
(1990) 09 DEL CK 0005

In the Delhi High Court

Case No : Criminal Writ Petition No. 770 of 1989

P.P. Sankaran

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-09-1990

Acts Referred:

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

Citation : (1993) 49 DLT 239

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : Rohit Kochhar, Ajoy Kumar, P.K. Jain, G. Prakash, T.T.K. Kannan and
Omana George, for the Appellant;

Judgement

M.K. Chawla, J.

(1) On 29.4.85. 18 gold biscuits of 10 tolas each were recovered from the baggage of one P. Bhaskaran Nair who had landed at Trivendrum Airport on a flight which came from Sharja. On interrogation, Shri Bhaskaran stated that the zipper bag containing the foam mattress with the 18 gold biscuits concealed therein had been given to him at Sharja by one Kunhimon, a friend of his employer Shankaran, the petitioner herein. Shri Bhaskaran further disclosed that he was instructed by Kunhimon to handover the said zipper bag to one Velayudhan a relative of the petitioner who would be waiting outside the airport to receive him. It is also the case of the Department that the statement of Shri P.K.. Velayudhan which was recorded on 29.4.85, revealed that he met the petitioner in the morning, who instructed him to go the airport to receive Shri Bhaskaran.

(2) As a consequence of the further investigation, petitioner was arrested on 29.4.85 by the D.R.I, officers from Shri Chitra Medical Center where he was confined and was undergoing treatment for cancer. On 2.5.85, the petitioner moved an application for his release on bail which was allowed by the learned

A.C.J.M., 1st Class. Ernakulam on 3.5.85, on his executing a bond of Rs. 10.000.00 with two solvent sureties each of the like amount .The petitioner was further directed to appear before the Superintendent, D.R.I, on every Monday and as and when required. However, in the meantime on 29.10.85. the Commissioner & Secretary (Home), Government of Kerala. while exercising his powers u/Sec. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short COFEPOSA Act), passed the order for the detention of the petitioner, with a view to preventing him from smuggling goods. Against this order of detention, the petitioner through his Counsel, made the representation to the Central Government on 25.8.89 praying for the revocation of the order of detention though the same has not been served on him. His representation has since been rejected.

(3) The petitioner has now moved this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for the issuance of a writ of mandamus and/or a writ of certiorari for restraining the respondents From implementing the order of detention purported to have been passed u/Sec. 3(1) of the Cofeposa Act, dated 29.10.85 and also restraining them from taking any steps or action pursuant to the said order and for setting aside the same.

(4) The foremost contention of the learned Counsel for the petitioner is that while in judicial custody, the petitioner moved an application for his release on bail on 2.5.85 before the Court of the Additional Judicial Magistrate 1st Class Ernakulam, pursuant to which he was granted bail on 3.5.85 on certain conditions. These two very relevant and material documents, which would have affected the mind of the detaining authority either way, were suppressed from it, thus vitiating the subjective satisfaction and making the detention order illegal.

(5) In the counter, filed by Rajesh Karan Nair, Additional Secretary to the Government of Kerala, the stand of the respondent is as under :-

"IT is reported that the petitioner's as well as his accomplice's bail application or the orders thereon were not readily available with the Department, Therefore, the same could not be placed before the detaining authority. Moreover, placement of the bail application or the bail order thereon with the detaining authority would in no way show the petitioner's involvement" in an entirely different light "

(6) It is not disputed that the bail application and the order passed thereon are very material documents which ought to have been placed before the detaining authority to enable it to arrive at the subjective satisfaction before passing the order of detention. The concealment of such like documents from the detaining authority have been held to be vitiative of the order of detention. Reliance is placed on the Division Bench Judgment of this Court in the case Patta Ibrahim v. Union of India and Others, Cri. W.No. 7/88 decided on 21.7.88.

(7) The respondents cannot be allowed to raise the same plea, which has been rejected in the writ petition of the co-detune Shri P. Bhaskaran Nair. It is the

common case of the parties that the co-detune challenged the order of his detention dated 5.11.85 passed under the same provisions of the COFEPOSA Act by the same authority and in relation to the same incident. in his writ petition Cri. W. No. 490/88. This writ came up for hearing before the Division Bench of this Court and the order of detention was quashed on the similar grounds with similar defense as is being put up in this case ,on 20/12/1988.

(8) I have carefully gone through the Judgment given in the case of P. Bhaskaran Nair (Cri. W. 495/88) and find that it lays down the same proposition of law which is applicable to the facts of the present case. The detention order was quashed on the ground that the bail application and the order passed thereon whereby P. Bhaskaran was released on bail were not placed before the detaining authority.

(9) In this view of the matter the ratio-descend of the case in ShivdevSingh v. Delhi Administration, Cri. W. 244/85, decided on December, 6, 1985 will fully apply. This Court held that if on similar reasons, detention order of co-accused stands quashed, then for parity of reasons on account of a precedent having been already set up, the detention of the other detenu must also be quashed.

(10) In view of the above discussions, I have no hesitation to hold that the impugned order of detention is liable to be quashed on the short ground that the copies of the bail application and the order passed thereon which are very relevant and material documents were not placed before the detaining authority, and that the order of detention of the co-detune Shri P.Bhaskaran on this very point has already been quashed.

I, allow the petition and direct the respondents not to detain the petitioner in pursuance of the proposed order of detention.