
(1984) 04 BOM CK 0011

In the Bombay High Court

Case No : Criminal Writ Petition No. 622 of 1983

Mohamed Hanif Mohamed Siddique

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-04-1984

Acts Referred:

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

Constitution of India, 1950 — Article 22, 226

Citation : (1984) 86 BOMLR 317

Hon'ble Judges : H.H. Kantharia, J;B.C. Gadgil, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kantharia, J.—One Abdul Kadar Mohamed Hanif Anajwala (hereinafter referred to as the "detenu") was detained by an order dated June 17, 1983 passed by the Government of Maharashtra, issued under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the "COFEPOSA Act") with a view to preventing him from smuggling goods and abetting the smuggling of goods. This is a writ petition under Article 226 of the Constitution of India by the father of the said detenu challenging the said detention order.

2. The grounds of detention dated June 17, 1983 and the documents relied upon and considered for the purpose of passing the detention order were supplied to the detenu. The allegations on which the detenu was ordered to be detained were that on March 9, 1983 while travelling to Dubai from Bombay by flight No. GF 037 he was found in possession of foreign currencies equivalent to Indian Rs. 94,963.25 which he attempted to smuggle out of India. The officers of the Air Intelligence Unit attached to the Sahar Air-port intercepted him on suspicion and recovered the said foreign currencies which were concealed in a polythene bag kept in a plastic container of Gomda vanaspati and that too so cleverly as to give

an impression that he was carrying dry pickle in the said container. The container was found in his suit case.

3. Although a number of contentions were raised in the writ petition, Mr. Siwani, learned advocate appearing on behalf of the detenu, canvassed only the following grounds. Thus, Mr. Siwani's first contention is that the statement of the detenu disclosed that the currency under seizure was handed over to him by one All Mohamed Kasam Chunawala and that the statement of the said Chunawala was recorded but not supplied to the detenu. According to Mr. Siwani, non-supply of this statement to the detenu and not placing the same before the detaining authority indicates non-application of mind on the part of the detaining authority and it also violated the fundamental right of the detenu guaranteed to him under Article 22(5) of the Constitution of India as a result of which the detention order is rendered null and void. In this connection Mr. B. K. Chougule, Special Secretary to Government of Maharashtra, Home Department (Law and Order), who is the detaining authority, has stated in his affidavit that the copies of the statements and documents were placed before him in English and their translations in Urdu were supplied to the detenu along with the grounds of detention. He further stated that the statement of Chunawala was not material and relevant in considering the question of detention order. Thus the affidavit of Chougule shows that before passing the detention order, he had fully applied his mind to the facts and circumstances of the case for arriving at a subjective satisfaction. As regards non-supply of the statement of Chunawala, it may be noted that the said statement was neither vital nor a relevant document in view of the fact that the detenu did admit that the currency under seizure was found in his possession in the circumstances mentioned above. It is immaterial, in our opinion, whether the currency in question was handed over to him by Chunawala or for that reason by any other person. But the fact remains that the detenu was apprehended in the "act of smuggling the said currency. The source from which he came in possession of this foreign currency makes no difference. Therefore, in our view, non-supply of the statement of Chunawala to the detenu and not placing the same before the detaining authority would not indicate non-application of mind on the part of the detaining authority. It also cannot be said on that account that the fundamental right of the detenu under Article 22(5) of the Constitution was in any way violated. The detenu had not to be told a fact which he had already admitted that he had received the currency from Chunawala. Even without telling him this fact as and by way of supplying him the statement of Chunawala, he could very well make his representation, under Article 22(5). To press his point, Mr. Siwani drew our attention to a Supreme Court ruling in case of *Ashadevi v. K. Shivraj* [1979] AIR S.C. 447 and submitted that it was laid down by the Supreme Court in the said case that non-consideration of vital or material facts likely to influence the mind of the detaining authority would vitiate the subjective satisfaction of the said authority which would render the detention order invalid. In the said case, by a detention order the detenu was detained with a view to prevent him from engaging in

transporting smuggled goods. In passing the detention order, the detaining authority based its decision on the detenu's confessional statement made earlier before the Customs Officers and the said confessional statements were subsequently retracted by the detenu at the first available opportunity while he was in judicial custody. On these facts it was held by the Supreme Court that the questions whether the confessional statements recorded earlier were voluntary statements or were statements which were obtained from the detenu under duress or whether the subsequent retraction of those statements by the detenu was in the nature of an after-thought, were primarily for the detaining authority to consider before deciding to issue the detention order but since admittedly the aforesaid vital facts which would have influenced the mind of the detaining authority one way or the other were neither placed before nor considered by the detaining authority, it was held that there was non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the detaining authority thereby rendering the detention order invalid and illegal. However, so far as our case is concerned, as stated above, Chunawala's statement could not be termed as vital, material and relevant statement. What could Chunawala state in his statement? He could only state that he had handed over the currency under seizure to detenu or that he had not. What difference does it make as to from what source the detenu had obtained the said currency? What is important is that the detenu admitted that he was found in possession of the said currency in the manner in which alleged against him. Therefore, Chunawala's statement becomes superfluous. Non-supply of the same to the detenu and its non-consideration by the detaining authority, therefore, would not vitiate the detention order.

4. Secondly, Mr. Siwani contended that the copies of some of the documents supplied to the detenu were so illegible that the detenu could not make an effective representation to the Government under Article 22(5) of the Constitution. Mr. Siwani showed us page Nos. 16, 17 and 18 of the documents supplied to the detenu in support of his contention. Apart from the fact that Mr. B. K. Chougule denied in his affidavit that some of the copies of documents furnished to the detenu were illegible, we ourselves went through the so-called illegible documents shown to us by Mr. Siwani and we were satisfied that one could easily read these statements. We, therefore, find no substance in this contention raised by Mr. Siwani.

5. The third contention of Mr. Siwani is that there was a delay of about three-and-a-half months in passing the detention order and the said delay was not adequately explained. He further submitted that on account of such delay, the live-link between the act complained of and the detention order was snapped and, therefore, the subjective satisfaction of the detaining authority was impaired. Now, in this connection Mr. Kotwal, learned Public Prosecutor, pointed out the law laid down by the Supreme Court in *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra* and another, which is as under (of p. 13 para 6)

Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority.

6. The Supreme Court further observed (at p 13 para 7): -

The detaining authority is in no legal liability to tell or satisfy the detenu as to the causes of delay; it is under an obligation to satisfy the court as to the causes of delay to show that there was no infraction of the constitutional provisions laid down-under sub-art. (5) of Article 22 of the Constitution.

Thus, there is no hard and fast rule as to within what time the detention order is to be passed. There is no mathematical method in which a detention order may be made. Everything depends upon the facts and circumstances of each individual case whether there was delay in passing a detention order. And what is required of the detaining authority is whether delay, if any, was explained satisfactorily. In our case, we are of the opinion that there was no delay in passing the detention order and if there was any, it was well explained. Thus, Mr. B. K. Chougule has in his affidavit stated,

I say after the incident dated 9th March, 1983, the Customs Authorities after getting the proposal approved from the Screening Committee forwarded the proposal to the Government on 26th April, 1983. The said proposal was received in the Home Department, Mantralaya, Bombay on 28th April, 1983. I say along with the said proposal there were ether five proposals. I say that I considered the said proposal very carefully and after 1 was subjectively satisfied about the detenu's involvement in the prejudicial activities and further satisfied that the detenu was likely to indulge in similar activities in future, I had ordered to issue detention order and contemporaneously formulated the grounds of detention. The said order and the grounds of detention were typed and the same were sent for translation into Urdu. Similarly, the Customs Officers were directed to supply the copies of the statements and documents placed before me, in English and their translation in Urdu. After the receipt of these documents the order of detention was issued on 17th June, 1983. I say in fact, the order of detention was issued within less than 3 1/2 months from the date of the incident and hence live-link is not snapped in the present case.

In addition to these averments made by Mr. Chougule in his affidavit, we are also told by Mr. Kotwal that the grounds of detention were formulated and detention order was ordered to be issued on April 29, 1983 by Mr. B. K Chougule. In the result, the contention of Mr. Siwani is without any substance.

7. Then lastly, Mr. Siwani canvassed that the detenu was never involved or concerned in the past in contravention or infringement of any provisions of the Customs Act and was never prosecuted nor convicted for any offence under the Customs Act nor was he ever adjudicated guilty and penalised by the customs authorities and, therefore, he should not have been detained for a single and

solitary incident. According to Mr. Siwani, the detention of the detenu on a solitary incident is indicative of the fact that the subjective satisfaction of the detaining authority was vitiated. Now, the law in this regard is as well settled. In case of *Mrs Saraswathi Seshagiri Vs. State of Kerala and Another*, the Supreme Court had observed that whether a single solitary act attributed to a person is sufficient to warrant an inference that he will repeat his activity in future also, will depend on the nature of the act and attendant circumstances. The past act of the person, in the circumstances, might be an index of his future conduct. The Supreme Court also referred to and took into consideration its decision in case of *Smt. Hemlata Shah (supra)* wherein it was held (at p. 14 para 9): -

...the authority may prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat such offences. What is required is that the detaining authority is to satisfy the Court that it had in mind the question whether prosecution of the offender was possible and sufficient in the circumstances of the case. In some cases of prosecution it may not be possible to bring home the culprit to book as in case of a professional bully, a murderer or a dacoit, as witnesses do not come forward to depose against him out of fear, or in case of international smuggling it may not be possible to collect all necessary evidence without unreasonable delay and expenditure to prove the guilt of the offender beyond reasonable doubt. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of supplies and services essential to the community or an act of violation of foreign exchange regulations and his smuggling activities are likely to have deleterious effect on the national economy.

The facts of our case show that the impugned detention order was essentially passed as a precautionary measure and it was based on a reasonable prognosis of the future behaviour of the detenu, regard being had to his past conduct which could be judged in the light of the surrounding circumstances. His past conduct shows that he is a potential carrier of smuggled goods. His trips abroad were sponsored by others. He acted as a carrier on two occasions in the past. The method adopted by him in this case shows that there was an element of concealment in smuggling foreign exchange. He had concealed the said currency in a container containing dry pickle on the top and polythene bag containing currency at the bottom of a plastic container of Oomda vanaspathi. This shows the organised and pre-planned practice of smuggling foreign currency out of India on the part of the detenu. His conduct clearly demonstrates the potentiality of continued criminality. If not detained, he is likely to indulge in the commission of such acts in future. In this view of the matter we find no merits in the last contention raised by Mr. Siwani.

8. In the premises of what we have stated above, this writ petition fails. It stands dismissed. Rule is accordingly discharged.