

(1998) 11 CAL CK 0029
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, W.P. No. 12945 (W) of 1998

Poonam Lachwani

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-11-1998

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 124

Citation : (1999) 1 CALLT 261 : (1999) CriLJ 910

Hon'ble Judges : Vidya Nand, J; Gitesh Ranjan Battacharjee, J

Bench : Division Bench

Advocate : Mr. Bhaskar Sen, Mr. Pradip Kr. Ghosh and Mr. S.K. Mehta, for the Appellant; Mr. Promode Ranjan Roy and Mr. Dilip Kr. Chatterjee, for the Respondent

Judgement

G.R. Bhattacharjee. J.

1. This is an application under Article 226 of the Constitution challenging the order of detention of the detenu passed in exercise of the power conferred by section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) (COFEPOSA, for short). The applicant who is the wife of the detenu has filed this application on behalf of the detenu. The order of detention was passed by the Joint Secretary to the Government of India, Ministry of Finance, Revenue Department on the 15th June, 1998. The said order of detention was executed against the detenu on 19.6.98 and since then he is in detention in the Dum Dum Central Jail, Calcutta. The detention, as the order purportedly announced, was considered necessary with a view to preventing the detenu in future from smuggling goods. From the background narrated and reflected in the said detention order it appears that on 27.7.97 the detenu, posing himself as a uniformed officer of Bhutan Customs booked with Jet Airways four packages containing wrist watches and stereo

system, all of foreign origin, at Bagdogra Airport, West Bengal as cargo from Royal Bhutan Customs for onward despatch to Mumbai under a false declaration that the packages contained "Dry Cell". It also appears that the detenu used fake certificate, rubber stamp, signature etc. which were not genuine. It further appears that he used false name, telephone number, etc. The grounds of detention also show that on 8.10.97 the residence of the detenu was searched, and seizure was also made and the detenu was arrested on that very days. However he was released on bail on 27.11.97. His signatures were also verified by getting the same examined by hand writing expert. The hand writing expert submitted his report on 1.1.98. Show-cause notice was issued to the petitioner u/s 124 of the Customs Act, 1962 on 22.1.98. The detention order was passed on 15.6.98 as we have noted and the same was executed on 19.6.98. Documents relied upon in the grounds of detention were served on the detenu on 22.6.98.

2. The detenu made a representation against his detention to the Joint Secretary, Ministry of Finance, Deptt. of Revenue, Govt. of India on the 4th July, 1998 through the Superintendent of Dum Dum Central Jail. The said representation dated 4.7.98 was rejected by the Joint Secretary on 3.8.98 and it appears that the said representation was also rejected by the Secretary to the Government of India, Department of Revenue on 6.8.98. The detenu also made another representation, referable to section 11, to the Secretary, Govt. of India, Ministry of Finance, Department of Revenue on 11th July, 1998 through the Superintendent, Dum Dum Central Jail. The said representation was however not yet disposed of at least till the filing of the affidavit-in-reply on 21.8.98.

3. In challenging the detention of the petitioner it is submitted by the learned Advocate for the petitioner that there was inordinate and unexplained delay in passing the order of the detention inasmuch as the seizure at Bagdogra Airport was made on 27.7.97 and the detention order was passed on 15.6.98. The question is whether this time-gap by itself is sufficient to warrant a finding that the order of detention is bad due to lapse of time. In this connection we may however refer to the decision of the Supreme Court in *Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others*, . There it has been held *infer alia* that the rule as to unexplained delay in taking action is not inflexible and that in cases of mere delay in making of an order of detention under a law like the COFEPOSA Act enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who owing to their large resources and influences have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of delay in making of an order of detention assume that such delay. If not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. In the present case, as we have seen, after the seizure of the offending articles at Bagdogra Airport a lot of investigation had to be made at different places to locate the identity of the culprit and to trace out necessary evidence connecting the involvement of the

culprit with the offending acts of smuggling. Obviously, this necessarily took some time and as we have seen, after collection of necessary materials show-cause notice was issued to the detenu towards the end of January 1998. In paragraph 12 of the affidavit-in-opposition it is stated, and we must say rightly, that the processing time in this case has to be reckoned from end of January 1998 and considering the fact that some of the documents considered relevant for proper appreciation of the case by the detaining authority were called for and placed before the detaining authority (which consumed some time) and also considering the usual process involved in preparing the grounds of detention and security of the large amount of materials relied upon, the time-gap that has elapsed cannot be said to be unduly long in this case. It is also further stated therein that considering the nature of the prejudicial activity indulged in by this detenu, the role and involvement therein, the modus operadi applied by him, the detaining authority was satisfied that the nexus between the date of incident and passing of this detention order as well as the object of the detention had been maintained. Having regard to the facts and circumstances of the case and the explanation offered regarding the time-gap before passing of the order of detention we are of the opinion that it cannot be said that the detention order is vitiated or bad for any delay in passing the same.

4. It has however been contended that there was unwarranted delay in disposing of the representation of the detenu dated 4.7.98 for which his continued detention is bad in law and is liable to be revoked. It is further submitted that there has also been inordinate delay in disposing of the second representation of the detenu dated 11.7.98 for which also the continued detention is liable to be revoked. The first representation of the detenu dated 4.7.98, it appears, was received in the Ministry on 7.7.98 through the Superintendent, Dum Dum Central Jail. In paragraph 15 of the affidavit-in-opposition it is stated that immediately comments of the sponsoring authority, namely, the Commissioner of Customs (Preventive), West Bengal were called for by the Ministry by its letter dated 9.7.98. So far there has not been any delay in dealing with the representation dated 4.7.98. It however appears that the report of the sponsoring authority was received by the Ministry on 29.7.98 and as a matter of fact a fax reminder was issued by the Ministry to the sponsoring authority on 28.7.98. As rioted, the report of the sponsoring authority was received on 29.7.98 and the Under Secretary submitted the representation along with the report of the sponsoring authority to the Joint Secretary (C) on 31.7.98 and the Joint Secretary rejected the representation of the detenu on 3.8.98, the 1st and the 2nd August being holidays (Saturday and Sunday). A memo intimating the detenu about rejection of his representation was issued on 3.8.98. It is further stated in paragraph 15 of the affidavit-in-opposition that simultaneously the representation dated 4.7.98 was also considered by the Central Government independently and the Under Secretary submitted the representation and the report of the sponsoring authority to ADG(M) on 31.7.98 and the ADG(M) forwarded the same to the Secretary (R) on 5.8.98 (the 1st and the 2nd August being Saturday and

Sunday) and the Secretary (R) rejected the same on 6.8.98 and on that very day a memo intimating the detenu about the rejection of his representation was issued. No explanation however is forthcoming as to why the ADG (M) could not forward the representation to the Secretary (R) on 3rd or 4th August, 1998 after receiving the same on 31st July, 1998. Be that as it may, no explanation has been offered as to why it took about three weeks to receive the comments from the sponsoring authority. The fact that the Ministry sent a fax reminder to the sponsoring authority on 28.7.98 for the comments of the sponsoring authority on the representation of the detenu also indicates that even to the Ministry also it appeared that unwarranted delay was being caused by the sponsoring authority in sending its comments necessitating a fax reminder. No explanation whatsoever is forthcoming for the time-gap of about three weeks in receiving the comments from the sponsoring authority. In the absence of any explanation for this time-gap it is submitted by the learned Advocate for the petitioner on the basis of the different decisions of the Supreme Court referred to by him that the continued detention of the detenu is bad in law and is liable to be revoked. Regarding the second representation of the detenu dated 11.7.98 referable to section 11, as submitted, it is stated in paragraph 15 of the affidavit-in-opposition that the Ministry received a copy of the letter from the Superintendent, Dum Dum Central Jail addressed to the sponsoring authority on 27.7.98 and that too without any representation. It is further stated in the said paragraph that the Ministry immediately on receiving the said letter contacted the sponsoring authority over phone and called for the copy of the representation along with their comments and the comments of the sponsoring authority were received in the Ministry on 6.8.98 and the same was being examined for the disposal of the representation by the concerned authorities. The disclosure in paragraph 15 of the affidavit-in-opposition in this respect shows that the sponsoring authority on being contacted over phone by the Ministry on 27.7.98 could send its comments along with a copy of the representation that reached the Ministry on 6.8.98. There was a time-gap of about ten days between 27.7.98 and 6.8.98 within which time the comments of the sponsoring authority on the representation dated 11.7.98 could be received in the Ministry. Even taking this to be the yardstick of normal time limit for obtaining the comments of the sponsoring authority we may again take notice of the fact that in obtaining the comments from the sponsoring authority on the representation of the detenu dated 4.7.98 the time consumed was three weeks which has not been even sought to be explained in any way. Therefore this unusual delay in the matter of receiving the comments of the sponsoring authority on the representation of the detenu dated 4.7.98, not being explained in any manner, is fatal to the continued detention of the detenu. Regarding the representation dated 11.7.98, as we have seen, the same did not reach the Ministry even on 27.7.98 on which date only a copy of the latter issued by the Superintendent, Dum Dum Central Jail to the sponsoring authority was received by the Ministry from the Superintendent of the said Jail. The inordinate delay in sending the representation of the detenu dated 11.7.98 to the Ministry is also fatal to the continued detention. It is also not understood why the

Superintendent of the Dum Dum Central Jail did not forward the representation of the detenu dated 11.7.98 directly to the Secretary, Ministry of Finance, Department of Revenue, Government of India to whom the representation was addressed instead of sending the same to the sponsoring authority under a forwarding letter and only sending a copy of that forwarding letter to the Ministry and that too, without any copy of the representation. There is absolutely no explanation in this respect. Then again although the representation dated 11.7.98 was received in the Ministry with comments of the sponsoring authority on 6.8.98 the same was not disposed of at least till 21.8.98 (the date on which the affidavit-in-reply has been affirmed) as it would appear from paragraph 11 of the affidavit-in-reply nor could the court be apprised even at the time of hearing whether the said representation dated 11.7.98 has since been disposed of and if so, when.

5. The learned Advocate for the petitioner has relied upon a number of decisions of the apex court regarding delay, namely, Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others, , In the Matter of Durga Show and Others, P. Shanker Dhuri v. S.G. Pradhan, (1971) 3 SCC 896b . Prof. Khaidem Ibocha Singh, etc. Vs. The State of Manipur, , Vijay Kumar Vs. State of Jammu and Kashmir and Others, Kundun Bhat v. District Magistrate : 1996CriLJ1981 , Mrs. Venmathi Selvam Vs. State of Tamil Nadu and Another, , etc. He has also referred to a recent decision of a Division Bench of this court dated 9.9.98 in W.P. No. 12899(W) of 1998. In the case of Durga Shaw and Ors. (supra) the detention was quashed by the Supreme Court for an unexplained delay of 16 days only. In the case of K.I. Singh (supra) the Supreme Court quashed the detention order for an unexplained delay of 17 days in disposing of the representation of the detenu. In Kundun Bhat (supra) the Supreme Court quashed the detention for a delay of 18 days, not properly explained. In disposing of the representation of the detenu. In Venmathi (supra) the Supreme Court held an unexplained delay of about three weeks, in disposing of the representation of the detenu, fatal for continued detention. In Vijoy Kumar (supra) there was a delay of 14 days in transit and a time-gap of 19 days thereafter in disposing of the representation by the Government. The Supreme Court quashed the detention. In Aslam Ahmed v. Union of India (supra) an unexplained delay of 7 days on the part of the jail Superintendent in transmitting the representation to the Central Government was held to be fatal to the continued detention of the detenu. Having regard to the aforesaid decisions of the Supreme Court we have no option but to hold that the unexplained delay of about three weeks in reaching the comments from the sponsoring authority in connection with the representation of the detenu dated 4.7.98 itself and alone is fatal to the continued detention of the detenu. Then again the second representation of the detenu dated 11.7.98 (referable to section 11) was not at all forwarded by the Superintendent of the Dum Dum Central Jail to the Ministry and instead, he forwarded to the Ministry only a forwarding letter addressed to the sponsoring authority which was received by the Ministry on 27.7.98 without being accompanied by any copy of the

representation at all. The delay in the matter of sending representation to the Ministry from the jail or for that matter non-forwarding of the representation by the Superintendent of the jail directly to the Ministry as a result of which the said representation remained pending and undisposed of even till the date of affirmation of the affidavit-in-reply on 21.8.98 as earlier discussed is also by itself and independently a ground which vitiates the continued detention of the detenu. In the circumstances we are left with no option in view of the decisions of the Supreme Court referred to above but to allow the writ petition. We are however making it clear that we have not found anything wrong with detention order or upto the stage of passing and execution of the detention order. We are rather allowing the writ petition because of circumstances associated with the question of quick disposal of the representation submitted by the detenu, which we have elaborately discussed above. Accordingly we allow the writ petition and direct that the detenu be released forthwith unless his detention is lawfully required in connection with any other proceedings. The writ petition stands disposed of accordingly.

V. Nand, J.

6. I agree.

7. Petition disposed of