

(1993) 02 DEL CK 0055

In the Delhi High Court

Case No : Criminal Writ Appeal No. 428 of 1992

Mohd. Yousuf @ Ashif Khan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1993) 49 DLT 732 : (1993) 2 RCR(Criminal) 377

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : R.M. Bagai and P.S. Sharma, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for issue of appropriate writ, order of directions for quashing detention order No. F.5/22/92-Home(P-II) dated 15.5.1992 passed by the Administrator of Delhi u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short COFEPOSA Act). On 9.3.1992, the petitioner was intercepted outside Railway Station, Delhi when he was about to board a rickshaw by the Custom officers. He was found to be carrying eight gold biscuits in three small packets wrapped with adhesive tape and carbon paper in his shoes. Besides ""proceedings against him under the Customs Act, the impugned detention order was passed on 15.5.1992 with a view to preventing him from smuggling goods and from engaging in concealing, keeping smuggled goods and also preventing him from dealing in smuggled goods etc. The petitioner made are presentation dated 28.5.1992 (copy Annexure P-IV in the paper book)to the Administrator of Delhi with the prayer that the detention order be revoked. He was informed vide letter dated 30.6.1992 that the representation had been rejected and further that all the documents duly considered and relied upon had already been supplied to him.

(2) Although the petitioner has taken up a number of grounds to assail the detention order, during the course of arguments Mr. Bagai, learned Counsel for the petitioner has restricted his arguments to the grounds taken up in Para-A of the grounds at page 4 of the writ petition. That ground is that there has been undue delay in considering his representation dated 28.5.1992 on the part of the second respondent. The Detaining Authority was bound under law to consider the representation at the earliest and without most haste. This representation was rejected after a month when the petitioner was served with the memorandum of rejection dated 30.6.1992 on 2.7.1992. Thus, there was undue and un-explained delay in considering the representation. In reply to this averment on behalf of second respondent it is stated that there was no delay in considering the representation. It is further stated that the representation dated 1.6.92 (Mr. Sharma on behalf of the State admits that the reference of this representation is the same as that moved by the petitioner) was received in the Home Department through Deputy Superintendent of Jail on 3.6.1992. It was sent to the Customs Department for comments on the same day. The comments were received on 11.6.1992. It was examined in the Branch on the same day and was put up before the Superintendent of the Branch who examined the same and put up before the respondent on 15.6.1992 (12th, 13th and 14th being holidays). The file was then placed before the Joint Secretary (Home) on the same date who examined the same and sent it to the link officer of the Home Secretary. The Home Secretary was on leave. The link officer considered the representation and could put up the same before the Detaining Authority on 24.6.1992 which was considered and rejected on 25.6.1992.

(3) Now the question is, whether from the aforesaid reply given on behalf of the second respondent can it be said that there is any undue delay in the consideration of the representation moved by the petitioner ? In this respect it has to be noted that there is no Explanation as to why the Customs Department took as many as eight days in forwarding its comments. The aforesaid department received the representation on 3.6.1992 and forwarded the comments only on 11.6.1992. Thus the affidavit is completely silent as to why about eight days were taken by the department. Thereafter there is no Explanation in the affidavit as to why after examining the same on 15.6.1992, it was put up before the second respondent on 24.6.1992. It means that there was a delay of about nine days in putting up the representation before the second respondent for consideration. This period of delay is also unexplained. It is stated that Home Secretary was on leave. If the link officer could put up the representation before the second respondent on 24.6.92 during the period of leave of the Home Secretary, he could have done it even earlier without any delay because he must have known the period of leave of the Home Secretary. In any case the delay of nine days in putting up the representation for consideration by the second respondent was not called for.

(4) A number of authorities have been cited by learned Counsel for the petitioner in respect of delay in the consideration of representation. The first case is that of

Harish Pahwa Vs. State of U. P. and Others, . It was observed in this case, "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look with equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking and allowing there presentation 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 import. 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) until a final decision is taken and communicated to the detenu". In this case the aforesaid comments were made when there was delay of about seven days only in the consideration of the representation. In the case of Rajender Pd. Khanna v. Union of India and Others, 1998(3) Cri 829, a Division Bench of this Court observed, "In preventive detention cases inordinate, unreasonable and unwarranted delay of about 10 days in considering the representation of detenu amounts to violation of Article 22(5) Constitution of India which guarantees to the detenu a right to have his representation considered with reasonable expedition". In the case of Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, , there was a gap of 28 days between the receipt and the disposal of representation. In para 10 at page 1863 it was observed," In attempting to explain the delay from 17-10-88 to 27-10-88 it is stated in the .counter-affidavit filed on behalf of the third respondent that 18th, 20th, 22nd and 23/10/1988 were the closed holidays; but no Explanation is given as to why the representation was not attended to and disposed of on 17, 19th, 21st, 24th to 26th October. In explaining the delay in communicating the decision taken on 27-10-88 it is stated that 29th and 30th October were holidays but the affidavit is silent as to why that decision had not been communicated to the detenu either on 27th or 28/10/1988." The Explanations were not found satisfactory at all by the Supreme Court and it was further of the view that the respondent had not diligently collected the information required by the third respondent.

(5) In the present case also, it will be seen that there is no Explanation at all as to why about eight days were taken in receiving the comments from the Customs department and another 9-10 days then in putting up the file before the second respondent for consideration. Thus, there is a clear violation of the guarantee provided by Article 22(5) of the Constitution and the detention order, Therefore, cannot be sustained.

(6) In view of what has been stated above, the impugned detention order is hereby quashed. Petitioner will be set at liberty if not wanted in any other case of proceedings.