

(1985) 03 DEL CK 0044

In the Delhi High Court

Case No : Criminal Writ Petition No. 152 of 1984

Ponish Siva Kanthaswamy

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 18-03-1985

Acts Referred:

Citation : (1985) CriLJ 1511

Hon'ble Judges : Prakash Narain, C.J;Charanjit Talwar, J

Bench : Division Bench

Judgement

Prakash Narain, C.J.—The petitioner who has been indulging in international travel under different names with the help of different passports, was apprehended at Bombay Airport on 17th March, 1984, while he was seeing a movie in the transit lounge. He was booked as a passenger from Singapore to Dubai via Madras and Bombay by Air India Flight No. AI 415. The petitioner was accompanied on this flight by a friend responding to the name of Patrick Evgene who was also coming from Singapore and was booked to go to Paris via Madras and Bombay. One Babu Kunjappa was employed as a sweeper in the International Airport at Bombay. The customs enforcement authorities on a suspicion apprehended Babu Kunjappa and searched him. On search four kilograms of gold was found on his person. His statement was recorded which led to apprehending of the petitioner and Patrick Evgene. On a search two kilograms of gold was found from zipper bag of the petitioner and one biscuit of gold weighing 100 grams was recovered from his personal search. All the persons were arrested and their statements recorded. The petitioner was produced before a Metropolitan Magistrate on 20th March, 1984. He was remanded to judicial custody. On 7th May, 1984, the petitioner was enlarged on bail. On 24th May, 1984, an order of detention in respect of the petitioner was passed by the Government the State of Maharashtra under S. 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, so as to detain him with a view to preventing him from smuggling goods. Since the petitioner was on bail an effort was made to locate him. The petitioner was arrested at Madras

International Airport on 31st May, 1984, when was coming into India from abroad. The order of detention was served on him on 2nd June, 1984 and he was detained by virtue thereof from 2nd June, 1984.

2. Grounds of detention also dt. 24-5-1984, were served on the detenu on 2nd June, 1984. On 14th July, 1984, a communication was addressed on behalf of the petitioner by his counsel to the Government of the State of Maharashtra asking for certain documents. On 16th July, 1984, a representation was submitted to the Advisory Board. Another representation was submitted on 20th July, 1984, to the State Government. The State Government sent a reply dt. 6-8-1984, to the application for supply of documents. The Central Government rejected the representation made by the petitioner and communicated it by its letter dt. 8-8-1984. The State Government also by its communication dt. 8-8-1984, rejected the representation of the petitioner made on 20th July, 1984. The detention of the petitioner was confirmed which fact was communicated by letter dt. 16-8-1984. Another letter dt. 23-8-1984 similar to the one written earlier, was sent to the State Government by the petitioner for supply of documents. The request was declined by communication dt. 15-9-1984.

3. The petitioner has moved this Court praying that the detention order dt. 24-5-1984 be quashed, his continued detention be held as illegal and he be ordered to be set at liberty.

4. Although the petitioner has taken various grounds in this petition yet before us only four grounds have been urged. We will deal with each of them. While dealing with each of them we would advert to, where necessary, the counter-affidavits filed on behalf of the respondents by way of return to the rule nisi.

5. The first contention on behalf of the petitioner is that the opinion of the Advisory Board was not given in time. In other words, it was given beyond the statutory time for the same under the law. The petitioner's contention is not well founded. Admittedly, the petitioner was detained on 2nd June, 1984, by virtue of the impugned order of detention dt. 24-5-1984. The Government of State of Maharashtra forwarded a report to the Central Government as required under S. 3(2) of the aforesaid Act on 31-5-1984. It referred the case for the opinion of the Advisory Board on 28-6-1984. The Advisory Board gave its opinion which is dt. 8/9th August 1984. The detention was confirmed by an order dt. 16-8-1984. We do not see how there is any delay or non-compliance of the statutory requirement of time limit.

6. The next contention is that the documents asked for by the application of 14-7-1984, were not supplied. In this context learned counsel for the petitioner invited our attention to application dt. 14-7-1984, and particularly mentioned the documents set out at Serial Nos. 4, 7, 9, 11 and 15 in the list of documents which were not supplied. Documents at Serial Nos. 4, 5, 7, 10, 11, 12, 14, 15 and 17, which were pointed out by way of detailed reference to the application of 14-7-1984, are documents which are not referred to even, much less relied

upon, by the detaining authority in the grounds of detention. It is refreshing to see that in the reply sent, the petitioner/petitioner's counsel has been informed that not only these documents were not in the possession, power or control of the detaining authority but that if the petitioner wanted those documents whom he should contact and wherefrom he could possibly obtain them. There was no responsibility, in our view, on the detaining authority to procure these documents and supply the same to the petitioner. With regard to documents at Serial Nos. 11 and 12, these pertained to Court record in the proceedings pending in the Court of Chief Metropolitan Magistrate. The detaining authority had not relied on them nor has he referred to them. All the same the petitioner was informed from where he could obtain those documents. As before, our view is that the detaining authority was not required to obtain these documents and supply the same to the petitioner. Therefore, there is no force in this contention either.

7. It was then urged that relevant documents which could have affected the subjective satisfaction of the detaining authority, one way or the other, were not placed before it. The documents are mentioned in para 2 (grounds) of the writ petition. The most crucial document on which reliance has been placed by the learned counsel for the petitioner is the retraction supposed to have been made by the petitioner by a communication dt. 14-5-1984, and sent to Additional Collector of Customs. From where the petitioner gets the date "14th May" is not clear. According to the respondents this communication was undated and was not received in any of the offices of the sponsoring authority or the detaining authority till the date of the passing of the detention order on 24-5-1984. Mr. B. R. Handa, learned counsel for the respondents on instructions which he has received in writing from the respondents, states that the said communication was received on 5-6-1984 and was replied to on 7-6-1984. Therefore, there was no occasion for the detaining authority taking this communication into consideration before passing the detention order. In support of his contention that the communication was sent on 14th May, 1984, a receipt issued by the post office for a registered letter has been filed on behalf of the petitioner. It is not possible to decipher the date from the postal stamp on the photostat copy as filed. We asked the learned counsel for the petitioner if he could place before us the original postal receipt. He has told us that he has also been supplied with a photostat copy by the petitioner. Prima facie the photostat copy which is on record or is with the learned counsel does not appear to be a reliable document. There is no way to connect it with the letter of 14-5-1984. Certain other documents referred to in para 2(d), (f) and (g) of the petition are said to be documents which should have been placed before the detaining authority in order to enable him to make up his mind one way or the other. No particulars of these documents are given by the petitioner. We do not know on what dates these documents, if at all, came into existence. We cannot answer the query hypothetically or on suppositions.

8. The last contention is that there was delay in dealing with the representation of the petitioner which would be vocative of not only the statutory protection but

also Art. 22(5) of the Constitution. According to the petitioner his representation dt. 16-7-1984, was not disposed of till 8-8-1984 and, Therefore, the delay of twenty days or so is to be explained by the respondents. We find that the petitioner in this case has made a habit of wrongly instructing his counsel and prevaricating in his petition. From the original record, which we have seen, we find that the typed representation bore the date "16th July, 1984". This date was corrected in ink to 25th because it was signed by the detenu in jail before the Superintendent of Jail on 25-7-1984. It was then sent to the Central Government from Pune. The original endorsements on the original representation shown to us makes it clear that the Central Government received it on 4th August, 1984. There may have been some postal delay but for that the Central Government cannot be blamed nor can the petitioner take any advantage of that. It was disposed of on 6th/7th August, 1984, and communication rejecting the representation was dispatched on 8th August, 1984. There is thus no delay in dealing with the representation.

9. The result is that we find no force in this petition. We discharge the rule and dismiss the petition.

10. Petition dismissed.