
(1986) 11 DEL CK 0058

In the Delhi High Court

Case No : Criminal Writ Petition Appeal No. 112 of 1986

Pudukkudl Abdu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-11-1986

Acts Referred:

Citation : (1987) 31 DLT 44

Hon'ble Judges : S. Ranganathan, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : B.P.S. Mangat, Naveen Malhotra and R.M. Bagai, for the Appellant;

Judgement

S. Ranganathan, J.—This is a petition praying for the issue of a writ Habeas Corpus for release of the petitioner who has been detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("COFEPOSA") under a detention order dated 4.11.1985.

2. It is not necessary to set out in detail the grounds of detention communicated to the petitioner because we find that the writ petition has to be allowed on a very snort point which we shall refer to a little later. We may just set out a few relevant dates and events. the petitioner arrived at Trivandrum airport from Kuwait on 9.6.1985. He thereafter proceeded to a place called Thikodi in taxi along with two other persons. The taxi was intercepted on the way by the officers of the customs and the petitioner was interrogated by the authorities on certain allegations of smuggling gold between the 10th June, 1985 and 12th June, 1985 when he was produced before the Chief Judicial Magistrate at Calicut. Subsequently, on 25th August, 1985. the Customs Department filed a complaint in the Court of the Additional Chief Judicial Magistrate, Trivandrum u/s 135(1)(i) of the Customs Act and Section 85(1)(i) Geld Control Act. The petitioner applied to the Court of the Addl. Chief Judicial Magistrate for bail on 12th June, 1985, and he was enlarged on bail on the 18th June, 1985. The trial against the petitioner commenced on the 13th September, 1985 and came to a dose on 7th December, 1985. The learned Addl. Chief Judicial Magistrate pronounced

judgment on the 19th December, 1985 by which he convicted the petitioner-accused and sentenced him to suffer rigorous imprisonment for a" period of two years for the offences u/s 135(1)(i) of the Customs Act and Section 85(1)(i) of the Gold Control Act. In the meantime, the Government of Kerala, through the complex authority, issued an order of detention of the petitioner in exercise of the powers under the COFEPOSA. The grounds of detention were served on the petitioner on the 18th November, 1985. On the 9th December, 1985 a declaration u/s 9 of the COFEPOSA. was served on the petitioner. On 13th December, 1985 the petitioner made a representation seeking the supply of certain documents but this was rejected by the Central Government on 26th December, 1985 and by the Kerala Government on 7th January, 1986. the case of the detenu was referred to the Advisory Board and, on the advice of the Board, the detention of the petitioner stood confirmed on 18.4.1986.

3. Counsel for the petitioner has taken a short point which, in our opinion, has to be accepted. His submission is that there has been suppression of vital and material facts from the detaining authority. It is pointed out that the criminal complaint had been filed before the Addl. Chief Judicial Magistrate on the 25th August, 1985, the trial had also started in September, 1985 and by the time the detention order was passed, the trial had also progressed to a considerable extent. The details of the complaint filed before the Addl. Chief Judicial Magistrate were not placed before the detaining authority. Again, as pointed out earlier, the petitioner made an application for bail which was accepted on 18th June, 1985. The order passed on the bail application by the trial court was also not brought to the notice of the detaining authority. Suppression of these vital and material facts from the detaining authority, the counsel for the petitioner submits, vitiates the detention.

4. On behalf of the Government of "Kerala there has been no appearance today. There is also no counter affidavit placed on record but a copy thereof appears to have been given to the counsel for the petitioner. We have seen the copy of the counter affidavit. We find that all that is stated in the counter affidavit is that the fact that a complaint had been filed under the Customs Act and the Gold Control Act as well as the fact that the petitioner had presented a bail application and been released on bail had been intimated to the detaining authority. There is no averment in the counter affidavit that the details of the complaint or the evidence of such of the witnesses as gave evidence in the trial between the date of the commencement of the trial and the date of the detention order or the order passed by the Chief Judicial Magistrate on the bail application had been placed before the detaining authority.

5. It is now settled law that the failure of the detaining authority to apply its mind to important circumstances bearing on the detention of the petitioner will vitiate the detention. We need hardly point out that the details of the complaint lodged before the Addl. Chief Judicial Magistrate as well as the order passed by the Chief Judicial Magistrate on the bail application constituted material

documents relevant for the purpose of detention. Also, by 4th November, 1985 the trial had also progressed to a considerable extent and the evidence of some of the witnesses had come on record by that time. All this constituted material having a bearing on the detention of the petitioner but not considered by the detaining authority. we are, Therefore, satisfied that in the present case the detention order of the petitioner is vitiated because these important documents have not been placed before, or considered by, the detaining authority. They have not been mentioned in, nor referred to as annexures to, the detention order. The detention order only makes mention of the bail application but it does not contain reference to the order passed by the Chief Judicial Magistrate on the bail application.

6. In the circumstances and for the reasons mentioned above, we are of the opinion that the detention of the petitioner was not justified. We, Therefore, quash the order of detention and direct the release of the petitioner forthwith unless he is liable under law to be detained for some other reason.