
(1990) 12 BOM CK 0014

In the Bombay High Court

Case No : Criminal Writ Petition No. 16 of 1990

Manilal Dajibhai Tandel and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-12-1990

Acts Referred:

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

Citation : (1991) 3 BomCR 206

Hon'ble Judges : Sujata Manohar, J; E.S. Da Silva, J

Bench : Division Bench

**Advocate : M.S. Sonak, under L.A.S, for the Appellant; G.U. Bhobe, Public
Prosecutor, for the Respondent**

Final Decision : Dismissed

Judgement

Sujata Manohar, J.—The petitioners have been detained on 14-6-1990 in pursuance of orders dated 13-6-1990 passed by the State Government under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) with a view to preventing them from smuggling goods. The case of each of the petitioners was placed before the Advisory Board, and after receipt of the opinion of the Advisory Board, the State Government has confirmed the detention of the petitioners u/s 8(f) of the said Act. This order is of 7th of August, 1990.

2. Mr. M.S. Sonak, has very ably argued the case of the petitioners on the basis of a petition received from jail. It is contended on behalf of the petitioners that the grounds of detention furnished to the petitioners are vague and no case is made out for the detention of the petitioners u/s 3(1) of the COFEPOSA Act.

3. The grounds of detention set out in detail the incident in question and the conduct of the petitioners on the basis of which the order of detention has been made. As the same grounds are the basis of detention orders in respect of each of the petitioners, we propose to examine the grounds in one of the detention

orders.

4. In paragraph 2 of the grounds of detention Exhibit R2, which is annexed to the affidavit-in-reply, it is stated that acting on an information that on 19-4-1990 an unknown fishing trawler had been grounded off Hotel "Swim Sea" at Caranzalem, the police rushed to the scene at 21-30 hours and took charge of the trawler "Sai Prasad". The petitioners Nos. one and four were apprehended by the police on the spot. The police also apprehended Govindbhai Tandel, Jagoobhai Somyabhai Tandel and Thakkarbhai Ramaiyabhai Tandel, (Petitioners Nos. 3, 5 and 2), on combing the nearby area. All these five persons were crew members of the trawler "Sai Prasad". The trawler was searched by the police in the presence of the panchas on 20-4-1990. They recovered 85 ingots of silver. The Customs seized the same under a panchanama for action under the Customs Act. These 85 ingots of silver weighed 2801.947 kgs and are valued at Rs. 1.89 crores. On combing the nearby area, the Customs recovered 7 silver ingots and the police recovered 1 silver ingot. These 8 silver ingots weighed 266.182 kgs and are valued at Rs. 19.20 lakhs. These were also seized under a panchanama for action under the Customs Act.

5. In paragraph 5, details are set out as to how 16 persons including the petitioner were recruited as the crew for this trawler when the trawler was sent from Dipla in Gujarat to Khorfakan in the United Arab Emirates with one Ramjibhai as tandel. The petitioner and the other crew members had paid Rs. 15,000/- each to one Purushotambhai for obtaining a job on fishing trawlers at Dubai. We need not set out in detail the contents of this paragraph. On the 5th day, after the arrival at Khorfakan, at midnight, the petitioners along with other persons on the trawler unloaded 101 ingots of silver from a pick-up launch and loaded the same in the trawler "Sai Prasad". On 11th April, the trawler "Sai Prasad" left Khorfakan for India with the silver ingots. Some of the crew members were dropped on the way in two Arab fishing trawlers while the petitioners accompanied the trawler to Caranzalem. The petitioners' statement before the authorities is to the effect that they sensed trouble on the way and told Ramjibhai to drop them back at Khorfakan. Ramjibhai pacified all the people and promised to pay each of them Rs. 10,000/- for the job of loading and unloading silver and also return Rs. 15,000/- to them but that none of the crew member agreed with Ramjibhai. The trawler, ultimately reached Goa on 19th April in the afternoon. At night, it started entering Mandovi river but was grounded at Caranzalem beach opposite Hotel "Swim Sea". All the crew member including the petitioners tried to salvage the trawler but were not successful. Thereafter, the police apprehended the petitioners. The tandel Ramjibhai made good his escape. We need not set out in detail all the other particulars relating to this incident which are set out in the grounds of detention. Based on all these grounds, in paragraph 12 it is stated that "the State Government is satisfied that the detenu has engaged himself in smuggling goods (silver)" and the State Government infers that the detenu would continue the prejudicial activity in case his movements are free.

6. In our view, these grounds which are set out in detail cannot be considered as vague. According to Mr. Sonak, learned Advocate for the petitioners, looking to circumstances which are set out in the grounds themselves, there is nothing to show that the detenues had engaged themselves in smuggling goods. He has submitted that u/s 3(1) of the COFEPOSA Act, the acts which constitute grounds for detention are separately set out as (i) smuggling goods; (ii) abetting the smuggling of goods, (iii) engaging in transporting or concealing or keeping smuggled goods, etc. He submits that in the present case, at the highest, the detenues can be considered as having engaged in transporting of smuggled goods. There is, therefore, no application of mind on the part of Detaining Authority when the petitioners are sought to be detained on the grounds of smuggling silver.

7. This submission, however, cannot be accepted. It is an accepted position that the provisions of section 3(i)(iii) viz. engaging in transporting smuggled goods, have been interpreted to refer to a course of conduct. In the present case, the grounds do not show any such course of conduct on the part of the detenu. The grounds do not establish that the petitioners are habitually engaged in transporting smuggled goods. On the contrary the grounds as set out, clearly show that the petitioners had participated in the act of smuggling goods in question. It is true that as set out in the case of Smt. Suvarna Mala Venkatesh Desai v. The Union of India and others, reported in 1987 (1) B.C.R. 738, u/s 3(1), various heads of detention are set out and the intention of the Legislature was to treat these grounds as separate and distinct. In the present case, however, the distinct ground u/s 3(1)(i) has been set out in the grounds of detention. Therefore, the order does not suffer from any non-application of mind or infirmity on this count.

8. It is submitted that after the petitioner was arrested on 19th of April, 1990, he was remanded to Jail custody for 14 days on 21-4-1990. He has, once again, been remanded on 4-5-1990 and 18-5-1990. The petitioner has not applied for any bail and he is still in jail. The Detaining Authority has not applied its mind to this circumstance. Hence, also the order of detention requires to be set aside. In paragraph 12, however, of the grounds of detention it is stated as follows:---

"State Government is aware that you were arrested and remanded to Judicial Custody under the Customs Act, 1962, along with your other four colleagues on 21-4-1990 and that all five of you are still in jail. State Government is aware that your seaman Identity card and those of your other colleagues have been detained by Customs. However looking to your role in the prejudicial activity, State Government is satisfied that there is sufficient cause to pass detention order against you under the COFEPOSA Act, 1974 with a view to preventing you from smuggling goods."

In paragraph 15 it has been stated that though the petitioner is in jail custody and even though his seaman identity card has been detained by Customs, he is likely to apply for bail and in case he is released, he may abscond and indulge in

smuggling, and hence, the State Government is compelled to pass this detention order to prevent him from smuggling goods even though he is in jail custody.

9. In view of these express statements made by the Detaining Authority, it is clear that the Detaining Authority had clearly applied its mind to the fact that the petitioner was in jail custody and that if he were released on bail he was likely to indulge in smuggling activity, and hence, it was necessary to place him under detention. In the case of Sanjay Kumar Aggarwal Vs. Union of India (UOI) and Others, , the Supreme Court after considering a number of authorities on this question has held that an order of detention can be validly passed against a person in custody. The facts and circumstances of each case have to be taken into consideration. In the case before the Supreme Court, the Detaining Authority was not only aware that the detenu was in jail, but also noted the circumstances on the basis of which the Authority was satisfied that the detenu was likely to come out on bail and continue to engage himself in the smuggling of goods. The Order of detention was upheld. The Court said that the detention order cannot be said to be invalid merely because the bail application can be opposed if moved and the same can be questioned in higher Court. The Supreme Court has distinguished the decision in Shashi Aggarwal v. State of U.P., case, reported in AIR 1986 S.C. 596 , as well as Ramesh Yadav Vs. District Magistrate, Etah and Others, , which are relied upon by the petitioner in the present case also. The Supreme Court observed that the orders in these two cases were made on the facts of these two particular cases. In this connection, it has reaffirmed the observations made by the Supreme Court in the case of N. Meera Rani Vs. Government of Tamil Nadu and Another, to the effect that the observations made in these cases are based on special circumstances of these cases only. The Supreme Court held that the Detaining Authority must show its awareness to the fact of subsisting custody and take that factor into account while making the order of detention. But even so, if the Detaining Authority is reasonably satisfied on cogent material, that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in prejudicial activities, the detention order can be validly made.

10. In the case of Smt. Azra Fatima Vs. Union of India (UOI) and Others, , also the Supreme Court has made similar observations. In that case, the Detaining Authority was conscious of the rejection of the bail application and the release on bail of all others who were arrested with the detenu. The Authority's apprehension as to the possibility of the detenu's release on bail and the detenu indulging once again in activities in question was considered as a valid ground for making the order of detention.

11. In the present case, it is pointed out by Mr. Bhole, that although the detenu have not made any bail application so far, the likelihood of their making such an application or of their being released on bail in future cannot be ruled out. Looking to the circumstances of the present case, in the event of the detenues

being released on bail, they are likely to indulge in smuggling. In these circumstances, the order of detention has been made after the Detaining Authority has applied its mind to all the relevant circumstances. We accept this submission made on behalf of Mr. Bhobe.

12. It was also submitted on behalf of the petitioners that this was the first offence on the part of the detenues - a factor which has not been considered by the Detaining Authority. The Detaining Authority, however, has applied its mind to the offence in question. It has also applied its mind to all the circumstances as explained by the detenues themselves in their statements. In the case of *State of Gujarat Vs. Sunil Fulchand Shah and Another*, , the Supreme Court has said that in the grounds of detention it is not necessary to mention the reaction of Detaining Authority in relation to every piece of evidence separately. The fact, therefore, that this was the first offence of the petitioner is not required to be commented on separately by the Detaining Authority in the grounds of detention. The grounds which are set out quite clearly bring out the fact that it was, as far as the Detaining Authority was aware, the first offence of the petitioners. In the circumstances, however, which are set out in the grounds of detention, a clear case is made out of the petitioners' indulging in smuggling activities and the likelihood of their indulging in such activities in future.

13. The order of detention in the present case is dated 13-6-1990. A report has been sent to the Goa Government on the same date. Relatives of the detenues have also been informed. We do not see any ground for setting aside the order of detention.

14. In the premises, the petition is dismissed.