

(1988) 11 DEL CK 0026

In the Delhi High Court

Case No : Criminal Writ Petition No. 451 of 1988

Manjit Singh Grewal, Jalanhdar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-11-1988

Acts Referred:

Citation : (1989) 37 DLT 3

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

Bench : Single Bench

Advocate : Harjinder Singh, Rohit Kochhar and Madan Lokur, for the Appellant;

Judgement

P.K. Bahri, J.

(1) Manjit Singh Grewal-detent has filed this writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, for quotient of the detention order dated June 9, 1988, passed by respondent No. 2 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (for short "COFEPOSA Act"). The detention order has been made with a view to prevent the petitioner from acting in "any manner prejudicial to the augmentation of foreign exchange.

(2) On secret information being received in the month of April 1988, the residential premises of the detenu were searched on April 27, 1988 and Indian currency of the value of Rs. 2,75,000 and certain incriminating documents were recovered and certain foreign currency was recovered from the bed room of the petitioner's father. The documents so discovered disclosed the names and addresses of persons and the amounts paid to them. The statement of the petitioner was recorded u/s 40 of the Foreign Exchange Regulation Act, 1973 and it was revealed that the services of the petitioner have been engaged by one Jit Singh, resident of England through one Rama Chandran of Pahar Ganj for making payments to different persons whose relations were non-resident Indians. The modus operandi adopted was that the relations of different persons, who were

non-resident Indians, were giving the foreign currency being earned by them to Jit Singh in England and Jit Singh made arrangement for making the payments in Indian currency to the relations of those persons and the petitioner was to be the intermediary in making the payments and was" to get Rs. 1,000 for making payment of Rs. 1,00,000. It was revealed that the petitioner has distributed in this manner about Rs. 15,00,000 (fifteen lakhs). The petitioner was arrested u/s 35 of the Foreign Exchange Regulation Act, 1973 and was produced before the Chief Judicial Magistrate and was remanded to judicial custody. First application for bail was moved and was rejected by the court on April 29, 1988. Another application was moved before the Sessions Court which was also rejected on May 10, 1988. Another bail application was moved and vide order dated June 2, 1988, the bail was granted. In the grounds of detention, then facts have been given as to search having been effected on 42 persons of different places and the material seized showing the receipt of payments. The detention order is being challenged by the detenu on the following grounds, (i) that there has occurred delay in considering the representation of the petitioner made to the Central Government as well as to the detaining authority; (ii) that the Advisory Board has failed to record the statement of the petitioner's father, who was produced as a witness, who was to explain the source of the Indian Currency recovered from the petitioner; (iii) that the respondents supplied the documents to the petitioner belatedly and thus, the right of the petitioner to make an effective and purposeful representation was prejudiced; and (iv) that some of the documents supplied to the petitioner were illegible and thus, the right of the petitioner to make an effective representation was prejudicially affected.

(3) Coming to the first point, it is pleaded by the petitioner that he had made representation dated June 30, 1988; to the detaining authority-which has not been considered by the proper officer and the respondent should satisfy the Court as to who has rejected the representation of the petitioner. It is also pleaded by the petitioner that there has occurred delay in considering his said representation. In respect of the representation made to the Central Government, it is averred that the same was dated July 8, 1938 and the same had not been considered by the Central Government till the filing of the writ petition. The writ petition was filed on September 13, 1988. Shri S. K. Ghoshdhy, Under Secretary, Government of India, Ministry of Finance, has filed the affidavit in contesting the writ petition. It has been pleaded by him that the representation which was though dated June 30, 1988, was actually signed by the detenu on July 11, 1988 and it was received in the Ministry of Finance on July 14, 1988 and was placed before the detaining authority on the following day and the detaining authority desired that the comments of the sponsoring authority i.e. Directorate of Enforcement, be called and thus, the representation was sent to the said authority on July 15, 1988 and in the meanwhile the petitioner had made a representation on which the date was not clear and it appears that the same was perhaps dated July 8, 1988 but the same was received in the Ministry of Finance from the Government of Punjab on July 26,

1988 and as the said disorientation was on similar lines as the previous representation made to the detaining authority, so the Directorate of Enforcement was required to prepare comments on both the representations and on July 27, 1988, the Directorate of Enforcement prepared the comments in respect of both the representations and dispatched the same on July 28, 1988. July 30 & 31, 1988 (Saturday & Sunday) being holidays, thus on August 1, 1988, the representations were analysed and nothings were prepared and on August 2, 1988, the detaining authority considered the representation and rejected the same and the memorandum containing the said rejection was issued to the petitioner on August 2, 1988. It was also pleaded that the noting in respect of the other representation was also prepared on August 2, 1988 and on August 3, 1988, the same was considered by the Minister of State who proposed for rejecting the said representation and the file was put up before the Finance Minister without delay and the Finance Minister on August 8, 1988, rejected the representation and memorandum of rejection was issued to the petitioner on August 9, 1988. It was clarified in the affidavit that the representations of the petitioner comprised of 13 pages each and in those representations the petitioner had asked for supply of copies of about 100 documents totalling about 500 pages and thus, the entire voluminous record had to be gone through by the Directorate of Enforcement in order to effectively consider the representations and also to as to what "documents have been already supplied and documents were available for being supplied to the petitioner as requested by him in his representations. It was pleaded that only some of the documents asked for by the petitioner had been relied upon by the detaining authority and directions were given to the sponsoring authority for supplying. the other documents to the detenu which were supplied to the detenu without any unreasonable delay.

(4) I have been shown the original record by the learned counsel for the respondents and I find that the representation addressed to the President of India dated July 8, 1988, was dispatched by the Superintendent (Jail), Jalandhar City to the Punjab Government on July 18, 1988. Surprisingly the Superintendent (Jail) had put the seal regarding his having attested the signatures of the detenu on the typed date appearing on the representation so that the date has become illegible. The representation was given to the Superintendent (Jail) by the detenu admittedly Along with five more copies. So, there was no difficulty in the way of the respondents to find out the actual date of representation from the other copies. Thus, it has to be held in the present circumstances that the representation of the detenu was dated July 8, 1988. The Superintendent (Jail) for reasons unknown had not cared to give the date under his signatures while attesting the signatures of the detenu and affixing the seal in this respect on the original representation. The failure of the Superintendent (Jail) to give a date under his signatures, in my view, does support the contention of the petitioner that this representation must have been given to the Superintendent (Jail) on July 8, 1988.

(5) Counsel for the respondents has pointed out that the representation dated

June 30, 1988, addressed to the detaining authority was actually handed over by the detenu to the Superintendent (Jail) on July 11, 1988, as is evident from the endorsement of the Superintendent (Jail) attesting the signatures of the detenu appended on the said representation. So, he has argued that the representation addressed to the President of India must have been given by the detenu on July 11, 1988. No such inference, in my opinion, can be drawn from such facts. The two representations were meant for different authorities and thus, it cannot be inferred that both must have been given on the same date to the Superintendent (Jail) on the mere fact that representation dated June 30, 1988, was signed by the detenu on July 11, 1988.

(6) Be that as it may, it is no doubt clear that the representation made to the detaining authority was being dealt with by the detaining authority with all promptitude. It is pertinent to mention that in that representation the petitioner had asked for almost all the documents and authorization /search warrants in respect of the said 43 persons whose premises had been searched. The representation was required to be considered effectively and thus, a reasonable time had to be taken by the authorities concerned for getting the copies of documents prepared which were in large number and thereafter making comments on the representation. So far as the representation, which was made to the detaining authority, was concerned, there appears to have occurred no undue delay in considering that representation. As soon as the comments were received from the sponsoring authority, the representation was considered promptly and was rejected by the detaining authority.

(7) However, as far as the representation which was made to the Central Government is concerned, there has occurred some unreasonable delay in considering the representation. The representation was addressed to the President of India. It is not understandable why it was sent by the Superintendent (Jail) to the Government of Punjab. The detenu has been placed in the Central Jail, Jalandhar, on the directions of the Central Government. The Superintendent (Jail) had sent the representation addressed to the detaining authority directly to the detaining authority. Similarly he should have sent the representation addressed to the President of India also to the Central Government directly. There is also no Explanation as to why the Superintendent (Jail) took 10 days in sending the representation to the Government of Punjab and it took so much in representation reaching the Central Government. According to the record shown to me, the representation was sent by the Government of Punjab to the Central Government on July 20, 1988 and was received on July 26, 1988. It is not understandable how it took six days for a representation to reach the Central Government by registered post. The registered envelope has not been placed on the record which could have shown whether it took six days due to postal lapse or not, Counsel for the respondents has argued that no prejudice had been caused to the petitioner inasmuch as the first representation made by the petitioner to the detaining authority has already reached the detaining authority on July 14, 1988 and was being dealt with

without undue delay and even if the representation made to the Central Government has been received belatedly on July 26, 1988, no harm has been done to the detenu inasmuch as the comments, which were already in process of being collected from the Directorate of Enforcement, would have covered the points raised in the representation made by the petitioner to the President of India.

(8) Counsel for the respondents cited *State of U.P. v. Hari Singh Thakur* 1987 Supp 190. In the said case the High Court had quashed the detention order on the ground that the representation of the detenu has not been considered with promptitude while the Supreme Court did not interfere with the order of the High Court but it went on to quote certain passage from the *State of Rajasthan v. Shamsheer Singh*, Air 1985 Sc 1982 wherein there had occurred a delay of one day in placing the order before the Advisory Board and It was held that such a delay would not vitiate the detention order. The Supreme Court observed that the High Court should realise that there is no particular virtue in quashing an order for in a given case a detention order may be fully justified and absolutely necessary for the protection of the society and the approach has to be an objective approach taking into account all the relevant circumstances and considerations in order to strike a balance between the need to protect the community on the one hand and the need to preserve the liberty of a citizen on the other hand.

(9) Counsel for the petitioner has, on the other" hand, argued that it is settled law now that if representation of the detenu remains unattended and no plausible Explanation is given for causing the delay in consideration of the representation, the detention order is liable to be quashed. He has cited *Shri. Saleh Mohammed Vs. Union of India (UOI) and Others*, wherein representation of the detenu remained unattended in the office of Superintendent (Jail) for over three weeks. It was held that there was inordinate and unreasonable delay in considering the representation of the detenu and this amounted to violation of Article 22(5) of the Constitution of India which guarantees to the detenu a right to have his representation considered with reasonable expedition. He has also cited *Harish Pahwa Vs. State of U. P. and Others*, which has laid down that the representation made by a detenu has to be considered without any delay and the Supreme Court does not look with equanimity upon delays when the liberty of a person is concerned " and calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It was held that it is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu.

(10) In the present case it is, no doubt, true that there had occurred unexplained delay at the level of the Supdt. (Jail) in dispatching the representation made by the detenu to the President of India. The matter would have not rested there if the other representation of the detenu was also being delayed. Fortunately, we find that the other representation of the detenu has reached the detaining authority without any delay and was being dealt with all promptness and was considered and rejected on August 2, 1988. The material which the detenu has "asked for in the first representation could not have been collected in a day or two and thus the detaining authority was justified in asking for comments from the sponsoring authority and the sponsoring authority did not take, in my opinion, any unusual time in making the comments and preparing the necessary copies of the documents which were to be supplied to the detenu. After all, even if the representation of the detenu had reached the Central Government within one or two days of the date of representation, the same would have been dealt with in similar manner in which the representation containing similar points v/as being dealt with by the detaining authority. The comments would have been necessary to be called in the said representation and copies of the documents have to be prepared as desired in the said representation. As soon as the representation was received, it was promptly ensured that comments on this representation be also incorporated in the comments being prepared respect of the first representation. So, in my opinion, no prejudice has been caused to the detenu by some delay having occurred in dispatch of the said representation addressed to the President of India at the level of Superintendent (Jail) and also at the level of the Punjab Government.

(11) However, the learned counsel for the petitioner has vehemently argued that the representation which was addressed to the President of India could have been placed before the competent authority straightway without at first being sent to the sponsoring authority for comments. There cannot be any hard and fast rule that the moment the representation made to the Central Government is received it must be placed before the competent authority immediately so that the competent authority E should first examine the representation and decide whether certain comments are required to be called before considering the representation. It would depend on the nature of the representation in each case. If some representation obviously on the face of it cannot be dealt with without first comments being available on the facts mentioned in the representation, there would be no useful purpose in putting such a representation before the competent authority straightway, rather it would amount to delaying the disposal of the representation because once time would be taken for putting the same before the competent authority and the competent authority in peculiar facts of such representation would have no option but to call for comments and then some time would be consumed in calling the comments. In the present case, it was obvious that the representation could not be disposed of without having the comments and without getting the copies of the documents asked for prepared. So, I do not think that there had occurred any undue Delay

on this score alone that the representation was not put up before the Minister concerned as soon as it was received.

(12) Counsel for the petitioner has made reference to a decision of this court given in Criminal Writ Petition No. 226/88, *Jasjit Singh v. Union of India & Others*, decided on November 24, 1988, (5) which decision has followed the Division Bench decision of this Court in Criminal Writ No. 326/86, *U.P. Aboobaeker v. Union of India & Others*, decided on March 27, 1987. (6) In both these cases there had occurred unexplained delay by the sponsoring authority in giving the comments and keeping in view the said delay it was held that the representation ought to have been put up before the competent authority promptly and it was for the competent authority to decide whether some comments are required to be obtained from the sponsoring authority. These observations have to be examined in that perspective in which they were made. Where obviously undue delay has occurred in giving the comments by the sponsoring authority the detention order was liable to be quashed on that score alone. It is possible that the representations subject-matter of decision in the said two cases required perhaps no such comments from the sponsoring authority. So, on facts these two judgments are distinguishable.

(13) The learned counsel for the petitioner has argued that after the comments have been received, the representations were not promptly and expeditiously considered by the Finance Minister inasmuch as the comments were received on August 1, 1988, still the representation was rejected by the Finance Minister on August 8, 1988. It is obvious that after comments were received, the representation was put up before the Minister of State on August 3, 1988 and he opined for rejecting the representation on August 3, 1988. August 6 & 7, 1988 were holidays and thus, the Finance Minister considered the matter and rejected the representation on August 8, 1988. There is no undue delay in considering the representation by the Minister. Hence, there is no merit point.

(14) A grievance was made that the petitioner had appeared before the Advisory Board and had in writing mentioned before the Advisory Board that his witness was present and he should be examined. I have perused the record of the Advisory Board and find that it was recorded by the Advisory Board that the detenu had not pressed for examining the witness before the Advisory Board. So, in the absence of any counter affidavit filed in rebuttal by the petitioner it cannot be said that the Advisory Board had refused to record the statement of the said witness. I do not find any force in this plea.

(15) There were large number of documents sought for by the detenu and thus a reasonable time had to be taken by the authorities for preparing copies of the said documents for being supplied to the detenu. I do not think that any undue delay has occurred in this respect. The detenu appeared before the Advisory Board after about seven days of supply of copies, so it cannot be said that he has been in any manner put in a disadvantageous position in making effective representation before the Advisory Board. I, hence, find no force in this

particular ground.

(16) In the writ petition it has been mentioned that the documents mentioned at page 15 of the writ petition, which were supplied to the petitioner, were illegible. It is pertinent to mention that in the representation which was given to the Advisory Board the petitioner did not give the particulars of the documents which were illegible and had made only a vague assertion that some of the documents supplied were illegible. Even, no such illegible documents have been filed Along with the petition to enable the respondents to take any proper plea in respect of such documents. In the counter-affidavit it has been clearly averred that the documents supplied to the petitioner were not illegible and rather the acknowledgement taken from the petitioner clearly mentioned that legible documents have been supplied. Be that at it may, it was the duty of the petitioner to file said illegible documents on the record to enable the respondents to take proper plea in that regard in the counter. After the counsel for the petitioner and counsel for the respondents had advanced the arguments, counsel for the petitioner in reply arguments had shown me the said particular documents which according to him are not legible. I do not think that it is proper way of handling with the matter. If the petitioner was keen to have this particular ground established, it was incumbent on the petitioner to have filed those documents Along with the petition so that the opposite party could take proper plea in regard to those documents. I am afraid that this Court would not be acting fairly towards the respondents if finding is given on the basis of documents now being shown by the learned counsel for the petitioner while replying to the arguments of the learned counsel for the respondents. So, I do not find any force in this particular plea of the petitioner. No other point has been urged. 17. In view of the above discussion, I dismiss the writ petition and discharge the rule. The parties are left to bear their own costs.