

(1985) 05 CAL CK 0014
In the Calcutta High Court
Case No : Criminal Misc. No. 59 of 1985

Om Prakash Modi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-1985

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 108, 111, 2

Citation : (1986) 7 ECC 113 : (1986) 6 ECR 479

Hon'ble Judges : Sankar Bhattacharyya, J; Monoj Kumar Mukherjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Monoj Kumar Mukherjee, J.—Om Prakash Modi, the petitioner in this petition for a writ of habeas corpus under Article 226 of the Constitution of India, is detained by an order dated September 19, 1984 passed by a Joint Secretary to the Government of India, Ministry of Finance (Department of Revenue). The order was passed in exercise of the powers conferred on him by Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA for short) with a view to preventing the petitioner from smuggling goods, abetting the smuggling of goods and engaging in the transporting of smuggled goods. The sum and substance of the grounds of detention communicated to the petitioner, which run through 30 pages, are as under.

2. On the basis of a secret information the Customs Officers of the Diamond Harbour Preventive Unit intercepted one jeep and one white Ambassador car at Kulpimore, 65 kms. south of Calcutta, on March 29, 1984. The vehicles were coming from Kakdwip, a place 30 kms. south of Kulpimore, towards Calcutta. There was another chocolate coloured Ambassador car at some distance behind those two vehicles which fled away towards Kakdwip on seeing the Customs

Officers and could not be intercepted. The intercepted jeep and the Ambassador car were searched and 74,831 pieces of wrist watches valued at Rs. 40,56,100 were recovered therefrom. There were three occupants, Mrinal Saha, Kanwarlal Jain and Amal Singh, in the jeep and the two occupants of the Ambassador car were Govindlal Modi and Md. Kalachand. Interrogation of those persons revealed that a trawler named "King Fisher" had been used to bring those watches from a foreign ship and that the watches were off loaded at Harwood point, Kakdwip. The trawler was located while it was inside a canal in Kalinagar area at the extreme end of No. 8 ghat of Kakdwip and was searched. The search resulted in recovery of two pairs of binoculars and one compass, all of foreign origin, valued at Rs. 2,200. The five occupants of the two vehicles and the ten crew members on board of the said trawler were arrested and the wrist watches, binoculars and the compass were seized under the Customs Act, 1962 on the reasonable belief that the said goods were smuggled and were liable to be confiscated under the provisions of the Customs Act, 1962 as they failed to produce any evidence, documentary or otherwise, to show legal possession and bona fide acquisition of those goods. The jeep, the Ambassador car and the carrier trawler were also seized for carrying smuggled goods.

3. On April 19, 1984, on receipt of further information the said Diamond Harbour Customs Preventive Unit searched the premises of one Smt. Himangini Jana of village Ganeshpur within the police station of Kakdwip and recovered and seized 22,720 pieces of electronic wrist watches of foreign origin valued at Rs. 9,08,800; and one brief case containing incriminating documents was also seized.

4. In connection with those two seizures various persons were interrogated including the occupiers of the jeep, the Ambassador car and the trawler and their statements were also recorded u/s 108 of the Customs Act and pursuant thereto further searches were conducted. From the materials collected from such interrogations, statements recorded u/s 108 of the Customs Act, and the searches conducted, the detaining authority concluded that the petitioner was the owner of the trawler in question and he had been smuggling goods, abetting the smuggling of goods and engaging in transporting smuggled goods. The details of the statements made by the persons interrogated and of the seizures have been incorporated in the grounds of detention.

5. In assailing the order of detention, Mr. Dipankar Gupta, the learned Advocate appearing for the petitioner, first contended that though the seizure was made on March 29, 1984 the order of detention was not made till September 19, 1984 which clearly indicated that there was no imminent apprehension that the detenu was likely to engage himself in smuggling, abetting the smuggling of goods or engaging in transportation of smuggled goods. According to Mr. Gupta such unusual delay in passing an order of detention made the same stale and liable to be set aside. In support of his contention he relied upon a judgment of the Supreme Court in the case of Rabindra Kumar Ghosel alias Buli Vs. The State of West Bengal, where an order of detention issued u/s 3 of the Maintenance of

Internal Security Act, 1971 was held to be bad as it was passed 3 months after the alleged date of criminal activity of the detenu. While on the point Mr. Gupta further contended that in a given case the delay in passing an order of detention might not be fatal if it was properly explained ; but in the instant case, Mr. Gupta argued, the detaining authority did not explain the delay in the affidavit-in-opposition he filed, even though the ground of delay was specifically pleaded in the petition under Article 226 of the Constitution. Having given our anxious consideration to the submission of Mr. Gupta we do not find any substance therein.

6. In the case of Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others, on which the Learned Counsel for the respondents relied in repelling the contention of Mr. Gupta it was held:--

It is true that there must be a live link between the grounds of criminal activity alleged by the detaining authority and the purpose of detention, namely, inhibition of prejudicial activity of the species specified in the statute. This credible chain is snapped if there is too long and unexplained an interval between the offending acts and the order of detention.... No authority, acting rationally can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of statutory requirement. But no mechanical test by counting the months of interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. (emphasis supplied)

7. When judged in the light of the principle laid down in the above quoted passage there is no escape from the conclusion that there was no delay whatsoever in passing the order of detention. In the instant case the petitioner was not apprehended either in the trawler or in the vehicles intercepted ; and it was during the investigation that was carried on thereafter that the petitioner's involvement came to light. The grounds of detention also indicate that the petitioner was summoned so that his statement could be taken into consideration but then he did not appear before the investigation agency and made himself scarce. On perusal of the entire grounds of detention we are satisfied that the passage of time from the date of seizure and the making of the order of detention was not occasioned by any laches or laxity on the part of the agencies concerned but was the result of a full and detailed consideration of the facts and circumstances of the case revealed through investigation and interrogation of a large number of persons who were somehow or other connected with the activities in question. We are, therefore, unable to hold that there was any undue delay in making the order of detention. Since the grounds of detention themselves explained the delay any further explanation by the detaining authority in respect thereof in his affidavit-in-opposition was not called for.

8. Mr. Gupta next contended that since the detaining authority obtained satisfaction of the involvement of the petitioner in the activities in question only from the statements made by the others, who were accomplices and since no incriminating articles were recovered from the premises of the petitioner when searched, the petitioner could not be successfully prosecuted in a court of law and consequently no order of detention could be passed on the basis of such materials.

9. Reliance was placed by Mr. Gupta on the case of *Bimla Dewan Vs. Lieutenant-Governor of Delhi*, wherein an order of detention passed under the National Security Act was set aside as some of the grounds related to instances of criminal prosecutions against the detenu, which ended in-orders of acquittal in his favour.

10. In our considered view the above decision has no manner of application in the instant case as no order of acquittal has been recorded in favour of the petitioner. It may also be mentioned that the jurisdiction to make orders for preventive detention is different from that of judicial trial in courts for offences. The preventive legislations confer in the authorities concerned a power to make orders for preventive detention on their subjective satisfaction on grounds of suspicion of commission in future of acts prejudicial to the purposes formulated in the respective legislations, whereas for a successful judicial trial proof beyond all reasonable doubt is absolutely essential.

11. Mr. Gupta next contended that the grounds of detention were not germane for a satisfaction that the petitioner was engaged in smuggling goods and since that was one of the three purposes for passing the impugned order, the same is bad. In elaborating his contention Mr. Gupta submitted that from the materials appearing in the grounds of detention the detaining authority might have obtained the satisfaction that the petitioner was abetting the smuggling of goods or was engaged in transporting smuggled goods but in no case it could be said that he was smuggling goods. The materials appearing in the grounds of detention clearly indicate that the petitioner was the owner of the trawler in question and in this trawler smuggled goods were brought and the finances thereof were provided by the petitioner. The above acts of the petitioner clearly come within the various clauses of Section 111 of the Customs Act and consequently such illegal importation brings the petitioner within the definition of smuggling of goods u/s 2(39) of the Customs Act. This contention of Mr. Gupta therefore also fails.

12. As no other point has been raised in support of this petition and as the procedural requirements of COFEPOSA have been complied with, the petition fails and the rule is discharged.