(1993) 09 DEL CK 0003

In the Delhi High Court

Case No : Criminal Writ Appeal No. 177 of 1993

Narender Pal Singh APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 14-09-1993

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)

Citation : (1993) 4 AD 301 : (1993) 52 DLT 269 : (1994) 1 RCR(Criminal) 636

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Ashok Arora, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This writ petition calls in question an order of detention dated 18/12/1991 made by the Joint Secretary to the Government of India, respondent No.2, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974(for short "COFEPOSA") directing the detention of the petitioner with a view to preventing him from acting in a manner prejudicial to the augmentation of foreign exchange.

(2) The facts arising from the grounds of detention are :Shri Waryam Singh resident of M-191, Greater Kailash New Delhi was indulging in illegal sale and purchase of foreign exchange and compensatory payments in collaboration with Shri Ravinder Pa! Singh Sethi resident of 20/8 Rajinder Nagar, New Delhi. On 16/08/1991 during surveillance of the letter''s residence. Shri Waryam Singh was seen boarding Car No. DL3CB 0397. This car was intercepted on Shanker Road and on search of the person of Shri Waryam Singh and the car the following recovers and seizures were made:1. Rupees 3000.002. Us $18,3. Uae Dirham 60.4. Saudi Rial 1005. Afganill906. Singapore S. 77. Documents.

(3) Thereafter, as a follow up action, certain properties were searched and

recovery of foreign currencies and documents were effected.

(4) Statement of Shri Waryam Singh was also recorded u/s 40 of the Foreign Exchange Regulation Act, 1973. in which he is alleged to have admitted that he transferred Us dollars 4,35,1350 abroad and receivedRs. 1,53,53.660.00in lieu thereof from different parties. From his statement it also appears that the petitioner and various other persons allegedly acted as conduits for transfer of foreign currency at the instance of Shri Waryam Singh and Shri Sethi. The petitioner is said to have transferred foreign exchange worth Us $ 4.5 lakhs abroad. In this process the petitioner allegedly earned a profit of Rs. 70 to 80 thousand in a period of one year.

(5) On 17/08/1991 the petitioner was arrested u/s 45 of the Foreign Exchange and Regulation Act. On 21/10/1991 the petitioner was released on bail. Thereafter on 18/12/1991 the detention order was made against the petitioner but the same was executed on 29/01/1992 after about a period of one year.

(6) Learned Counsel for the petitioner contends that there is a considerable delay in execution of the detention order, which shows that the Detaining Authority was not genuinely satisfied about the activities of the petitioner which needed to be curbed. His submission is that in case the petitioner was really indulging in the aforesaid activities, the order of detention would have been executed immediately as the whole object of the said order was to prevent the prejudicial activities of the petitioner which were not conducive to the augmentation of foreign exchange.

(7) No one has appeared on behalf of the respondents even today.The matter came up for hearing on 13/09/1993 but the Counsel for the respondents did not appear and due his absence the matter was allowed to stand over for the day Today again, when the matter was called no one appeared for the respondents. After waiting in vain for the Counsel for the respondents, matter is now being taken up for hearing at 3.45 p.m., at the fag end of the day as in the circumstances I feel I have no choice but to proceed with the matter in absence of the Counsel for the respondent.

(8) In the petition it is specifically alleged that though the detention order was passed on 18/02/1992 yet the same was not executed till 29/01/1993. It is further averred therein that when the petitioner came to know about the making of the said detention order the voluntarily surrendered on 29/01/1993. It is also stated that "long and undue delay in execution of the order of detention casts doubt on the genuineness of the Detaining Authority to detain the petitioner preventively".

(9) In reply to these averments of the petitioner, respondent No. 2 in his counter-affidavit has stated as follows :

"AS regards Ground I of the petition, it is submitted that it is absolutely wrong that the detenu was available at the given address. The detention order was issued on 18/12/1991 and since then concerted efforts were made to execute the order on the detenu but in vain. All out efforts were made to execute the order but the detenu was never available. Ultimately, an order u/s 7(1)(b) of the Act was issued by the Ministry declaring him absconder and also directing the petitioner appear before the police authorities. The order was finally executed on 29/01/1993when the detune/petitioner surrendered himself. Thus, the allegation made therein is denied. The order is legal and valid".

(10) The aforesaid reply does not disclose as to what effective steps were taken to execute the order of detention. There is nothing on record to show that any enquiry was made about the whereabouts of the petitioner which officer was deputed to execute the order is also not disclosed. The reply is vague and unconvincing. I am not satisfied with the Explanation rendered by respondent No. 2 for the delay in the execution of the order of detention. It appears that there was no actual need to detain the petitioner. In the circumstances it can be assumed that respondent No. 2 failed to apply his mind and did not arrive at a real and genuine subjective satisfaction about the necessity of passing the detention order with a view to preventing the petitioner from acting in a manner prejudicial to the augmentation of foreign exchange.

(11) Sk. Nizamuddin Vs. State of West Bengal, it has been held as under :

"...If there is any delay in arresting the detenu pursuant to the order of detention which is prima facie unreasonable, the State must give reasons explaining the delay. Vide Sk. Serajul v. State of West Bengal W.P., 2000 of 1973, decided on 9/09/1974. Since in the present case no Explanation for the delay has been given in the affidavit-in reply filed by the District Magistrate, we are not at all satisfied that the District Magistrate applied his mind and arrived at a real and genuine subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner".

(12) To the similar effect are the following two decisions of the Supreme Court and this Court :-1. Shafiq Ahmad Vs. District Magistrate, Meerut and Others, .2. Subash Chander v. Union of India and Others, 1991 (1) Cri745.

(13) The whole object and purpose of detaining a person under the preventive laws is to prevent him from indulging in activities which are needed to be curbed in the interests of the State. In case the detenu is left free for a considerable period of time even after making an order of detention against him, then it cannot be legitimately claimed that the detention order was made as there was real and imminent danger of the detenu continuing with the prejudicial activities of in future. Besides in a case of a delay in executing the order of detention live link or proximate connection between the prejudicial activities of the detenu and the detention order snaps. Since there is an unexplained and an unreasonable delay of about one year in executing the order of detention, it casts considerable doubt on the genuineness of the subjective satisfaction arrived at by the Detaining Authority in passing the impugned detention order. As the delay in

executing the order of detention has not been properly and satisfactorily explained in the counter affidavit of respondent No. 2, I have no hesitation in holding that the detention order stands vitiated.

(14) Learned Counsel for the petitioner points out that the main person namely, Shri Waryam Singh, who was running the whole show of hawala business, has already been released by the State on the advice of the Advisory Board. He submits that in view of this fact the detention order of the petitioner also stands vitiated. In support of his submission, he also relies upon a decision of this Court in Prem Singh v. The Administrator of the National Capital Territory of Delhi, (Cr.W.No.637 of 1992 rendered on 16/02/1993). Learned Counsel for the petitioner seems to be correct. Since Shri Waryam Singh the prime actor has been released by the State on the recommendation of the Advisory Board, there is hardly any justification in detaining the petitioner whose position does not appear to be worse than that of Shri Waryam Singh.

(15) In view of the aforesaid discussion, I have no hesitation in hold-ding that the order of detention is vitiated because of the delay in executing the same and also because of the decision Of the Advisory Board to let off Shri Waryam Singh for whom the petitioner is alleged to have been working.

(16) Accordingly, the rule is made absolute. The petition succeeds and the order of detention is quashed. The petitioner is directed to be released forthwith, if he is not wanted in any other case.

