

(1987) 01 DEL CK 0015

In the Delhi High Court

Case No : Criminal Writ Appeal No. 330 of 1986

Sanjay Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-01-1987

Acts Referred:

Citation : (1987) 12 DRJ 247 : (1987) 1 RCR(Criminal) 468

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : Trilok Kumar, N.C. Chawla, S.K. Mishra and Anuradha Kaushal, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) Mr. Sanjay Kumar, came to be detained by an order dated 19/2/1986 passed by Shri M.L.Wadhawan, Additional Secretary to the Government of India u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended). The detention order was passed with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. Be it noted that this detention order was actually executed on 7/5/1986 and even though it was passed on 19/2/1986, it was actually passed on to the District authorities at Hoshiarpur for execution on 19/3/1986. The detention order was passed on the basis of an incident dated 1/12/1985.

(2) It is not necessary for me to refer to the detailed grounds of detention. Suffice is to say that on the basis of secret information, the officers of the Enforcement Directorate Jalandhar intercepted detenu along with his sister, a co-detenu namely Smt. Veena Rani and allegedly recovered from their possession a sum of Rs. 1,100.00 Indian currency and foreign exchange of various countries. In the grounds of detention it is detailed that both these

"ONE small attache case was also lying along with her luggage under the seat she was occupying the ownership of which she denied. The other passengers

traveling by her side also did not claim the said attache case and informed the officers on enquiry that it belongs to the said lady and subsequently said lady also accepted its ownership."

I am making specific reference to this fact for the reason that if this were true that the officers were informed by some passengers that the attache case belongs to the lady they would not have missed to record their statements in order to satisfy the detaining authority to independently exert and apply its mind as to whether on facts the detention is called for or not. It was necessary to place such material before the detaining authority. I am not able to understand when in Panchnama reference to certain persons had been made as having stated that the attache case belonged to this lady how the detaining authority could go by a mere assertion of the officers in the absence of the statements of such persons. This to my mind is important for the reason that this attache case allegedly was lying along with luggage of the lady underneath the seat and she in the first instance denied its ownership.

(3) In any case be that what it is, though this is one of the important reasons which vitiates the satisfaction of the detaining authority, there is one important aspect to this case. Mr. Trilok Kumar while arguing the case on behalf of the petitioner has raised a number of points but it is not necessary for me to examine all as after giving my anxious consideration to the facts of the case I find that this petition can safely be decided on consideration of single point. This is in respect of the delay in passing of the detention order and the execution thereof. But before I deal with that I must make reference to what Mr. Trilok Kumar has stated at the bar. The alleged story of the sponsoring authority is that the petitioner along with his sister Veena Rani were caught in possession of the foreign exchange and on recording their statements they are supposed to have informed the authorities concerned that this foreign exchange was given to him by one Kirnti Lal Jain and that he was delivering it to one Chhabra of Delhi. Kirnti Lal Jain was also detained according to Mr. Trilok Kumar and was released by the Advisory Board. It transpired during the proceedings of the Advisory Board that one Ramesh Kumar was also involved as it was alleged by Kirnti Lal that it was actually one Ramesh Kumar who used to hand over foreign exchange to him and in turn he used to hand it over to the petitioner for carrying it to one Chhabra of Delhi. This Ramesh Kumar was not detained. His statement was allegedly record and according to Mr. Trilok Kumar this statement was. not produced before the detaining authority. In any case I am not concerned with it because it is stated that he had denied any connection with the incident. Mr. Trilok Kumar states that this is very relevant but I am not going into this contention. It may or may not be relevant.

(4) The principal contention of Mr. Trilok Kumar, as already stated,. is that the order of detention was passed after the delay of two months and 15 days. It was executed after 2 months 20 days thereafter. This contention he has specifically raised both in the petition as well as in the grounds. This contention of the

petitioner has been answered in para 3 of the counter affidavit in the following manner :

"I say that the delay in the service of the detention order on the detenu was due to the bad law and order situation at Hoshiarpur as reported by the District Police Authorities. The detention order was handed over to the Additional Superintendent of Police, Hoshiarpur on 19/3/1986."

THE same stand has been reiterated at several places of the counter affidavit. In reply to paras 7 and 8 of the grounds it is stated in the counter affidavit :

"THERE has not been any inordinate delay in passing the detention order as alleged. The time taken in passing the detention order is excessive as the papers had to be scrutinised and examined at various stages".

MR.Misra during the dictation of the judgment intervenes to say that. the word "is excessive" are typing mistakes and it should have been "is not. excessive."

(5) I need not refer to all the rulings of the Supreme Court that the delay in passing the order or execution thereof by itself is not fatal but it is fatal if it is not properly and reasonably explained. Now applying this principle to the present petition one can very safely say that the delay in passing of the detention order and execution thereof in this particular petition has been very vaguely explained. There is no affidavit of the Superintendent of Police of Hoshiarpur that he could not execute the detention order even after it was conveyed to him because of law and order situation. I understand that even if there is a law and order situation police does not cease to discharge its normal duties. That is no body's case. Further more how could it be said that the delay has been reasonably explained when the retention order itself was transmitted to the executing authority on 19/3/1986 even though it was admittedly passed on 19/2/1986. There is absolutely no Explanation for this delay. That sufficiently goes to show that there is no nexus between the allegedly prejudicial activities and the compulsion for passing the detention order. If the idea is, as stated in the detention order, to prevent the detenu from acting in a manner prejudicial to the augmentation of foreign exchange, in that event, the authorities would not fail to act expeditiously. On this ground alone Therefore subjective satisfaction of the detaining authority is vitiated. The petitioner shall be released forthwith unless otherwise wanted. The petition is allowed.

(6) CRI. Writ No. 348 of 1986 Smt. Veena Rani which again has been filed by her brother in law Shri Shiv Narain Jaggi is in respect of the same incident and is based on the same facts. The detention order in this petition is of even date and is based on the same incident. This petition also suffers from the infirmity which I have pointed out in Cri. Writ No. 330 of 1986 above on the ground that there has been unexplained and unreasonable delay in passing the detention order and in transmitting it for execution and execution thereof. This petition is also to be allowed. It is accordingly allowed. The detention of Smt. Veena Rani is quashed. She be released forthwith unless wanted otherwise.