
(1980) 07 BOM CK 0014
In the Bombay High Court
Case No : Criminal Appeal No. 477 of 1980

Pradip Mulchand Mirpuri	Vs	APPELLANT
M.R. Deshpande and Others		RESPONDENT

Date of Decision : 15-07-1980

Acts Referred:

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

Citation : (1980) 07 BOM CK 0014

Hon'ble Judges : P.B. Sawant, J; M.L. Pendse, J

Bench : Division Bench

Advocate : G.A. Merchant, M.R. Kotwal, P.P, for the Appellant;

Final Decision : Allowed

Judgement

P.B. Sawant, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 3rd October, 1979, passed against him by the second respondent State.

2. The petitioner was initially arrested on 16th February, 1979 for an offence under the Customs Act on the allegation that he had given 146 wrist watches and 120 watch straps together valued at Rs. 90,930/- to one passenger by name Shyamdas Bhagwandas Budhrani at Hongkong Airport and that the said Budhrani was arrested at Bombay airport on 28th January, 1979 carrying the said contraband goods, and that the petitioner had also accompanied the said Budhrani from Hongkong by the very same flight. The petitioner was produced in Court on 16th February, 1979, and was released on bail in the first week of March 1979. While the petitioner was still on bail pending the conclusion of the trial for the criminal offence for which he was arrested, on 3rd October, 1979 the impugned order of detention was passed against him u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the said Act.) The said order was executed

against him on the 6th October, 1979, and he was supplied with the grounds of detention on that day. By his letter dated the 16th November, 1979, addressed to the Collector of Customs, the petitioner requested for the documents which were referred to in the grounds of detention and in particular the statements of the persons referred to therein on the basis of which the detention order had come to be passed. Thereafter by his letter dated 23rd November, 1979, addressed to the State Government, he renewed the said request and also made a reference to his letter dated 16th November, 1979 addressed to the Collector of Customs on the subject. Having not been obliged with the reply to either of his communications, he sent yet another letter to the State Government on the 4th December, 1979 reminding the Government of his earlier letter and renewing his demand for the documents called for therein. It may be mentioned that in all these three communications he had made it clear that in the absence of the documents requested for by him, it was not possible for him to make an effective representation to the grounds of detention and the explanation which he had given in the letters dated 23rd November, 1979 and 4th December, 1979 was on the basis of whatever material he had, and, therefore, was incomplete and that he looked forward to make a complete representation only after the receipt of the documents requested for by him. The State Government by its letter dated 6th December, 1979, replied to the letter of 23rd November, 1979 addressed by the petitioner, and stated that the request of the petitioner for supply of copies of the statements and documents relating the detention and also the request for his release from detention could not be granted.

3. In identical language, by its letter dated 18th December, 1979, the State Government replied to the second representation made in that behalf by the petitioner on the 4th December, 1979.

4. In the meanwhile the hearing before the Advisory Board took place on 17th December, 1979, and thereafter the State Government confirmed the order on the 26th December, 1979.

5. The petitioner thereafter filed the present petition on 9th April, 1980 challenging firstly the detention order itself on the ground that the grounds on which the impugned order was made had no live link with the order. Secondly, the petitioner has also challenged the continued detention on the ground that in the absence of the copies of the documents that he had requested for, he had no opportunity to make an effective representation against the detention order, and, therefore, his continued detention is in breach of the provisions of Article 22(5) of the Constitution. To this petition Shri K.K. Uppal, secretary to the Government of Maharashtra, Home (Transport) Department, and who had passed the impugned order under the powers delegated to him in that behalf, filed his Return on the 30th June, 1980. So also Shri C.R. Mulherkar, Deputy secretary to the Government of Maharashtra, Home Department (Special) filed his Affidavit on the same day on behalf of the State of Maharashtra. In his return, Shri Uppal has denied that there is no live link between the grounds on which the detention

order has been passed and the detention itself and has explained that the delay in passing the impugned order was on account of the fact that a number of persons were involved in the smuggling of a huge quantity of wrist watches from abroad and hence the investigation in the case took long time. Thereafter the necessary proposal was sent to the Government and after considering the entire material, he was satisfied that the petitioner was likely to indulge in similar activities in future, and therefore, the detention order came to be passed thereafter. He thus denied that there was any delay in passing the order and that the delay of eight months between his arrest for the offence in question on 16th February, 1979 and the date of the order did not vitiate the impugned order as contended by the petitioner. As regards the non-supply of the copies of the relevant documents and statements, in paragraph 6 of his return, he has contended that the pith and substance of all the statements and other documents was mentioned in the grounds of detention and, therefore, the copies of the statements and documents were not necessary to the detenu for making an effective representation. In his affidavit, Shri Mulherkar has not referred to the delay alleged by the petitioner in passing the impugned order. However, in reply to the second contention viz. the non-supply of the documents, he has stated that as the grounds of detention are sufficiently elaborated, the Government though it not necessary to supply the copies of the statements referred to in the grounds of detention. He has added that moreover the investigations into the conspiracy case in which the detenu is involved were in delicate stage and were not finalised and as such at a premature stage i.e. before issue of show-cause notice to the detenu, the Government considered advised (sic) not to disclose the said statements in public interest.

6. Since we are of the view, for the reasons stated hereafter, that there is no justification given by the Government for the non-supply of the statements and documents required by the petitioner to make his representation, his further detention has become illegal, we have not through it necessary to deal with the first contention raised on behalf of the petitioner, viz. that the order of detention is illegal for want of a live link between the grounds of detention and the said order. We will, therefore, dispose of this petition on the said short ground only.

7. As has been pointed out earlier , the petitioner had addressed three letters dated 16th November, 1979, 23rd November, 1979 and 4th December, 1979 requesting for the supply of the documents and copies of statements, which are admittedly referred to in the grounds supplied to him and which have been relied upon by the Detaining Authority for the passing of the impugned order detention. The first of the three letter was addressed to the Collectors of Customs, while the later two letters were addressed the State Government. In all these letters, he had made a specific grievance that it would not be possible for him to make a proper and effective representation unless he had the benefit of the said documents and statements. Although it is true that this letter also contain his representation against the grounds of detention, it is also equally undisputed that he had made it clear that the representation which he was sending under

the said letters was on the basis of such material as he had in his possession and was, therefore, incomplete. He had further made it clear that he wanted to send a complete representation and that he could do so only after the receipt of the documents and statements. The only reply which he received to his request and that too as late on the 6th and 18th December, 1979 was that his request for the supply of copies of the said statements and documents could not be granted. No reasons whatsoever were given as to why the said request could not be granted. However, belatedly in reply to the petition, two different explanations are sought to be given for the non-supply of the said documents, one by the Detaining Authority Shri K.K. Uppal and the other by Shri Mulherkar, who as stated earlier filed two different returns to counter the petition. These two explanations are not only inconsistent with each other but are also conflicting the point of being untrue. In his explanation, Shri Uppal has stated that the pith and substance of all the statements and documents was mentioned in the grounds of detention, and, therefore, it was not necessary to supply the copies of the statements and documents to the detenu. It may be noted in this connection that he has not contended, as has been done by Shri Mulherkar, that it was not in public interest to supply the said copies of documents nor is it his case that because the grounds of detention were sufficiently elaborate, it was not necessary to supply the same. On the other hand, his explanation is that the grounds themselves contained the pith and substance of the said statements and documents. As against this, Shri Mulherkar has pleaded two excuses for the non-supply of the documents and statements, viz., that the grounds of detention were sufficiently elaborate and further that as the investigation was "in delicate stage" it was not in public interest to disclose the said statements at a premature stage i.e. before issue of show cause notice to the detenu. It is further to be remembered that not a whisper of any such ground is noticed in the replies given by the Government on the 6th and 18th December, 1979 as stated earlier. We have thus a stand taken by two Government authorities which is irreconcilable. This is apart from the fact that there is no way of knowing whether in fact the pith and substance of the statements and documents was supplied to the petitioner in the grounds of detention or not, or whether the said statement and documents contained other material which was favourable to the petitioner. This is so because no attempt was made on behalf of the state to satisfy the Court in that behalf by producing the said statements and documents for perusal. Secondly, beyond making a vague statement that the investigations were "in delicate stage" and were not finalised, no further details are given by Mulherkar to show how the public interest was likely to be affected, if the said statements and documents were supplied to the detenu. This is apart from the fact that if as contended by Uppal the pith and substance of the said statements and documents were supplied to the detenu in the grounds of detention themselves, then it is difficult to understand the so called claim for withholding the same in "public interest."

8. According to us, therefore, the State was not justified in withholding the documents and statements referred to in the grounds of detention and relied

upon for passing the order of detention, which were requested for by the detenu. The detenu has definitely been prejudiced on account of such non supply of documents and a valuable right given to him to make a representation against the order of detention has been frustrated by the State by its said attitude. There is thus non-compliance with the provisions of section 3(3) of the said Act read with Article 22(5) of the Constitution. It has been held by the Supreme Court in the case of Ramchandra A. Kamat Vs. Union of India (UOI) and Others, as follows :

"The right to make a representation is a fundamental right.....In order to make an effective representation, the detenu is entitled to obtain information relating to the grounds of detention. When the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously."

It has been further observed by the Supreme Court there that :

"If there is undue delay in furnishing the statements and documents referred to in the grounds of detention, the right to make effective representation is denied. The detention cannot be said to be according to the procedure prescribed by law."

In that case also although a request was made by the detenu for supply of the documents and statements referred to in the grounds of detention, the said request was not complied with for a considerable length of time. In that case, the order of detention was passed on 31st August, 1979. The first request for the documents was made on 7th September, 1979. The request was renewed on 14th September, 1979, and the Deputy Director by his letter dated 22nd September, 1979 requested the Advocate of the detenu to take inspection of the documents on the 24th September, 1979. On inspecting the documents, the Advocate was not satisfied and insisted on supply of copies of documents and ultimately copies were supplied on three days viz. 26th, 28th and 29th September, 1979. The representation was thereafter made on 5th October, 1979. On these facts, the Court held that the Detaining Authorities failed to act with reasonable expedition in furnishing the statements and documents referred to in the grounds of detention, and therefore, the detention was not in accordance with the procedure contemplated under the law. The Court, therefore, directed the release of the petitioner as the continued detention was not warranted. It may further be mentioned that in that case also a plea similar to the one which is taken in the present case was taken on behalf of the Detaining Authority viz. that the grounds were sufficiently detailed so as to enable the petitioner to make an effective representation against his detention. The Court, however, negatived even this contention by observing that :

"Once the detenu state that for effective representation it is necessary that he should have copies of the statements and documents referred to in the grounds

of detention, it is the duty of the Detaining Authority to furnish them with reasonable expedition. The Detaining Authority cannot decline to furnish copies of the documents on the ground that the grounds were sufficiently detailed to enable the petitioner to make an effective representation."

9. However, on behalf of the State reliance was placed on the decision of a Division Bench of this Court reported in *Mohamed Yusuf Ahmed Vs. S.D. Pradhan, Secretary to the Government of Maharashtra, Home Department and Others*, in the case of *Mohamed Yusuf Ahmed v. R.D. Pradhan and others*. Since admittedly the Division Bench had not the benefit of the Supreme Court decision discussed above, we feel that the view taken there is no longer good law. In view of the decision of the Supreme Court, it is not necessary to discuss either the facts or the reasoning in the said decision.

10. In the result, we are of the view that in the present case the Government had withheld the documents and the statements from the petitioner without any justifiable grounds. The non-supply of the said documents and statements was in breach of the petitioner's fundamental right to make a representation. There was further a non-compliance with the mandatory provisions of law which deprived the petitioner of his right to make a proper representation to the Detaining Authority. In the circumstances, the petitioner's continued detention has become illegal. The petitioner is, therefore, entitled to succeed in the petition and also for a direction from this Court for his release from detention forthwith.

11. The petition is, therefore, allowed and the rule is made absolute in terms of prayer (a) of the petition. Accordingly, the petitioner is ordered to be released forthwith. In the circumstances, there will be no order as to costs.