

(1977) 07 BOM CK 0034
In the Bombay High Court

Robert Thursch

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-07-1977

Acts Referred:

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

Citation : (1978) CriLJ 933

Hon'ble Judges : Sawant, J;Hajarnavis, J

Bench : Division Bench

Judgement

Sawant, J.—This is a petition filed under Article 226 of the Constitution challenging the order of detention dated 19-4-1977 passed by the Secretary to the Government of Maharashtra, Home Department, under the provisions of Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The petitioner is a Belgium national and was found carrying diamonds on his person at the time of his search at the Bombay Airport on the morning of 22-3-1977. The diamonds were valued at Rs. 6,92,259/- and they were seized under the Customs Act, 1962 by the Customs authorities. It also further appears that on interrogation by the Customs Officers, the petitioner made statements on 22nd, 23rd and 31st March 1977 u/s 108 of the Customs Act, in which he admitted that he had delivered diamonds, also on previous trips to a Bombay party. He was a carrier of diamonds since 1970 and he used to carry diamonds to Italy in 1975 for which he received commission. He was then offered a job for carrying diamonds to India and was promised commission for such carriage. He also admitted that the diamonds which were seized from him on 22-3-1977 were carried by him for the same party in Bombay. He identified the said party as one Nanalal Laxmi-chand Javeri from his photograph and when he was taken to the residence of the said Nanalal, he identified him as the very same Nanalal in the presence of panchas, on 23-3-1977. He was thereafter arrested at 10-00 p. m. on 23-3-1977 and produced before the Chief Metropolitan Magistrate, Bombay, on the next day i.e.

24-3-1977. The learned Magistrate ordered him to be released on cash bail of Rs, 1,50,000/- of which he availed on 10-4-1977. The prosecution launched against the petitioner is pending in the Court of the Chief Metropolitan Magistrate, Bombay. While the prosecution was still pending, the impugned order of detention came to be passed.

2. The petitioner seeks to challenge the order of detention on the following grounds:

According to him, the authority passing the order viz, the Secretary, Home Department, had certain grounds before him which were not communicated by the impugned order. Secondly, it is the contention of the petitioner that there is no nexus between the object of the order and the grounds of detention stated in the order. Thirdly, he urges that no order of detention can "be passed against him while a prosecution has been launched on the same facts. Fourthly, it was argued that there was no material before the authority passing the order which had any probative value. The last contention advanced was that the order was passed by the Officer concerned at the dictates of the Customs Department and not after his own subjective satisfaction.

3. We find that there is no substance in any of these contentions. As regards the first contention, Mr. Bhatt the learned counsel for the petitioner, pointed out that in para 29 of the return, the detaining authority has stated that there were other basic facts or materials apart from the admissions made by the petitioner which had a reasonable influence on his decision to pass the order. Relying on this statement, Mr. Bhatt contended that this shows that the order was passed on the basis of facts and materials which were not disclosed in the order. Now, it is not disputed that the order mentions that the entries in the passport of the petitioner shows that the petitioner had made two earlier trips. The order also states that the petitioner had in the presence of two witnesses identified the said Nanalal Laxmichand Javeri, a party in Bombay for whom the diamonds were allegedly carried by the petitioner. In addition, the fact that diamonds worth Rs. 6.92,259 were found concealed on the person of the petitioner has also been stated in the order. These are facts which are apart from those disclosed in the admissions made by the petitioner, and when the detaining authority referred to the facts and materials apart from the admissions there can "be no doubt that the authority was referring to these facts. The same having been disclosed in the order, we are unable to understand the argument that the detaining authority had passed the order on the basis of facts which were not communicated in the order to the petitioner. It must further be noted that in the very same paragraph, the sentence which follows the sentence of which Mr. Bhatt tried to take advantage states in categorical terms that the detaining authority has mentioned all the material facts which were taken into consideration at the time of supplying grounds of detention. We therefore see no force in this submission.

4. As regards the second submission, it was contended that the impugned order mentions three purposes for detaining the petitioner viz. to prevent him from

smuggling goods, to prevent him from abetting the smuggling of goods and also to prevent him engaging in transporting smuggled goods. According to Mr. Bhatt, the grounds stated "in the order however have relevance only to the first ground viz. prevention of smuggling of goods and not to the other objects viz. the abetment and the transportation of smuggled goods. In the first instance, factually Mr. Bhatt is not correct because the grounds stated in the order clearly mention that he was engaged as a carrier of diamonds for commission and that he had in fact transported these diamonds in this country from foreign country for and on behalf of a party in foreign land to be delivered to a party in Bombay. These facts stated in the order therefore will have a clear relation, to the other two grounds also. Apart from this, Mr. Bhatt was unable to show us as to how, if the grounds stated in the order have relation or nexus only with one of the objects stated in it the order of detention on that count is vitiated in law. For these reasons therefore we find that the submission is baseless.

5. In support of his third contention viz, that no order of detention can be made while the prosecution has been launched on the same facts, Mr. Bhatt sought to rely upon a decision of the Supreme Court reported *iffi Biram Chand Vs. State of Uttar Pradesh and Others*, Since this judgment which was delivered by two Judges was overruled in specific terms by a Bench of five Judges in a decision reported in the same volume viz *Haradhan Saha Vs. The State of West Bengal and Others*, Mr. Bhatt could not make any headway in his submission. The said submission therefore has only to be stated to be rejected.

6. The fourth contention advanced by Mr. Bhatt is equally without any substance. The contention was based on the allegation that the admissions which have been taken into consideration were involuntary admissions made under threat and coercion and therefore they had no probative value. It is however admitted by him that the handwriting and the signature on the said admissions are those of the petitioner. Whether the statement is voluntary or involuntary is a question of fact and is not open for this Court in this petition to investigate into the said question of fact. It is sufficient for the purpose of deciding this petition that there was some material before the detaining authority, before the authority passed the detention order and that the authority had applied its mind to the same. We are therefore unable to entertain the invitation of Mr. Bhatt to go into the question of the probative value of the said admissions.

7. The last contention has no basis whatsoever in fact. On the other hand, the material on record shows that the detaining authority had before it the admissions made by the petitioner as well as the other facts such as the recovery from the petitioner's person of the diamonds, the entries in his passport and the panchanama showing that the petitioner had identified the Bombay party. The return filed by the detaining authority also stated that the impugned order was passed after going through all this material. We therefore see no substance in the allegation that the order in question was passed at the instance of the Customs Department and not on the personal satisfaction of the detaining

authority. For all these reasons we are of the view that there is no substance in this petition and the petition deserves to be dismissed. The petition is accordingly dismissed and the rule is discharged with costs.