
(1994) 11 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 98 of 1994

Manjit Singh Grewal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-11-1994

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 108

Citation : (1995) 57 ECR 469 : (1995) 1 RCR(Criminal) 668

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This will dispose of Criminal Writ Petitions No. 98 and 104 of 1994. Both petitions under Article 226 of the Constitution of India have been filed for quashing detention order dated 8.2.1994 in the case of Manjit Singh Grewal, and detention order dated 27.1.1994 in the case of Jasvir Singh, passed by the respondent u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (hereinafter referred to as the "1974 Act").

2. In brief, the facts are that on the basis of specific information, the officers of Customs Department, on 18.6.1993, searched the residential premises of Manjit Singh Grewal at House No. 130, New Lajpat Nagar, Pakhowal Road, Ludhiana, and recovered 99 gold biscuits with foreign markings from a specially made cavity in the almirah, in the store-room attached to the bedroom on the first floor of the said house. A baggage receipt bearing No. 55665 dated 19.12.1992 issued by Customs, I.G.I. Airport, New Delhi, in favour of Mahendra Pal Sihag, Village Bojla, District Ganganagar (Rajasthan) for 42 gold biscuits bearing markings of Johnson Mathey, London, 9990 collectively weighing 4929 grams and one passport bearing No. W081885 issued by Regional Passport Officer,

Chandigarh, in favour of Manjit Singh Grewal were also seized along with aforesaid 99 gold biscuits. The seized gold biscuits were assessed by two gold dealers of Ludhiana who in their certificates opined that the seized gold biscuits were of 24 carat purity, collectively weighed 11547.360 grams and were valued at Rs. 50,23,101/-. On 20.6.1993, the officers of the Customs department seized two cars, Premier bearing Registration No. PCT-478 and Mercedes Benz bearing Registration No. DL-3C-8503, on the basis of information that the said cars were used by Manjit Singh Grewal and Jasvir Singh for transportation of smuggled goods. Manjit Singh Grewal in his statements recorded on 18.6.1993/19.6.1993 and 20.6.1993, u/s 108 of the Customs Act admitted about the recovery of 99 gold biscuits, the baggage receipt and the passport. He further admitted that about one and a half year ago, one Sukhdev Singh started giving him smuggled gold biscuits for disposal. Apart from this, he admitted that during last one and a half year, he had acquired and sold, about 2800 gold biscuits. He too disclosed that he used to transport the smuggled gold biscuits in his fiat car bearing registration No. PCT-478 and Mercedes Car bearing registration No. DL-3C-8503 and had made a secret cavity in his aforesaid fiat car. He also admitted that on 28.4.1980, he was booked by the Directorate of Enforcement, in a case under the Foreign Exchange Regulations Act, 1973. Jasvir Singh (petitioner in other petition, i.e. Crl.W.P. No. 104 of 1994) in his statement on 19.6.1993, u/s 108 of the Customs Act, admitted that he was working with Manjit Singh Grewal and helping him in transportation and disposal of smuggled gold. He too admitted that the two vehicles, Fiat car bearing registration No. PCT-478 and Mercedes Car bearing registration No. DL-3C-C-8503, were used for transportation of smuggled gold. In the follow-up action, the premises of the persons, who were stated to have been involved with Manjit Singh Grewal and Jasvir Singh, were searched and their statements recorded. On the basis of material collected, the detaining Authority after having been satisfied that Manjit Singh Grewal and Jasvir Singh (petitioners) were engaged in transporting and dealing in smuggled goods, passed an order of detention against them, which orders are now being impugned here in these petitions.

3. The orders of detention are being sought to be quashed on the grounds, namely, that there is a delay in passing the order of detention; that vital and complete documents were not supplied along with the grounds of detention; and that vital documents, such as, report regarding medical examination of Manjit Singh Grewal and Jasvir Singh, copies of orders of Court directing the release of fiat car, documents of the earlier case registered against Manjit Singh, petitioner, and summons issued by the High Court in contempt petition, were not brought to the notice of the detaining Authority. According to the counsel for the petitioners, these documents ought to have been taken into consideration and also brought to the notice of the detaining Authority, but having failed to do so, the orders of detention are liable to be quashed. Counsel further contended that retraction of confessional statement too was not brought to the notice of the detaining Authority.

4. On behalf of the detaining Authority, affidavit has been filed by Ms. Amrita Atwal, Deputy Secretary Home, Punjab, Department of Home Affairs and Justice, Chandigarh, in which allegations made in the petitions have been denied. In regard to delay, it has been stated that the case was processed with due promptitude and application of mind at all stages and the time taken in passing the detention order is reasonable and has been adequately explained. Respondent has denied the allegation that there is no close nexus between the prejudicial activities indulged in by the petitioners and the detention orders. Complaints filed by the petitioners in the court of Judicial Magistrate against the Customs Officers/officials have been stated to be an after-thought in order to escape from the clutches of law. With regard to supply of documents, it has been stated that the documents mentioned in the petitions are petitioners' own documents which were not required to be supplied and moreover, material on record was sufficient for subjective satisfaction of the detaining Authority. If any document was required by the petitioners, the same would have been supplied to them on demand, but no such request was made prior to the filing of the writ petitions. It has been denied by the respondent that because of filing of contempt petition, the detention orders have been passed on 7.2.1994 and 20.1.1994. According to the respondent, all the relevant material was put up before the detaining Authority who after due consideration and application of mind, has passed the detention orders.

5. Learned Counsel for the petitioners in support of his arguments has placed reliance upon judgments in *Daljit Singh Sandhu v. Union of India and Ors.* 1994 (1) C.L.R. 559, and *Varinder Singh Batra v. Union of India and Ors.* 1994 (1) C.L.R. 680. Both these judgments are of Delhi High Court. In *Daljit Singh Sandhu's* case (supra), order of detention was passed after five months of alleged incident and there was no plausible explanation forthcoming for the said delay, and in *Varinder Singh Batra's* case (supra), suppression of vital material vitiated the detention order. Counsel also placed reliance upon judgments in *Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others*, , *Kimti Lal v. Secy. to Govt. of Punjab* 1994 (1) R.C.R. 581, *Sarabjit Singh @ Shaba v. State of Punjab and Anr.* 1992 (2) R.C.R. 417 and *Pipal Singh v. State of Punjab and Anr.* 1992 (2) R.C.R. 672. In *Pradeep Nilkanth Paturkar's* case (supra), a case under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, the Supreme Court had quashed the order of detention which was passed on the basis of some criminal cases registered against the detenu therein as also on the basis of statements of witnesses, after a period of 5 months and 8 days from registration of last case and more than 4 months from submission of proposal. In *Kimti Lal's* case (supra), a Single Bench judgment of this Court, order of detention was quashed as there was no proper explanation for delay and order of detention passed after 8 months after the release of detenu therein on bail. In *Sarabjit Singh's* and *Pipal Singh's* cases (supra), both judgments of this Court, G.S. Chahal, J. (as he then was) had quashed the orders of detention on the ground that there were no prejudicial activities on the

part of detenus therein after their release on bail.

6. Having gone through the petitions carefully, the judgments cited by counsel for the petitioners, and on consideration of arguments advanced by learned Counsel for the parties, I am of the view that there is no merit in these petitions. In para-7 of affidavit filed on behalf of the respondent, it has been stated that the sponsoring authority after collecting and thoroughly examining the material on record, sponsored the proposal on 11.8.1993 to the State Government for detention of the petitioners. The proposal was examined by the Legal Agency, whereafter some additional information was called from the sponsoring Authority which was so received in the office of respondent from the Customs department on 20.8.1993. The case was further examined and the original grounds of detention in Punjabi were prepared and then translated into English, whereafter number of copies of supporting material were typed which was quite a voluminous job and consumed sufficiently long time. Some more additional information was called vide letter dated-26.8.1993 and 3.9.1993, which was received on 13.9.1993. Though there is no adequate explanation between 14.9.1993 to 11.1.1994, but it has been stated in this very paragraph, i.e. para-7, that there were more than 40 holidays. The proposal for passing the detention orders was sent to the State Law Department on 13.1.1994 where it was examined on 17.1.1994. In the light of observations of State Law Department and after consideration of material on record, order of detention was passed by the detaining Authority on 8.2.1994 in the case of Manjit Singh Grewal and on 27.1.1994 in the case of Jasvir Singh. It now stands settled by the Apex Court that it is not right to assume that order of detention has to be mechanically struck down, but it is necessary to consider the circumstances in each individual case to find out as to whether the delay has been satisfactorily explained or not. In case the delay has not been satisfactorily explained, the detention order is to be quashed. I am unable to agree with learned Counsel for the petitioners that because of this delay, the necessary nexus got severed and the grounds have become stale and illusory. In appreciating such a contention, the Court has to bear in mind the nature of the prejudicial activities indulged in by the detenu and the likelihood of his repeating the same. In the case *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another*, the Supreme Court has held that the delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person. Petitioners here, were released on bail on 17.7.1993. In order to prevent them from indulging in smuggling activities in future, the Sponsoring Authority after collecting and thoroughly examining the material on record, as also verifying/examining the antecedents of petitioners and their co-associates, sponsored the proposal on 11.8.1993, whereafter detention order in the case of Manjit Singh Grewal was passed on 8.2.1994 and in the case of Jasvir Singh on 27.1.1994. For this reason, I am of the view that in the circumstances of this case, the delay is not unreasonable as contended by the counsel for the petitioners, and moreover, it has reasonably been explained. As regards the contention of counsel for the petitioners that vital

documents were not brought to notice or supplied to the petitioners, suffice it to say, it is not necessary to furnish to the detenu, the copies of all documents which are not material and relevant for reaching subjective satisfaction of detaining Authority. Non-communication of documents and the material is not fatal if they are already within the knowledge of the detenu. Moreover, nothing has been brought on record from which it can be concluded that the documents are such that in their absence, subjective satisfaction was likely to be affected. Non-consideration of such like documents would not, therefore, impair the satisfaction arrived at by the detaining Authority and would not vitiate the order of detention. For the same reason, the non-supply of copies of the same to the detenu would not result in denial of the right of the detenu. There is also no merit in the contention of counsel that the petitioners were subjected to ill-treatment and the medical certificates issued by the doctors were not placed before the detaining Authority, and, therefore, their detention is vitiated. No particulars have been brought on record of this petition to show as to when a prayer was made for medically examining the petitioners or what was the report. In absence of this material, I am afraid to accept this contention. Counsel for the petitioners has also not been able to satisfy that as to how the summons issued by the High Court in the contempt petition and copy of orders directing the release of car, are relevant. Failure to supply documents and materials, which are not relied upon by the detaining Authority in making the detention order, would not render the detention illegal. Moreover, in absence of any application from the detenu, requesting the detaining Authority to furnish copy of such documents, the detention order is not vitiated on the ground that failure to supply those documents affected his right to make an effective representation. I am also not impressed with the argument of counsel that order of detention deserves to be quashed on the ground that the detaining Authority has not taken into consideration the subsequent retraction of confessional statement made in communication dated 18.7.1993 to the Board Members, Indirect Taxes, New Delhi. The so-called retraction is an after-thought as would be clear from the fact that petitioner was arrested on 18.6.1993, whereas the retraction of confessional statement was made on 18.7.1993, and that too in the form of some communication addressed to the Board Members, Indirect Taxes, New Delhi.

7. Consequently, both the petitions, i.e. Crl. Writ Petitions No. 98 and 104 of 1994, being without any merit, shall stand dismissed, with no order as to costs.