(1993) 11 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Amended Crl. Writ Petition No. 78 of 1993

Ramesh Kumar Wadhera APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 12-11-1993

Acts Referred:

Citation : (1994) 1 AICLR 660 : (1994) 1 RCR(Criminal) 408

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : D. D. Sharma, G. S. Chahal, R. S. Randhawa, R. S. Bajaj, Advocates for appearing Parties

Judgement

H. K. Sandhu, J.

1. The present writ petition has been filed by Ramesh Kumar Wadhera under Article 226 of the Constitution of India read with Section 402 Cr.P.C. for quashing the order of detention dated 22nd April, 1993 passed under Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) with a view to prevent him from engaging in keeping smuggled goods and dealing in smuggled goods otherwise than be engaging or transporting or concealing smuggled goods in future.

2. The brief facts of the case as gathered from the record of detention Annexure P5 are that on 19th April, 1993 the officers of Directorate of Revenue Intelligence, Delhi Zonal Unit, searched the premises of M/s Chopra Associates, situated at No. CW602, Sanjay Gandhi Transport Nagar, New Delhi, in the presence of the petitioner and recovered goods of foreign origin such as telephone, tinning, chemical, torches Microfloppy discs etc. of the value of more than Rs. 37 lacs. The petitioner failed to produce any document to prove the legal import of the goods the same were seized in the presence of independent witnesses under a Panchnama. On the same day another godown situated at No. CW 580, Sanjay Gandhi Transport Nagar, New Delhi was searched on the disclosure of the petitioner from where 13824 torches of Chinese origin were recovered. From another premises 166 bales of polyester texturised yarn of

foreign origin was also recovered. In his statement under Section 108 of the Customs Act, 1962 the petitioner stated that he was the sole owner of the firm known as M/s Chopra Associates and he had purchased the premises where the firm was running business from a person named Bansi Lal of Delhi whose exact address he did not know by paying him Rs. 50,000/ in cash as advance. He further stated that he was owner of another shop situated at No. CW 580 in Sanjay Gandhi Transport Nagar, Delhi which he purchased from Sushil Chopra of Delhi whose address he did not know by paying Rs. 50,000/ in cash as advance. He further admitted that all the goods seized were received by him from Nepal and as per arrangements made the same were stored in the godown on the night of 18.4.1993. The goods were received from Sita Ram Kothari and his son Pardeep Kothari of Kathmandu and he used to finance the smuggling of goods into India from Nepal and earned 18 per cent commission on the goods so smuggled. Statements of Jasbir Singh, Bir Singh and some other persons were recorded. The petitioner was produced before A.C.M.M. Patiala House, New Delhi on 20th April, 1993 and was remanded to judicial custody. He retracted his confessional statement in the Court but after going through the facts and circumstances of the case the detaining authority, on the material placed before him, drew his requisite subjective satisfaction and passed the impugned order on 22nd April, 1993. The detaining authority also observed that although the petitioner was in judicial custody and he had not moved any bail application so far, but nothing prevented him to move bail application and possibility of his being released on bail could not be ruled out. So the detention order was passed and was served on the petitioner on the same day while he was in judicial custody.

3. The petitioner challenged the validity and legality of the order of detention raising several contentions. In para No. 17 of the petition he alleged that he had made a representation to the Joint Secretary wherein he had requested for supply of certain documents and information vide his application dated 30.4.1993, but neither his representation was considered nor he was supplied with the documents and information as mentioned in the representation. There was long delay in consideration of the representation which made the detention illegal and bad in law being violative of Article 22 (5) of the Constitution of India. It was further pleaded that there was complete nonapplication of mind in passing the detention order. The order of detention was activated as a result of mala fide action of the officers of the customs. The order was passed not as a preventive measure but as a punitive measure. The list of documents showed that the last document which was alleged to have been placed before the detaining authority was a letter dated 21.4.1993 and Panchnama of the same date. The order of detention was passed on 22.4.1993 just after one day and it showed complete nonapplication of mind in passing the order.

4. The various grounds assailing the validity of the impugned order were mentioned in para No. 18 of the petition, but in the return filed by the respondents the averments made in the petition were not specifically denied.

Only this fact was alleged that there was proper application of mind in passing the detention order by the detaining authority and in the light of the facts of the case and the petitioner''s involvement in smuggling of contraband goods valued at Rs. 57,43,050/ his detention under COFEPOSA 1974 was fully justified and well within the ambit of law.

5. I have heard Mr. R. S. Randhawa, Advocate, with Mr. R. S. Bajaj and Mr. G. S. Chahal, Advocates, the learned counsel for the petitioner and Mr. D. D. Sharma, Advocate, the learned counsel for the respondents.

6. It was argued on behalf of the petitioner that earlier in November, 1992 some miscellaneous goods were recovered by the officers of Directorate of Revenue Intelligence from certain trucks and in connection with that seizure Yog Ram, Tarsem Singh and Sushil Kumar were taken into custody. These persons were forced to make certain statements in which they named the petitioner. Residential premises of the petitioner were searched thereafter but nothing incriminating was recovered. Apprehending his false implication in case the petitioner moved for his prearrest bail and he also filed a writ for prohibiting the respondents from implicating him in a false case under the Customs Act in pursuance to the alleged seizure of smuggled items in November, 1992. In that writ petition the respondents were directed not to take the petitioner into preventive custody but in order to frustrate the relief granted to the petitioner he was wrongfully taken into custody on 19th April, 1993 from his business premises at Sohna (Haryana) in connection with some seizure effected on that day and the order of detention was passed against him. The order was passed hastily without due application of mind. The detention order was passed after perusal of the documents enumerated in Annexure P/6 but there was hardly any time for the detaining authority to go through all those documents and apply its mind. There was, thus, complete nonapplication of mind in passing the detention order. It was enjoined upon the detaining authority to satisfy the Court as to when the documents were received and whether these documents were received directly from the sponsoring authority or from the screening authority. It was further necessary to state whether basic procedure which was required to be followed in the detention matter was actually followed or not. These facts were specifically mentioned in the petition but the same were not denied in the reply filed by the respondents, so the presumption is that the allegations made by the detenu were admitted to be correct by the detaining authority. In support of his contention the learned counsel placed reliance on Criminal Writ No. 139 of 1989, M.V. Khader v. Union of India and others, decided by Delhi High Court on September 19, 1989 and Criminal Appeal No. 828 of 1985, Umesh Chandra Verma v. Union of India and another, decided by the Hon''ble Supreme Court on December 20,1985. In this latter case a detention order made by Chief Secretary to Government of India, Finance Department was assailed on the ground that detaining authority could not have possibly applied his mind to the facts and circumstances of the case having regard to the fact that the documents on which the detaining authority purported to rely in making the order of detention ran to

about 234 pages and the documents included the arrest memo which was prepared at 6.00 P.M. on 13th June, 1985. It was observed :

"The reference to the arrest memo which was prepared at 6.00 P.M. is one of the documents which was relied upon by the detaining authority indicates that the documents and the proposal for detention must have been placed before the detaining authority some time after 6.00 P.M. in which case it would certainly be difficult if not impossible for the detaining authority to make the order the same night. We think that in the facts and circumstances of the case the detaining authority could not have been possibly applied his mind to the voluminous documentary evidence which was placed before him and for that reason alone the order of detention has to be quashed."

7. In the instant case Annexure P/6 contains a list of 25 documents and the documents at serial Nos. 22, 23 and 25 are dated 21.4.1993. It is not made out from the reply submitted by the respondents as to when these documents were produced before the detaining authority. The record in the case which was to be examined by the detaining authority for its subjective satisfaction was quite voluminous. The contention raised by the learned counsel that it was quite difficult for the detaining authority to go through the whole of the record within such a short time seems to be well merited. Some of the documents could not have been put before the detaining authority on the date when the detention order was passed. When there were specific averments in the petition that the detaining authority could not have applied his mind to all the material placed on record then it was incumbent upon the respondents to disclose as to when the whole of the record was placed before the detaining authority and whether he had sufficient time to go through the complete record within that time and pass the detention order after fully applying his mind to the facts of the case. In the instant case the very averments made in the petition have not been denied, what to talk of putting forward any justification. So in view of the authorities referred to above the impugned detention order is liable to be quashed on this ground alone.

8. The learned counsel for the petitioner referred to the grounds of detention Annexure P/5 where the detaining authority stated :

"I am aware that you are in judicial custody and I am also aware that you have not moved any application so far but nothing prevents you to move bail application and the possibility of your being released on bail cannot be ruled out. In the event of your getting released on bail keeping in view your role in the present case I am satisfied that unless detained you are likely to continue your prejudicial activities in future."

It was urged that at the time the impugned order of detention was passed the petitioner was in jail and there was a complete check upon the alleged prejudicial activities. He had not moved any application for his release on bail. As such the apprehension of the sponsoring authority that there was possibility of the petitioner''s release on bail is without any basis. No compelling necessity was made out by the detaining authority for the purpose of invoking the extraordinary power of preventive detention. The detention of the petitioner in fact was punitive in nature and not preventive. This contention of the learned counsel is also quite tenable. The conclusion arrived at by the detaining authority in the grounds of detention is quite vague and evasive. In the absence of any bail application moved by the petitioner no such conclusion could be arrived at and this was another instance of nonapplication of mind rendering the subjective satisfaction of the detaining authority as not genuine. In Criminal Writ Petition No. 604 of 1992, Rivadeneyta Ricardo Austin v. Government of the National Capital Territory of Delhi and others, decided on April 8, 1993 by the Hon''ble Supreme Court in the grounds of detention the following statement occurred in para No. 9:

"The Administrator of the National Capital Territory of Delhi is aware that you are in judicial custody and had not moved any bail application in the Court (s) after 9.6.92 but nothing prevents you from moving bail applications and possibility of your release on bail cannot be ruled out in the near future. Keeping in view your modus operandi to smuggle gold into India and frequent visits to India, The Administrator of the National Capital Territory of Delhi is satisfied that unless prevented you will continue to engage yourself in prejudicial activities once you are released."

It was held "that the above statement merely speaks of a possibility of the detenu''s release in case he moves a bail application. It neither says that such release was likely nor that it was imminent. Evidently, the statement falls short of the requirement enunciated by this court in Kamarunnissa. Even in the return filed in this petition the authority has not stated (in response to Ground ''B'' of Writ Petition) that there was material before him upon which he was satisfied that the petitioner was likely to be released or that such release was imminent."

9. In the instant case also no reply has been filed with respect to the averments contained in ground (1) of para No. 18 of the petition and there is no material indicating that the release of the petitioner was likely or there was a real possibility of his being released and that the authority was satisfied about the said aspect. In the case of Shri Dharmendra Sugan chand Chelawat v. Union of India and others, Judgments Today 1990(1) SC 84 : 1990(1) Recent Criminal Reports 446 it was observed as follows :

"The expression compelling reasons in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account of nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

The learned counsel for the respondents has not been able to advance any arguments against the submission made by learned counsel for the petitioner. 1, therefore, hold that the detention order cannot be sustained even on this ground.

10. The other grounds raised in the petition were not pressed before me.

11. In view of my aforesaid discussion this writ petition is allowed and the order of detention dated 22.4.1993 is hereby quashed. The petitioner is ordered to be released forthwith if not required in connection with any other case.

