

(1989) 04 PAT CK 0014

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 243 of 1988

Sant Lal Rai

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-04-1989

Acts Referred:

Customs Act, 1962 — Section 135

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 2(C), 3(I)

Citation : (1989) 37 BLJR 385

Hon'ble Judges : B.N. Singh, J;B.N. Agrawal, J

Bench : Division Bench

Advocate : Madan Mohan Prasad, Madhusudan Kumar and Mohindra Kumar, for the Appellant; G.P. Jaiswal and Renuka Sharma, for the Respondent

Final Decision : Allowed

Judgement

B.N. Agrawal, J.—This application has been filed for issuance of a writ of habeas corpus after quashing the order of detention passed on 7th of July, 1988 by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue (hereinafter referred to as the Joint Secretary) u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (7 of 1988) published in the extraordinary issue of the Gazette of India on 4th of July, 1988 (hereinafter referred to as the Ordinance) contained in Annexure T to the Writ application.

2. The short facts for disposal of this application are that on 9-5-1988 the petitioners were arrested in connection with Custom case No. 13 of 1988 u/s 135 of the Customs Act, 1962 (Act No. 52 of 1962) (hereinafter referred to as the Act) and the said case was pending in the court of the Presiding Officer, Special Court for trial of Economic offences, Muzaffarpur (hereinafter referred to "the Special Court"). When the petitioners were in jail in connection with aforesaid substantive case an order of detention was passed on 7th of July, 1988 by the

Joint Secretary u/s 3(I) of the Ordinance stating therein that it was necessary to detain the petitioners in order to prevent them from engaging in transportation and purchase of narcotic drugs which are some of acts within the meaning of "illicit traffic" as defined u/s 2(C) of the Ordinance. The order of detention along with the grounds was served upon the petitioners on 9-7-1988 in Jail. Thereafter it appears that on 10-8-1988 the petitioners were granted bail by this court in the substantive case, referred to above. On 27-7-1988 the petitioners filed a representation which was received by the Government on 1-8-1988 and the representation was rejected on 2nd of September, 1988. After observing the formality of referring the matter to the Advisory Board, the detention of the petitioners was confirmed by the Central Government on 13-9-1988 and meanwhile, the present Writ application was filed challenging detention of the petitioners.

3. Learned Counsel appearing on behalf of the petitioners has raised several points in support of this Writ application, but, in my view, it is not necessary to refer to all of them, because this writ application is bound to succeed on a very short question, that is, that the representation of the petitioners was not disposed of with utmost expedition. On this question, it may be stated that even from the counter-affidavit filed on behalf of the respondent Union of India, it would appear that undue delay was caused in disposal of the representation filed on behalf of the petitioners. In this connection, I may usefully quote paragraph 17 of the counter-affidavit filed on behalf of the respondent Union of India, which runs thus:-

"With regard to para 2 of the Writ petition, it is stated that (he petitioners sent a joint representation dated 27-7-1988 which was received on 1-8-1988. The authorities acted promptly and on the same day comments from the Collector of Customs (Preventive), Patna were called for and the Collector, in turn, obtained the comments, from the Assistant Collector of Customs (Preventive), Muzaffarpur. The comments dated 16-8-1988 of the Assistant Collector were received under the cover of Collector of Customs (Preventive), Patna's letter dated 26-8-1988. The papers were processed immediately thereafter and put up to the Detaining Authority on 2-9-1988. The Detaining Authority considered the said representation on 2-9-1988 itself. On the same day the fact of rejection was communicated to the petitioners vide memo dated 2-9-1988. These memos were sent to Bhagalpur Jail for service. The Superintendent returned the same intimating that they are not lodged in that Jail. The memos were redespached to Muzaffar-pur Jail for service. A copy of the memo was also sent to the petitioner's Advocate. It is further stated that no copy of the said representation was received through the Jail authorities, but only through the petitioners' advocate."

From the aforesaid statements in the counter-affidavit it becomes clear that the representation filed by the petitioners was received by the respondent Union of India, on 1-8-1988 and on the same by comments were called for from the

Collector, Customs (Preventive), Patna, who, in his turn, referred the matter to the Assistant Collector of Customs (Preventive), Muzaffarpur and he submitted his comments on 16-8-1988. It is not known when the letter from the Central Government was received by the Collector, Customs (Preventive), Patna, and on which date he called for the comments from the Assistant Collector, Customs (Preventive), Muzaffarpur why the Assistant Collector, Customs (Preventive), Muzaffarpur has taken 16 days" time in preparing the comments, is not known. The matter does not rest here. The comments of the Assistant Collector of Customs (Preventive), Muzaffarpur are dated 16-8-1988 and according to the counter affidavit, the said comments were forwarded by the Collector, Customs (Preventive), Patna under his letter dated 26-8-1988 to the respondent - Union of India. It does not stand to reason as to how ten days would be taken in merely preparing and forwarding letter by the Collector, Customs (Preventive), Patna to the Union of India by which comments of the Assistant Collector, Customs (Preventive), Muzaffarpur were forwarded. No reason whatsoever has been assigned as to what the Collector, Customs (Preventive), Patna was doing for these full ten days. It was for the respondent - Union of India to justify the action of its officer in dealing with representation of the petitioners but they have miserably failed therein either by making statement in the counter-affidavit or producing the original file relating to detention of the petitioners.

4. In view of the foregoing discussions, I am of the view that the representation of the petitioners has been dealt with by the officers of the Union in a leisurely manner like administrative files in the Government Offices. It is well settled that in cases of preventive detention, where liberty of a citizen is in jeopardy, a representation cannot be allowed to remain pending like this without being attended to for days together and weeks together. The present case, in my view, is squarely covered by a decision of the Supreme Court in the case of Harish Pahwa Vs. State of U. P. and Others, wherein disposal of the representation in the like manner by the Government has been deprecated and the order of detention has been quashed by the apex court. In the said case, their Lordships while quashing the order of detention observed as follows:

"In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th, and 25th of June, 1980. It is also not clear that consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980, when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was only authority to decide the representation. We may make it clear as we have done on numerous earlier occasions, that this court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling

comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

(Emphasis added).

5. For the reasons mentioned above, I have no option but to allow this writ application which is accordingly allowed, the order of detention passed by the Joint Secretary on 7th of July, 1988 contained in Annexure I and confirmed by the respondent - Union of India are hereby quashed and the petitioners are directed to be released forthwith, in case they are otherwise not required to be in custody.

Binodanand Singh, J.

6. I agree.