

**(1989) 02 MAD CK 0021**

**In the Madras High Court**

**Case No : Writ Petition No. 9678 of 1988**

P. Subramani

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

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**Date of Decision : 28-02-1989**

**Acts Referred:**

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —  
Section 11, 3, 3(1)  
Constitution of India, 1950 — Article 22(5), 226

**Citation : (1990) CriLJ 1106**

**Hon'ble Judges : Janarthanam, J; David Annoussamy, J**

**Bench : Division Bench**

**Advocate : B. Kumar, for the Appellant; V. Sairam, for S. Srinivasan and T.R. Rajaraman, for the Respondent**

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## **Judgement**

Annoussamy, J.—This is a petition under Art. 226 of the Constitution of India, for the issuance of a writ of habeas corpus quashing the

order of detention passed against the detenu and setting him at liberty.

2. The order of detention was passed by the Government of Karnataka under S. 3(1)(iii) of the Conservation of Foreign Exchange and Prevention

of Smuggling Activities Act, 1974 with a view to prevent the detenu from engaging in keeping and transporting smuggled goods.

3. The short facts which led to the detention are as follows :

On 13-1-1988 at 06.45 hours, the Superintendent of Customs and Central Excise, Head quarters, Preventive II Belgaum and his staff

accompanied by witnesses entered the second class Bogie No. 6738 of Bombay Bangalore Udyan Express train No. 129 which had arrived at the

Gulbarga Railway station on information and reasonable belief that one passenger sitting on Seat No. 32 of the said bogie was carrying smuggled

goods with him. The detenu was found actually sitting as stated above and disclosed his name and address and he was found carrying one brown

colour raxine bag. He produced a second class train ticket from Dar to Bangalore City. He was taken to suits No. 4 of Hotel Pariwar, Gulbarga.

A search was made and in the course of which gold weighing 933.280 grams were found and recovered from the detenu. The Panchas, who are

experienced persons in gold business, had tested all the gold pellets with foreign markings under seizure with touchstone method and ascertained

their purity as 24 cts. Further the petitioner has also given statements incriminating himself.

4. "The petitioner first sent a representation to the Home Secretary, Karnataka on 8-6-1988, which was rejected on 16-6-1988. He gave a

second representation on 9-7-1988 to the jail authority. This writ petition was filed on 22-8-1988 in which it was complained that the second

representation in which vital document were asked for were not so far supplied. The counter of the respondents was that the alleged second

representation was never signed by the detenu and, therefore it was not forwarded by the jail authority. Then a third representation was sent by the

detenu duly signed and addressed to the Chief Secretary to the Government of Karnataka on 17-10-1988. The petitioner filed an additional

affidavit on 21-8-89 stating that the third representation which was sent and for which acknowledgment was obtained, was not so far replied. It is

also to be stated that the petitioner approached first the Karnataka High Court and his writ petition to set aside the order of detention was rejected

in the month of April 1988.

5. The first point which emerged for our consideration is, whether this Court has got jurisdiction to entertain this petition ?

6. A two fold argument was put forth by the learned counsel for the respondents. He stated that since the seizure was effected in Karnataka, the

Karnataka High Court alone would have jurisdiction and the fact that the order was served upon the petitioner would not be of any consequence.

In this connection, he relied on a decision of the Supreme Court reported in State of Rajasthan and Others Vs. Swaika Properties and Another,

where in it was held as follows :

"The mere service in the State of West Bengal of notice under S. 52(2) of the

Rajasthan Urban Improvement Act (5 of 1959) on the owner of a land situated in the State of Rajasthan intimating of the State Government's proposal to acquire that land for public purpose does not constitute an integral part of the cause of action sufficient to invest the Calcutta High Court with jurisdiction to entertain a petition under Art. 226 of the Constitution challenging the validity of the notification acquiring the land."

This ratio cannot be imported to a case of detention which is quite different. In this case, not only the order was served upon the detenu in Salem in Tamil Nadu his liberty was deprived in the same place and the grounds of detention were also served on him at the same place. Therefore, the essential act of detention physically happened in Tamil Nadu as far as the petitioner is concerned and, therefore, a considerable part of the cause of action took place in the State of Tamil Nadu, conferring jurisdiction upon this Court.

7. The second argument is that the petitioner has already filed a writ petition before the Karnataka High Court, and, therefore, he "should not be allowed to file a further writ petition regarding the same order of detention. In this connection, he relied on the following portions of a judgment of the Allahabad High Court in Dr. (Smt.) Bharti Raj Vs. Sumesh Sachdeo and Others, .

No second petition for writ of habeas corpus lies to the High Court on a ground on which a similar petition had already been dismissed by the Court. However, a second such petition will lie when a fresh and a new ground of attack against the legality of detention or custody has arisen after the decision of the first petition and (also) where for some exceptional reason or ground has been omitted in an earlier petition, in appropriate circumstances, the High Court, will hear the second petition on such a ground for ends of justice. In the last case, it is only a ground which existed at the time of the earlier petition, and was omitted from it that will be considered. Second petition will not be competent on the same ground merely because an additional argument is available to urge with regard to the same.

We are at a loss to understand how this observation will help the case of the petitioner. It has been made clear in the judgment itself that a second petition would lie even if a ground has been omitted in the earlier petition. The only bar is that a new petition cannot be filed on the same ground. In

the case relied on by the learned counsel, the same ground was agitated with the help of an additional argument. That is what the High Court of

Allahabad considered and held as not possible. It is not so in this case as we will see later. Since what is challenged now is the absence of a reply

to the third representation dt. 17-10-88, which fact happened long after the rejection of the writ petition by the Karnataka High Court, we hold

that this Court has ample jurisdiction to entertain this writ petition.

8. The main ground urged by the learned counsel for the petitioner is in his third petition, he has prayed for not only for setting aside the detention

order but also applied for certain vital documents, namely, the mahazar for search of his house, the mahazar for search of his son's place of

business and the certificate of forensic test showing the purity of gold and that those documents were never given to him. He has stated that this has

deprived him of the possibility of making further prayer for revocation either to the State Government or to the Central Government.

9. As per Art. 22(5) of the Constitution a person who is detained has got a right to make a representation. That constitutional right as such can be

exercised only once and the Courts have consistently held that such representation should be considered with due diligence. The order of detention

is one which can be suspended and revoked at any time either by the authority who passed the order of detention or by any superior authority as

provided under S. 11 of the Act. In fact, as soon as the order of detention is passed by the State Government or by the officer empowered by the

State Government, it shall within 10 days, forward to the Central Government, a report in respect of the order as mentioned in S. 3 of the Act.

Therefore, apart from the constitutional representation which had to be considered with utmost diligence, it is open to the petitioner to file as many

representations as he thinks useful to put forward his case. The delay in considering the case will not be viewed with the same severity as the delay

in considering the first constitutional representation.

10. In the present case, the main grievance of the petitioner is that he has not only made a representation, simpliciter, but he has made a specific

request for documents and with the help of those documents he could have made further representations either to the State Government or to the

Central Government and that the State Government by non-supply of those

documents had deprived him of his valuable right to pray for revocation of the order. In fact, the documents he applied for and which we have enumerated above, are vital documents. The non supply of the documents so far, though the request emanated in October 1988, will certainly constitute a violation of the provisions of the Act, and would, therefore, render the order null and void

11. The learned counsel for the respondents contended that the third representation was not sent to the proper authority, that as per the grounds of detention served upon the detenu, he should forward the representation to the Secretary to the Home Department and that having sent it to the Chief Secretary to the Government, he cannot blame the Government for non-reply. This contention is unacceptable. No doubt, he should have normally sent it to the Home Secretary. But nothing prevented him from sending it to any body of the Government and that body of the Government has a duty to forward the representation to the officer in charge of the matter. If the detenu has sent his representation to a person other than the one mentioned in the grounds of detention, he should himself be blamed for the delay which might have occurred in the transit of the representation. We see no ground to accept this contention and this contention of the learned counsel for the respondents is, therefore, rejected.

12. The next contention is that the plea of non-supply of the documents and the prejudice that the detenu suffered on account of that was not taken in the additional affidavit filed by the detenu in which he referred to the third representation. It has to be remembered that the additional affidavit came into existence upon the respondents stating that his second representation was not signed and, therefore, was not forwarded. It is for that reason that the third representation was sent by the detenu and in support of the fact of his sending a third representation he had filed his additional affidavit. But this additional affidavit has necessarily to be read along with the earlier affidavit and all the pleas taken in the earlier affidavit would certainly be available to the detenu if the documents and facts relate to the point which had been taken. In this case the point taken is the prejudice to the detenu by non-supply of the documents. That was taken in the earlier affidavit and the fact of non-supply has been established in this subsequent affidavit. This contention is also rejected.

13. In the result, the petition is allowed, the order of detention is set aside and the detenu shall be set at liberty forthwith unless required otherwise.

14. Petition allowed.