

**(1994) 05 DEL CK 0035**

**In the Delhi High Court**

**Case No :** Criminal Writ Appeal No. 12 of 1994

Pawan Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 01-05-1994

**Acts Referred:**

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

Foreign Exchange Regulation Act, 1973 — Section 40

**Citation :** (1994) 54 DLT 674 : (1994) 29 DRJ 438

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

**Bench :** Single Bench

**Advocate :** Naveen Malhotra and V.K. Shall, for the Appellant;

## Judgement

V.B. Bansal, J.

(1) Pawan Kumar, petitioner has challenged the order of detention dated 10.5.1993 passed u/s 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act (hereinafter referred to as "the Act") in pursuance of which, he was detained on 20.9.1993. The order, aforesaid, was pasted by Shri Mahinder Prasad, Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance for the detention of Pawan Kumar and to be detained with a view to preventing him in future from acting in any marine prejudicial to the augmentation of foreign exchange. The grounds of detention were served upon the petitioner simultaneously when he was detained.

(2) Briefly stated the facts leading to the passing of the detention order against the petitioner are that the Delhi Zonal Office of Enforcement Directorate had information about one Atam Prakash indulging in illegal sale/purchase of foreign exchange and sending the same to one Nirmal Dhanuka of Kathmandu, Nepal through some persons including the petitioner Pawan Kumar: On the basis of specific information, officers of the Enforcement Directorate apprehended the petitioner while going to Kathmandu by Royal Nepal Airlines Flight No. RA-218 on

26.1.1993. During interrogation, Pawan Kumar admitted having kept concealed 2 packets of foreign exchange in his rectum ,which, he voluntarily ejected out and on opening, foreign currency of 750 ponds, Dm 2000 and Usd 3085 besides one loose sheet were recovered from Bundle No. I while Ponds 1400, Usd 9022, Canadian Dollars 250 and Dm 4000 were found from the second bundle. In his statement, u/s 40 of the Foreign Exchange Regulation Act, Pawan Kumar admitted the recovery of the foreign exchange in the manner stated above, and also gave facts as to how the foreign exchange was being given to him by Atam Prakash and how he was taking the same to D Kathmandu. Atam Prakash, Vinod Kumar and others were also examined and all the facts were considered before passing of the impugned order.

(3) I have heard learned counsel for the parties and have also gone through the record.

(4) The petitioner has taken up many grounds to challenge the order of detention. However, learned counsel for the petitioner has restricted his submissions only on one ground i.e. the inordinate delay in the execution of the detention order. Learned counsel for the petitioner has submitted that there has not been any valid Explanation as to why the detention order dated 10.5.1993 was not executed till 20.9.1993 and that on account of absence of any valid Explanation ,the detention order is liable to be quashed. These averments have been made in Ground No. "G" and "H" in the writ petition. The same read as under:- G) Because the petitioner say and submit that there is a long and unreasonable delay in the execution of the detaining order. The order of detention has been passed against the petitioner on 10.5.1993 and the petitioner was all the time available at his house. No application for cancellation of bail was moved, no complaint has been filed against him, nor he was summoned by the Sponsoring authorities or by the detaining authority. Order of detention has been served upon him on 20th September, 1993 at his residence. Petitioner submit that there is no live and proximate link between the incident mentioned in the grounds of detention and the avowed purpose of the detention. The link has already been snapped. The long and unreasonable delay is bad in law. H) Because the petitioner submit that the order of detention has been executed upon him after the period of approximately five months, petitioner was not evading his arrest, nor he was absconding. No proceedings u/s 7 of the Cofeposa has been initiated against the petitioner, shows the negligence and slipshod manner in which the liberty of the petitioner has been curtailed by the detaining authority. The satisfaction of the detaining authority is bad in law and shows the casual exercise of powers. Order of detention has been served and passed for punitive purpose and not the preventive purpose.

(5) Learned counsel for the respondent has submitted that efforts were made to apprehend the detenu at both his address at Delhi and Patiala where he was not available and as soon as he could be found, he was detained and the grounds of detention were served upon him. He has, thus, submitted that there has not

been any inordinate delay. It would, at this stage, be appropriate to reproduce the reply to grounds G & H which reads as under : G & H. In reply to para (G) & (H), it is stated that there has been no delay in execution of the order. The petitioner after the bail, was not available either in Delhi or at his Patiala address. He was apprehended on 18.09.93 in Patiala and on the same day he was served upon the detention order.

(6) The only question, thus, for consideration is as to whether the respondent has been able to bring on record any material to indicate as to what steps were taken during all this period for the arrest of Pawan Kumar. The best material in this regard could be available with the respondents. No such material was placed on record with the counter affidavit. Learned counsel for the respondent on his request, was given time to produce the file of the department to indicate whether any steps were taken for detaining the petitioner in pursuance of order of detention. Learned counsel for the respondent however, frankly conceded that the file did not give the details of steps which could be taken for executing the order of detention. It is, thus, clear that there is no material to indicate that the petitioner was absconding or that he was not available at his house. Petitioner has taken a specific plea that he was available at his house during all this period. Admittedly, no steps were taken by the respondents in terms of section 7 of the Act, whereby, the appropriate Government is empowered to make a report, in writing, of the fact to a Metropolitan Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure apply in respect of such a person and property as if the order directing that he be detained were a warrant issued by the Magistrate. The appropriate Government can also issue an order notifying the same in the official gazette, directing such person to appear before such officer at such place and within such period as may be specified. However, there is no Explanation forth-coming as to why such steps were not taken. There is not even an averment that any surveillance was kept at the house of Pawan Kumar so as to apprehend him as soon as he could be available. This delay, which is unexplained and not justified, is clearly indicative of the fact that the appropriate Government was not and could not have been satisfied that the preventive custody of Pawan Kumar was necessary to prevent him from his prejudicial activities to the augmentation of foreign exchange. I find support in this regard from the case Shafiq Ahmad versus District Magistrate, Meerut and others land T.A. Abdul Rahman versus State of Kerala and others AIR 1990 Sc 115, V.V. Iqbal versus Union of India and others 1991 (1) Crimes 166, and Crl.A. 297 of 1994 Narendra Punjabhai Shah-appellant versus Union of India and others-respondents decided by Supreme Court on 28.4.1994. Same has been the view of this court in many cases, namely, Man Mohan Singh versus Union of India & Others 1988 (1) DL 1711, Brij Mohan Sethi Vs. Union of India and Another, ; Puran Singh versus Union of India & Others 1991 (1) Ccc 332 and Raj Kumar Mahajan versus Union of India & Others 1992 Jcc 416. In case Vishnu Kumur Shukla versus Union of India & Ors.

1199 3 JCC 495, the detention order was passed on 20.10.1992 and there was a delay of 20 days, which was not explained on account of which, the order of detention was held to have been vitiated on account of this delay. In case Ravi Kapoor versus Union of India & Ors. 11993 Jcc 194], there was an unexplained delay of more than 6 months and the order of detention was held to be not justified and thus, quashed.

(7) Following the aforesaid pronouncement and the fact that there is an unexplained delay of more than five and half months in the execution of the detention order, the only option available to me is to hold that the detention order stands vitiated and thus, can not be sustained.

(8) As a result, the writ petition is allowed and rule is made absolute. Order of detention dated 10.5.1993 is quashed and Pawan Kumar, petitioner is ordered to be released forthwith, if not required in any other case.