

(1994) 07 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 135 of 1994

Om Parkash Kashmiri Lal Panjabi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-07-1994

Acts Referred:

Citation : (1994) 3 AICLR 477 : (1994) 3 RCR(Criminal) 333

Hon'ble Judges : V.K.Jhanji, J

Advocate : R.S. Randhawa, S.C. Mohunta, Advocates for appearing Parties

Judgement

V.K. Jhanji, J.(Oral)

1. This is a petition under Article 226 of the Constitution of India. Petitioner, Om Parkash Kashmiri Lal Panjabi is seeking a writ, order or direction, quashing the order of detention dated 29.12 1993 passed by respondent No. 2 being illegal, without jurisdiction and having been made for wrongful purposes, and not as a preventive, but as a punitive measure, and having been passed on vague, extraneous and irrelevant grounds, thus, rendering the same lacking in bona fide.

2. The petition has been filed at the predetention stage.

3. In brief, the facts are that the officers of the Directorate of Revenue Intelligence, on or about 3.8.1993, carried out a surprise check at Kandla Port and seized certain sealed containers purported to have been imported and containing lead scrap, but on opening of the containers, it was found to contain ballbearings instead of lead scrap as declared. On enquiry from the Custom Clearing Agents who had filled in the necessary forms, declaring therein that the import was made in regard to lead scrap, it was disclosed in a statement made before the custom authorities that they had received instructions from one Om Parkash Kashmiri Lal Panjabi, i.e petitioner, for clearance of the aforesaid goods, who had allegedly told the said Agents for declaration to the above effect that the consignment in question was in regard to the import of lead scrap and, therefore, the Customs Clearing Agents had filled in the necessary forms and

cleared the goods, which was the subject matter of seizure aforesaid. Petitioner apprehending his arrest, filed a petition under Section 438 Cr.P.C. seeking concession of anticipatory bail. The said petition was filed on 27.8.1993. Vide JUDGMENT dated 27.8.1993, the Gujarat High Court directed the petitioner to be present before the Director, Intelligence on 1.9.1993 and before the Court on 2.9.1993. On 7.9.1993, order giving concession of anticipatory bail was made absolute. The Directorate of Revenue Intelligence filed an application for cancellation of bail before the Gujarat High Court on 7.9.1993. On which, notice was issued for 30.12.1993. On 30.12.1993, the application was disposed of as the counsel appearing for the Department stated that the petitioner is not going to be arrested. It is worth while to mention at this stage that at the time of filing petition before the Gujarat High Court, the petitioner had given his address as "Om Parkash Kashmiri Lal Punjabi, 10, Krishna Colony, St. Xavier School Road, Navrangpura, Ahmedabad."

4. Before application for cancellation of anticipatory bail was decided by the Gujarat High Court, the petitioner showing himself/giving his address as "Om Parkash Kashmiri Lal Punjabi, r/o 63, Moore Avenue, P.S. Regent Park, Calcutta40," filed a writ petition before the Calcutta High Court on 22.12. 1993 for stalling the purported move to detain the petitioner in connection with import of said ballbearings at Kandla Port. The said petition came up for hearing before Shyamal Kumar Sen, J, on 7.12.1993. The following order was passed in the petition :

"In view of the urgency of the matter, requirement of Rule 27 of the Writ Rules is dispensed with.

Petitioner is directed to communicate this order along with copy of the writ petition upon all the respondents in the meantime and affirm affidavit of service.

There will be an adinterim order restraining the respondents from detaining the petitioner in pursuance of purported move to detain the petitioner Om Parkash Kashmiri Lal Panjabi under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, in connection with an alleged illicit importation of ball bearings at Kandla Port in connection whereof summon under Section 108, Customs Act, 1962, dated 22.10.1993 being No. F.No. DRI/AZU/INT.19/93, in connection whereof a showcause Notice bearing F.No. S/2073/93/SIB dated 27.11.1993 has been issued by the Collectorate of Customs, Customs House, Kandla, to the petitioner.

This interim order is passed on condition that the petitioner will not leave Calcutta without the leave of this court and the learned Advocate for the petitioner undertakes to comply with the above condition on behalf of his client. However, the petitioner is granted leave to attend the Courts and other judicial authorities at Delhi in connection with pending Criminal cases as and when required and he will report to the Officer in Charge of the local Police Station there and on his return to Calcutta after attending such cases, will immediately report

to the local Police Station here in Calcutta.

It appears that on identical matters, N.K. Mitra, J. and Umesh Chandra Banerjee, J, had passed interim orders in similar terms. It also appears that appeals were preferred against the adinterim orders before the Division Bench consisting of the then Chief Justice Hon"ble P.D. Desai and the Hon"ble Mr. Justice Shyamal Kumar Sen. The Division Bench upon hearing counsel appearing for the parties dismissed the appeals.

This interim order will continue for a period of two weeks.

Liberty is given to the petitioner to apply for extension of the interim order on the same application upon notice to the respondents. Liberty is also given to the respondents to apply for variation and/or modification of this order upon notice to the petitioner.

Let this matter appear as for orders on January 6th, 1994.

Let a plain copy of this order duly countersigned by the Assistant Registrar (Court) be handed over to the learned Advocate for the petitioner on his usual undertaking to apply for and obtain certified copy of this order.

Sd/ Shyamal Kumar Sen, J."

Notice of the writ petition was given to the respondents. When the petitioner came to know that his petition was going to be contested, he got the petition dismissed for nonprosecution. On a statement made by the counsel for the petitioner, the following order was passed by the Calcutta High Court on 10.3.1994:

"Mr. Banerjee, learned Advocate for the petitioner, states that he had instructions not to proceed with the matter. The Civil JUDGMENT is, therefore, dismissed for nonprosecution. Interim orders, if any, stands vacated.

Plain copy of this order, counter signed by Assistant Registrar (Court) be given to the learned Advocate for the petitioner, as prayed for.

At the time the petition pending at Calcutta High Court was withdrawn, it was not disclosed to the Court that the petitioner has already filed a petition in the Punjab and Haryana High Court for quashing the detention order at the predetention stage. The present petition was filed on 8.3.1994. The affidavit which was filed alongwith the petition is dated 6.3.1994. In para 23 of the affidavit as well as of the petition, petitioner has specifically averred that "the petitioner, however, had moved an application before Calcutta High Court when he was residing there, which he has withdrawn." This statement as contained in para 23 of the affidavit as well as the petition, on the face of it, is false as on that date when the affidavit was got attested, it was to the knowledge of the petitioner that the petition had not been withdrawn. In the present petition, the petitioner has shown himself to be resident of "281/B, Bawa Gangapuri Road, Netaji Colony, Panipat, Haryana."

5. In response to this petition, respondents took a preliminary objection with regard to the territorial jurisdiction of this court. Petition in order to give reply to this objection, filed a supplementary affidavit along with Annexures P2, P3, P4 and P5. Annexure P2 is the affidavit of one Om Parkash son of Pari Ram, stating that Om Parkash Panjabi son of Kashmiri Lal is his tenant and is residing as tenant in his house. The affidavit dated 30.3.1994 is attested and identified by the Executive Magistrate, Panipat. The other relevant annexure is Annexure P5, a certificate given by two residents of Panipat, Basant Lal and Kailash Kumar, which is attested by ASI Mohinder Singh Verma, Incharge of Police Post HUDA Colony, Panipat, and he in his attestation, stated that Om Parkash son of Kashmiri Lal Panjabi is residing in the house of Om Parkash son of Pari Ram and he is a respectable person in the colony. This certificate is dated 30.4.1994. On receipt of these documents, statement of Mohinder Singh Verma, ASI, was got recorded by the respondents under Section 108 of the Customs Act, on 12.5.1994. In his statement, Mohinder Singh Verma has stated that on 30.4.1994, one person Om Parkash Chuadhary, who is younger brother of Har Bhagwan Chaudhary alongwith two persons, came to him with an affidavit written on a stamp paper and told him that a certificate is required that Om Parkash son of Kashmiri Lal Panjabi lives as tenant in the house of Om Parkash Chaudhary. Since Om Parkash Chaudhary is a respectable person of the colony and his brother, Har Bhagwan Chaudhary is a member of the Municipal Committee, Panipat; therefore, on their request and keeping in view their own affidavit attested by both persons, Basant Lal and Kailash Kumar, and as well as on the asking of Om Parkash Chaudhary, he issued the certificate though he did not knew Om Parkash son of Kashmiri Lal Panjabi at all and he did not live there.

6. On 16.3.1994, the petition came up for hearing before H.K. Sandhu, J. On a prayer made by the counsel, arrest of the petitioner was stayed, which order continues till date.

7. Respondents have filed reply to the petition in which they have stated that order of detention was passed under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short, COFEPOSA Act) against the petitioner on 29.12.1993, and the petitioner is since evading detention by filing one petition or the other.

8. Mr. S.C. Mohunta, Sr. Advocate and Mr. R.S. Randhawa, Advocate, counsel for the petitioner, have contended that the order of detention is required to be quashed on the ground that it cannot be based on a single act, but on a series of acts, with a view to prevent him from smuggling goods in future. The counsel also contended that the petition can be filed at a predetention stage and in support of this submission, have referred to five categories of cases as described by the Apex Court in *The Additional Secretary to the Government of India and others v. Smt. Alka Subhash Gadia and another*, 1991(1) Recent Criminal Reports 677 (SC) : JT 1991(1) SC 549 . According to the counsel, order in the case of the petitioner has been passed for wrongful purpose, and not as a preventive, but as

a punitive measure, and having been passed on vague, extraneous and irrelevant grounds. Counsel have further contended that the case of the petitioner falls in two categories out of five categories so mentioned in Smt. Alka Subhash Gadia's case (supra). As regards the territorial jurisdiction, counsel submitted that the petitioner now being a resident of Panipat, is entitled to file the present petition. In support of this, the counsel have cited judgments of this Court in Ganpat v. State of Haryana, 1994(1) RCR 667 and in Ajaib Singh v. Union of India, 1994(1) RCR 683 .

9. In answer to the submissions made by learned counsel for the petitioner, Mr. Viney Mittal, Advocate, for the respondents, contended that the present petition is nothing but an abuse of process of the court. He has read in extenso the averments made in the reply and cited a judgment of Supreme Court in Criminal Appeal No. 662 of 1993, (The Administrator of the National Capital of Delhi, Raj Niwas, Delhi v. Prem Singh), wherein the Supreme Court has deprecated the interference by High Court of the detention order at predetention stage. Mr. Mittal also relied upon judgment of the Supreme Court in N.K. Bapna v. Union of India and others, 1992(3) Recent Criminal Reports 613 : JT 1992(4) SC 49 , and submitted that the respondents are not required to disclose the grounds of detention to the petitioner before detention till the grounds are actually served upon him in accordance with the provisions of the Act.

10. Having heard learned counsel for the parties at length, I am of the view that the present writ petition has not merit and deserves to be dismissed. I am in agreement with learned counsel for the respondents that the present petition is nothing, but an abuse of process of the court. When search and seizure was made on 3.8.1993, brother of the petitioner filed a petition for anticipatory bail on behalf of the petitioner, showing the petitioner to be resident of Ahmedabad. Before that petition could be decided by that Court, petitioner conveniently shifted to Calcutta High Court and filed a petition in order to frustrate the respondents from executing the detention order. He was successful in obtaining an adinterim order, but when he found that on contest his petition would be defeated, he without disclosing that he had already filed a petition in this Court, got his petition dismissed as withdrawn. In the present petition supported by an affidavit, he has made statement that petition filed by him in Calcutta High Court has since been withdrawn. In the petition, neither the particulars of the petition filed in the Calcutta High Court were disclosed, nor the order passed thereon was disclosed. Three different addresses were given by the petitioner at the time when petition was filed before the Gujarat High Court, Calcutta High Court and this Court. When it was brought to the notice of this Court that the petitioner is making a false statement, he obtained a certificate from Basant Lal and Kailash Kumar, showing the petitioner to be tenant. On going through the averments made in the petition, I find that the case of the petitioner does not fall in either of the following five categories :

(i) that the impugned order is not passed under the Act under which it is

purported to have been passed,

(ii) that it is sought to be executed against a wrong person.

(iii) that it is passed for a wrong purpose,

(iv) that it is passed on vague, extraneous and irrelevant grounds, or

(v) that the authority which passed it had no authority to do so."

I am further of the view that as per judgment of Supreme Court in N.K. Bapna's case (supra), the respondents are not required to furnish grounds of detention to the petitioner before order is actually executed. As and when order of detention is executed, petitioner would certainly be entitled to grounds of detention according to provisions of the Act. Without there being any grounds of detention on the record of this case, this Court cannot go into the legality or illegality of the grounds of detention. As regards the territorial jurisdiction, it is not necessary to go into the respective contentions of counsel for the petitioner that mere residence of a person would confer jurisdiction on the Court to entertain a petition under Article 226 of the Constitution of India, when in the facts as disclosed by the respondents in the written statement, I am satisfied that the averment made in the petition that petitioner is resident of Panipat, is false.

11. Faced with this situation, learned counsel for the petitioner contended that the present petition be adjourned for a month as the case of other persons, who have been detained in connection with same matter in which petitioner is sought to be detained, is coming up before the Advisory Board and, therefore, this matter may be decided in light of the order which the Advisory Board may pass in those cases. Counsel also contended that in case this Court is not prepared to accept this contention, then the petition may be dismissed as withdrawn with permission to the petitioner to file a fresh petition on the same cause of action after the decision of the Advisory Board. Both these contentions of the counsel cannot be accepted for the reason that until and unless any of the five categories as mentioned in Alka Subhash Gadia's case (supra) is established, the Court cannot interfere at the pre detention stage, otherwise the very object of preventive detention would be frustrated. The Supreme Court in Prem Singh's case (supra) had not accepted the view of the Delhi High Court where order of detention was quashed at the predetention stage on the ground that the Advisory Board had rendered the advice for release of other detenus similarly placed, as the petitioner in this case. Petitioner, if permitted to withdraw the present petition with a liberty to file a fresh one, it would perpetuate the wrong and frustrate the effort of the respondents to execute the detention order. In order to curb the tendency of the one like the petitioner to file false affidavits, for obtaining favourable orders. I am of the view that not only this petition deserves dismissal with special costs, but the petitioner as well as those who have filed false affidavits/certificates are liable to be prosecuted.

12. Consequently, this writ petition stands dismissed with special costs which are

quantified at Rs. 20,000/. A direction is issued to the Registrar (General) of this Court to file a complaint before an appropriate Court against Om Parkash Chaudhary son of Pari Ram, who has given affidavit dated 30.3.1994 (Annexure P2) showing the petitioner to be his tenant, and against Basant Lal and Kailash Kumar for giving certificate (Annexure P.5) and also against the petitioner for filing a false affidavit in this Court.