

**(1992) 04 RAJ CK 0042**

**In the Rajasthan High Court**

**Case No : Habeas Corpus Petition No. 2669 of 1992**

Rajendra Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision : 30-04-1992**

**Acts Referred:**

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3  
Customs Act, 1962 — Section 108, 124

**Citation :** (1992) 2 WLC 500 : (1992) 1 WLN 450

**Hon'ble Judges :** M.B. Sharma, J;Farooq Hasan, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

M.B. Sharma, J.—This habeas corpus petition is by Shri Rajendra Sharma, real brother of detenu, Shri Satyanarain Sharma. An order u/s 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, (for short "the act") has been passed by the State Government through the Secretary, Home Department, on 28-1-1992. The petitioner has challenged the afore-said order.

2. Before we may take up the grounds of challenge to the impugned order, we will like to have a brief resume of the facts: A Vespa scooter No. RJ-14-1M-4848 was intercepted by the Customs officers on 2.7.1991 and a person who was driving the scooter was also arrested. The person disclosed his identity as Hari Narain @ Hari S/o Shri Phool Chand. During the search, 10 gold pieces bearing foreign marka, were recovered from the pocket of his trouser. The purity of the gold was examined which was found to be "999" Tunch and it was thus 24 carats purity gold. Each of the pieces when weighed, was found to be 116.650 grams and the total weight of the gold biscuits recovered was 1166.500 grams and the value there of was worth Rs. 4,32,500/-. It was noticed that the foreign marks from the 10 pieces of the gold biscuits had been removed through roller

machine. Shri Hari Narain failed to produce any licence or any document in respect of the lawful possession of the said 10 biscuits. So, therefore, on a reasonable belief that the said 10 gold biscuits were liable to be confiscated as having been brought in India in violation of Import Export (Control) Act, 1947, the same were seized by the Custom Officers/Authorities. There was thorough interrogation of Hari Narain by the Custom Authorities. His statement u/s 108 of the Customs Act was recorded and in the follow up action the search of various premises including residential as well as professional was taken up by the Customs Authorities.

3. Upon search of the business premises of M/s Ram Narain Shri Ram Soni by the customs officers, Ghanshyam alongwith the detenu were found present and during the search one gold biscuits and Indian Currence notes worth Rs. 1,45,700/- were recovered from the business premises. When the customs Authorities reached the aforesaid business premises of M/s Ram Narain Shriram Soni, Shri Satya Narain (detenu) was found indulging in removing foreign marks from one gold biscuit, weighing ten tolas. As said earlier, ten gold biscuit were recovered upon the search of Shri Hari Nariain, the foreign marks from those biscuits had been removed through some process by roller machine, therefore, further investigation was conducted and it came to the notice of the authorities that Hari Narain was going with the ten biscuits to deliver them to one, Shri Kishor Lashkari, and then he was also apprehended. So far as detenu-Satya Narain is concerned, he was not immediately arrested but his statement was recorded u/s 108 of the Customs Act. Thereafter, a detention order was made against him also.

4. The petitioner has challenged the detention order of his brother, inter alia, on the grounds that, some of the documents which were supplied to the detenu alongwith the detention order and the grounds of detention were illegible; that, a show cause notice for initiating proceedings u/s 124 of the Customs Act was given to the detenu on 20th December, 1991 to which he had filed reply but those documents were not brought to the notice of the detaining Authority when he made detention order on 28-1-1992, it is a case of a solitary incident, and that too, by one who was simply an employee of Shri Ghanshyam, having been engaged for a few days just before the recovery of one gold biscuit, and to be more precise, he was engaged on or about 25-6- 1991, while the gold biscuit was recoveres on 2.7.1991. Elaborating further it was contended that there was no previous incident and so such antecedents of the detenu which could have warranted any possibility that he would engage himself in smuggling activities , and therefore, it was not a case where on the facts it could be said that with a view to prevent the detenu from indulging in" activities prejudicial to the augmentation of country"s foreign exchange resources through smuggled goods, making of the detention order was necessary.

5. So far as first two grounds are concerned, we find no merit in either of them. The contention of the learned Counsel for the petitioner is that copies of some of

the document on which grounds of detention of were based and which were supplied alongwith the detention order were not legible and thereby fare opportunity to make effective representation was denied to the detenu. It has been stated in ground 7 [c) of the petition that most of the papers supplied to the detenu were not legible. Ground No. 4 of the grounds of detention (Annex.2) was not legible as well as Ex.3 at page 5 of the paper book, pages 60 and 61 of the paper book were not legible. It has further been stated that the detenu in. his representation (Annex.4) also stated this fact before the detaining authority and had requested to supply the legible documents so that he would have made an effective representation. But still then the legible copies were not supplied. There can be no dispute that alongwith grounds of detention legible copies of the documents should be supplied to the detenu so as to make an effective representation. In this case, alongwith the petition, the petitioner had not filed the copies of the documents said to have been supplied to him, and it was only later on when directed to do so, he filed the copies. Firstly, from the copies filed by the petitioner, we are not satisfied that they are legible and we are of the opinion that they can be read and secondly it is denied in behalf of the respondents that the legible copies were not supplied. We are unable to say in the present case that copies which have been filed by the petitioner are the same, which were supplied to the detenu.

6. Coming to the next ground that a copy of the show cause notice u/s 124 of the Customs Act as well as reply filed by the detenu was not forwarded to the detaining authority before the order was made, we may state that the sponsoring authority had forwarded the papers to the detaining authority on 9-12-1991 and even as per the case of the petitioner the show cause notice for adjudication proceedings u/s 124 of the Customs Act is dated 20-12-1991, therefore, it was not in existence when the sponsoring authority moved to the detaining authority to consider to make a detention order against the detenu u/s 3(1) of the COFEPOSA Act.

7. Coming to the last ground, viz. there was no material on which there could be subjective satisfaction of the detaining authority that to prevent the petitioner from smuggling goods or abating the sumgguling goods, it is necessary to make a detention order, the contention of the learned Counsel for the detenu is that the statement u/s 108 of the Customs Act, which was recorded by the customs Authorities, he clearly stated that he had only joined his employer Shri Ghanshyam on 25-6-1991, he worked for two days i.e. on 25th and 26th of June, 1991, then he proceeded on leave and had only come from leave on 2-7-1991. He had been employed by Shri Ghanshyam for some other work and not for the purpose of removing the foreign marks and not in dealing with any of smuggled articles. It has been stated by the detenu in his statement recorded u/s 108 of the Customs Act that though he know that dealing with smuggling gold is illegal and is an offence but prior to that he had not seen any gold biscuit bearing foreign marka and it was the first incident/first time when Ghanshyam asked him to remove the foreign marks from one gold biscuits and he also demonstrated to

him as to how it is to be removed with the help of a roller machine. It is further stated that when he was in the process of removing the foreign marka with the help of roller, the customs officers/Authorities raided the business premises of Ghanshyam and one gold biscuit often tolas with foreign marks was recovered. Neither in any statement u/s 108 of the Customs Act, nor in any other material, the grounds of detention or the documents accompanying them there is any material that even prior to the incident, the detenu had dealt in smuggled goods or in abetting the smuggling of goods or any like activities prejudicial to the augmentation that he on his own free will voluntarily on 2-7-1991 was indulging in the activity and as said earlier, it can be said that it was his employer, Shri Ghanshyam, who had directed him to do so and he was obeying the directions of his employer. It was contended by the learned Counsel that in the facts of this case no reasonable man could have come to the conclusion that there was any possibility of the detenu engaging himself in smuggling goods or abetting the smuggling in goods and, therefore, it was not necessary to make a detention order against the petitioner because it could not be said that making of a detention order was necessary to prevent him from indulging in such activities in future. The learned Counsel for the petitioner in support of his contention that in case of a solitary incident what should be the approach of the Court when a detention order is made, cited a decision in *M. Mohammed Sulthan v. Joint Secretary to Govt. of India* AIR 1990 SC 2222, wherein the Apex Court though upheld the detention order because the facts and circumstances were such that the gold weighing 70 tolas had been brought in his rectum but dealing with the argument of the counsel for the detenu that a single incident could not afford the basis for arriving at the subjective satisfaction that the petitioner might repeat such acts in future, the court said:

We are unable to agree with this contention. An order of preventive detention is founded on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances, such past conduct may consist of one single act or of a series of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts as to warrant his detention.

8. The Court then said that the incident which needs to be considered in such cases is whether from the past conduct of detenu as set out in the grounds of the detention it could reasonably be inferred that he would be likely to repeat such acts in the future. The court placed reliance on the decision in *Debu Mahato Vs. The State of West Bengal*, . In *Mohammed Haju Alavi -V-State of Karnataka* 1992 (1) Crimes 968, the Karnataka High Court dealing with a case on a solitary incident, referred to decision of the Apex Court and held as under:

According to the said enunciation of the legal proposition made by our Supreme Court, the test to be applied by Courts to find whether a detention order made by the Detaining Authority on the basis of its subjective satisfaction could be interfered with, is whether a reasonable Authority could not have possibly

reached such subjective satisfaction by reference to the material or circumstances constituting the ground on which such satisfaction was reached by the Detaining Authority. If we have regard to the said test, where there is no material or circumstances at all which could form the ground respecting which subjective satisfaction had to be reached by the Detaining Authority, the supposed subjective satisfaction to be reached by it to make the detention order would vitiate the detention under itself.

9. From the above case it will be clear that though a single incident may be sufficient for the subjective satisfaction for the Detaining Authority to make a detention order, but it will depend on the facts and circumstances of each case as to whether such subjective satisfaction could be arrived at or not. The past conduct of a person may consist of one single act but it must be such a nature that a reasonable man may draw a reasonable inference that the person is likely to repeat such act.

10. It was contended by the learned Additional Advocate General that it is the Detaining Authority who had arrived at the subjective satisfaction and the Court cannot substitute its own satisfaction to the Detaining Authority. There can be no dispute about this proposition but there must be circumstances which may lead that a person is likely to repeat the act or there is possibility of his repeating the act. In the instant case we have already stated the facts of the case that the detenu had only joined the service of 1991 proceeded on leave on 26th and returned only on 2-7-Ghanshyam on 25th June, 1991; he was unemployed youth; had married recently, and had been engaged for the work at the shop and not for this type of work, and that he did not even earlier see the foreign marks or any gold biscuits. The employer asked him to remove the foreign marka with the help of roller machine and he was obeying his employer, the customs authorities apprehended him. He has since then left the shop of Ghanshyam, as said by the learned Counsel. Under these circumstances, there was no chance of the petitioner of repeating such activities. Having regard to/all the facts stated above, we are of the opinion that there is no and was no material or circumstance at all which could lead the detaining Authority to reach to the subjective satisfaction that if the detention order is not made, he would repeat the activities. In other words, it cannot be said that there was any material or circumstance on the basis of which it can be said that even to prevent the detenu in future from including in any manner prejudicial to augmentation of country's foreign exchange resources or with a view to prove him from indulging in smuggling of goods or abetting the smuggling in goods, the making of the detention order was necessary.

11. The last ground, therefore, prevails and we hereby set aside the detention order and direct that the detenu (Satya Narain Sharma) shall be released forthwith, if not, wanted in, any other case.