
(1992) 01 DEL CK 0059

In the Delhi High Court

Case No : Criminal Writ Appeal No. 130 of 1991

Mood Aslam Habib

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 29-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 46 DLT 394

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : Sangeeta Nanchaha, Ashutosh and B.D. Bairn, for the Appellant;

Judgement

V.B. Bansal, J.

(1) In exercise of the powers u/s 3(1) read with Section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 (hereinafter referred to as the Act), the Administrator of Union Territory of Delhi directed that Mohd. Aslam Habib s/o Shri Habib Vali resident of 10. Kedar Building, Room No. 16, 1st floor, Bagty Road, Bombay be detained and kept in custody in the Central Jail Tihar, New Delhi with a view to prevent him from smuggling goods, and also preventing him from engaging in transporting or concealing or keeping smuggled goods. Accordingly an order dated 18th January, 1991 was issued by the Deputy Secretary (Home) Delhi Administration for and on behalf of the Administrator of Union Territory of Delhi. This order was served upon Mohd. Aslam Habib on 9th February, 1991. He was supplied with the order of detention along with the grounds of detention and the documents relied upon in support of his detention.

(2) Briefly stated the facts leading to the passing of the said order are as under:

(3) On 23rd April, 1990 Mohd. Aslam Habib arrived at Indira Gandhi International Airport, New Delhi from Sharjah and after customs clearance he was going out of the Customs arrival hall. He was intercepted at the exit gate by the Customs Officer who on inquiry was informed by Mohd. Aslam Habib that he was not

carrying any gold, silver watches etc. Two respectable persons were however joined and in their presence the baggage of Mohd. Aslam Habib was searched when gold weighing 1279 grams was found concealed in one juicer, one tool holder of Row log bit set and nine pieces of numbering dies. A certificate was obtained of the effect that the recovered gold was of 24 caret purity, valued at Rs. 4,28,465.00 . Mohd. Aslam Habib was not in a position to produce any permit for the lawful import of the said gold which was thus seized by the Customs Officer u/s 110 of the Customs Act under a reasonable belief that it was smuggled gold liable for confiscation

(4) Statement u/s 110 of the Act of Mohd. Aslam Habib was recorded in which he, infer alias admitted about his knowledge of availability of gold in the items available with him and about recovery of the gold in the manner claimed to have been effected by the Customs Officer. A complaint was filed against Mohd. Aslam Habib in the Court of Additional Chief Metropolitan Magistrate, New Delhi for trial and his application for bail was rejected on 5th June, 1989. He was however allowed bail on 28th June, 1990. It was in these circumstances that the detention order was passed against Mohd. Aslam Habib.

(5) By way of writ petition under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioner has prayed for being released by setting aside the aforesaid detention order.

(6) I have heard Ms. Sangeeta Nanchahal, learned Counsel for the petitioner and Shri B. D.Batra, learned Counsel for the respondent no. 2. No one has appeared for respondent no. 1.

(7) A number of grounds have been taken by the petitioner to challenge the order of detention, Counsel for the petitioner has, however, restricted her submissions only to one ground i.e. vagueness in the grounds of detention. Counsel for the petitioner has submitted that in para-11 of the grounds of detention It has been mentioned by the detaining authority that the petitioner was likely to indulge In the smuggling activities in a similar manner or otherwise and that there is no Explanation as to what is meant by the word "otherwise". She has thus submitted that this ground is vague on account of which the petitioner has been deprived of his fundamental right of making a representation. She has thus submitted that on this ground alone the order of detention is liable to be quashed. It would, in my opinion, be appropriate at this stage to quote the aforesaid portion of the ground of detention :

"ON the basis of the foregoing facts and circumstances, the Administrator of the Union Territory of Delhi had no hesitation in arriving at the conclusion that you have the inclination and propensity in the matter of indulging in smuggling activities in an organized and clandestine manner and unless prevented you are likely to indulge in the smuggling activities in a similar manner or otherwise, in future."

Learned Counsel for the respondent has submitted that the petitioner could be

very well aware of the manner in which the smuggling activities could be continued by the petitioner and on this account It cannot be said that these words are vague. He has also submitted that at the instance of brother of the petitioner who had made a representation of clarification was issued by the detaining authority on 30th May, 1991 under the signatures of the Deputy Secretary (Home) Delhi Administration in which it was stated that "as regards enquiry in para-6 he is hereby informed that in the instant case he had adopted ingenious method concealing gold in juicer and tool holder. He may adopt that method in future or may indulge In smuggling activities in similar manner or may adopt any other method, such as concealing gold in his rectum or in bids baggage". This was the implication of the words "or otherwise". He has thus submitted that after the information was made available to the petitioner he was free to make a representation against his detention and thus submitted that this ground may not be available to the petitioner. I have given my thoughtful consideration to these submissions and have also perused the relevant documents. There can possibly be no dispute that the Explanation mentioned by the detaining authority in the memorandum dated 30th May, 1991 is conspicuous by its absence from the grounds of detention. It cannot be disputed that these details were necessary to explain the term "or otherwise" referred to in para-11 of the grounds of detention. The short question for consideration is as to what is the effect of this omission from the grounds of detention and whether the fundamental right of the petitioner of making a representation as provided by Article 22(5) of the Constitution of India has been violated on account of the non-furnishing of these details. My answer to this question is certainly in the affirmative and I find support for this view from the cases Abdul Razak Nannekhan Pathan v. The Police Commissioner ,Ahmedabad & Another Judgment Today 1989 (3) S.C. 231 and Shri Jahangir Khan Razal Khan Pathan v. The Police Commissioner Ahmedabad & Another Judgment Today 1989 (3) SC. 183. These judgments of the Supreme Court have been followed by this Court In numerous cases including Criminal writ No. 292 of 1990 (Rafiuddin @ Rafi v. Union of India and Others) decided on 18th January, 1991, Criminal writ No 363 of 1990 (Arayath Barambil Markkar v. Union of India & Ors.) decided on April 4, 1991 Criminal and Writ No. 522 of 1990 (Meharban Singh v. Union of India & Others) decided on 27th May, 1991. Learned Counsel for the respondent has not been able to point out any judgment to the contrary. In these circumstances I am clear in my mind that the grounds of detention served upon the petitioner have been vague on account of the use of the term "or otherwise" and the clarification with regard to this term which ought have been contained in the grounds of detention itself was made available to the petitioner only vide memorandum dated 30th May, 1991 and thus not paripassu with the grounds of detention. On this ground alone the detention order cannot be sustained. In view of my aforesaid discussion the writ petition is allowed and order of detention of the petitioner is quashed. The petitioner is ordered to be released forthwith, if not required in any other case. Petition allowed