. We find it extremely impossible to support this order. The stand of the present appellant who figures as respondent in the High Court was the ground of detention as far as the writ petition is concerned were yet to be served. By what process of reasoning the High Court came to be the conclusion that the grounds of Vijay Kumar and that the petitioner before it are common is difficult to discuss.

As rightly urged on behalf of appellant, merely because the Advisory Board rendered the advice for release of Vijay Kumar and other detenus "afortiori" it does not follow the Advisory Board will do the same thing. Even then it is function of the Advisory Board and not a ground for interference as predetention

stage. The High Court has completely mis understood the scope of liberalisation of policy in relation to import of gold and the conditions under which such import could be made. What is nexus between the policy and the Preventive Detention. Therefore not one of these three grounds on which the High Court chose to interfere at the predetention stage could be held to be tenable."

6. As already noticed, the petitioner has not come to this court with clean hands and has wrongly stated that he is a resident of Palwal (Haryana ) whereas it clearly stands proved on record that he is a permanent resident of New Delhi and, therefore, the present petition deserves dismissal, with special costs.

7. Consequently, this petition shall stand dismissed with special costs which are quantified at Rs. 20,000/.