
(1982) 12 DEL CK 0007

In the Delhi High Court

Case No : Criminal Writ Appeal No. 102 of 1982

Santosh Kumar Jain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-12-1982

Acts Referred:

Citation : (1983) 1 Crimes 945 : (1983) 23 DLT 164

Hon'ble Judges : Rajinder Sachar, J; R.N. Aggarwal, J

Bench : Division Bench

Advocate : Harjinder Singh and G.L. Chaudhary, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) This is a petition under Article 226 of the Constitution of India by the detenu Santosh Kumar Jain for the quashing of the order of detention dated 29th September, 1981.

(2) On 29th September, 1981 Shri B. B. Gujral, Additional Secretary to the Government of India, passed an order u/s 3(1) of the Conservation of the Foreign Exchange and Prevention of Smuggling Activities Act, 1974, as amended, (hereinafter referred to as "COFEPOSA") for the detention of Santosh Kumar Jain resident of F-13G, Lajpat Nagar, New Delhi with a view to preventing him from acting in any manner prejudicial to the augmentation of the foreign exchange.

(3) The petitioner on 29th November, 1981 filed a writ petition in the Calcutta High Court and obtained an injunction order restraining the detaining authority from enforcing the detention order subject to certain conditions. The petition, it appears, was dismissed for default on 20th February, 1982. We may notice here that the respondents in para 5 of the counter affidavit have stated that the Calcutta High Court on the basis of the reply filed by the respondents had vacated the ex parte injunction order. Whether the petition at Calcutta was dismissed in default or it was dismissed after the respondents had moved the Court for the vacation of the ex-parte injunction order is not material for the

decision of this petition. The petition at Calcutta was dismissed in default on 20th February, 1982 and the petitioner was arrested pursuant to the order dated 29th September, 1981 on 8th March, 1982.

(4) The grounds of detention as required by law were served on the detenu. The detenu made representation against his detention on 23rd April, 1982. The matter was placed before the Advisory Board and the Advisory Board approved the order of detention. The detenu made another representation on 16th August, 1982 and this was also rejected by the Government on 31st August, 1982. The present petition was filed on 6th October, 1982.

(5) The allegations in substance against the petitioner are that the Directorate of Enforcement received an information that the petitioner in association with his father Nanak Chand Jain and brother Suresh Kumar Jain was indulging in the sale and purchase of foreign currency in black market and he also indulged in the smuggling of watches, electronics and other contraband goods. On 23rd February, 1981 an information was received that the petitioner had collected huge foreign currency for supply to some persons in Okhla Industrial Area. Pursuant to this information, a surveillance was kept outside the office of the petitioner in Connaught Circus. The petitioner was apprehended by the officers of the Enforcement Directorate on 23rd February, 1981 outside Sachin Tea House No : 33/A, Connaught Circus, New Delhi. The person of the petitioner was searched and foreign currency as detailed below was recovered from the inner pocket of the coat worn by the detenu: Saudi Rials Canadian \$ Stg. Pound Uae Dirhams Singapore \$ Kuwait Dinars During interrogation on 24th February, 1981 that petitioner disclosed that he knew one R.N. Sharma staying in room No. 12-A Regal Hotel, Chandni Chowk, Delhi and that on the evening of 23rd February, 1981 at 5.15 P.M. he had gone to R.N. Sharma and left with him one brief case and two small boxes containing two speakers and cassette deck of foreign origin and had requested him to keep the same till the morning of 24th February, 1981 when he would come to him and collect the said articles. The premises at room No : 12-A, Regal Hotel, Ghandhi Chowk, were searched and a Vip travellite brief case containing foreign exchange as detailed below was recovered: Italian Liras 7,22,500 French Cents 100 Oman Currency 100 Dutch Marks 60 Belgian Francs Netherland Guilders U.S.S Indian Currency

(6) Besides the above currency some imported articles like electronic watches, cameras, tapes were also recovered from the two Boxes lying in room No. 12-A. The brief case also contained documents including loose sheets, note books and diaries. These documents were also taken into possession. The petitioner on 24th February, 1981 is alleged to have made a statement admitting that the foreign currency belonged to him and that the documents related to his business in foreign exchange, smuggling of goods, etc. The petitioner is said to have made a detailed statement regarding the documents which proved that the petitioner was dealing in the sale and purchase of foreign currency since about the year 1975.

(7) Grounds of detention mentioned that the petitioner was arrested under the Foreign Exchange Regulation Act on 25th February, 1981 and he remained in judicial custody up to 20th April, 1981 when he was released on bail.

(8) Mr. Harjinder Singh counsel on behalf of the petitioner has assailed the validity of the detention order on the ground that immediately on production before the court the petitioner had retracted the statement dated 24th February, 1981 said to have been made by him before the Customs Officers and further told the Court that the said statement had been extorted by giving beating and this vital and important material which was likely to influence the mind of the detaining authority in the passing of the impugned order was not placed before the detaining authority and this omission rendered the detention invalid. The counsel referred to para 11 (vi) of the counter-affidavit filed by the Union of India and contended that it is not disputed that the bail application and orders of the Magistrate were not placed before the detaining authority. We would like to notice here that in para Ii (vi) of the counter-affidavit it is stated that the detaining authority was not aware as to whether the petitioner when produced before the Magistrate had retracted the statement dated 24th February, 1981. The counsel in support of his contention relied upon (Asha Devi v. K. Shivraj & anr.) Air 1979 S.C 447, (Mrs. Bhagwati Devi v. Union of India etc.) 1975 (11) Delhi 791 and (Javeri and others v. B.B. Gujral and others) Criminal Writ No. 19/78 decided on 11th July, 1978 by a Bench of this Court.

(9) The principle/principles that can be spelled out from the authorities mentioned above are :(1) all the material facts having bearing on the detention must be placed before the detaining authority, (2) the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of facts arrived at by the detaining authority (3) copies of the statements and documents to which reference is made in the grounds must be supplied to the detenu as part of the grounds; and (4) if any material fact which could influence the decision of the detaining authority is not placed before the detaining authority the detention order is rendered invalid.

(10) The petitioner during the hearing of the case filed a supplementary affidavit along with copy of the bail application dated 26th February, 1981 moved before the Additional Sessions Judge and a copy of the order of the Additional Sessions Judge. The detenu in para 5 of the application for bail had stated that the confessional statements were obtained by force and torture.

(11) We have perused the grounds of detention and we find that the detention is based on the following grounds (1) the apprehension of the detenu on 23rd February, 1981 and the recovery of foreign exchange as detailed in para I of the grounds (2) the recovery of a brief case and two small boxes from room No. 12-A, Regal Hotel, Ghandni Chowk in occupation of one R.N. Sharma on the information given by the detenu (3) the recovery of foreign exchange and some loose sheets, note book and diaries from room No. 12-A, Regal Hotel, Chandni

Ghowk, (4) the statement by the detenu that some of the documents seized were written by him and they related to the purchase and sale of foreign exchange in 1975; and 5) that the documents seized showed that the transactions mentioned in the documents pertained not only to the period 1975 but also to the period ranging from 1978 to 1981.

(12) We have perused the various representations made by the detenu to the Government against his detention and also the averments made in the petition and the supplementary affidavit dated 30th November, 1982 and we find that beyond a general allegation that the confessional statement was obtained by compulsion and force, there is no denial of the recovery of the loose sheets, note book and diaries and the fact that they were in the hand of the detenu.

(13) In the first representation dated 23rd April, 1982 the only thing urged qua the laid documents was that the transactions mentioned were too remote in time and that the documents marked B-7, M-23, N-I, P-53, P-54, P-57, R-2, R-3, R-12 and L-22 did not relate to foreign exchange and that in fact a perusal of the said documents would show that they related to some cash receipts and payments. The question whether the said transactions related to foreign exchange or not could only be gone into and determined by the detaining authority. This court cannot substitute its own opinion formed by the detaining authority on the basis of the statements, documents and other material. The important fact is that there is no denial of the fact that some of the documents noticed in the grounds are written by the detenu.

(14) In the representation dated 16th August, 1982 also there is no denial of the fact that the documents seized at the instance of the detenu are written by the detenu.

(15) The petitioner has not placed before us the bail application and order passed there on by the Additional Chief Metropolitan Magistrate. Therefore, we do not know as to what was the actual stand taken by the detenu before the Additional Chief Metropolitan Magistrate regarding the alleged confessional statement made by him before the customs authorities on 24th February, 1981. The fact, however, remains that before the Sessions Judge the detenu had pleaded that the statement was obtained from him by force and torture. This allegation in the circumstances of this case, in our opinion, is too general and would not render the detention invalid on the ground that the retraction by the detenu of the confessional statement was not brought to the knowledge of the detaining authority.

(16) Mr. Harjinder Singh next contended that the detaining authority had taken into consideration while making the detention order the statements of R.N. Sharma, Suresh Kumar Jain and Nanak Chand Jain recorded by the Customs Officers but the copies of the said statements were not supplied to the detenu and this rendered the order invalid; in the alternative Mr. Harjinder Singh contended that assuming the statements of R N. Sharma, Suresh Kumar Jain and

Nanak Chand Jain were not placed before the detaining authority the detention is bad because the statements of the said persons had vital bearing in the formation of the opinion one way or the other by the detaining authority.

(17) The respondents in their counter-affidavit in para 11 (viii) have stated that the detaining authority is not aware if any statement of R.N. Sharma was recorded. The respondents, however, did not dispute that the statement of R.N. Sharma if any was not placed before the detaining authority.

(18) We have gone through the record and we find that there is neither any averment in the writ petition nor any other material showing that R.N. Sharma, Suresh Kumar Jain and Nanak Ghand Jain had made any statement which had a material bearing on the issue. We also find nothing in the record to suggest that the detaining authority had taken into consideration any statement, document or material which was not communicated to the detenu.

(19) Mr. Harjinder Singh next contended that the Supreme Court in A.K. Roy and Others Vs. Union of India (UOI) and Others, had ruled that a detenu has the right to lead evidence in rebuttal before the advisory Board, but the said right had been denied to him and that vitiated the detention order.

(20) There is no doubt that the Supreme Court in the cited authority has held that a detenu can produce oral and documentary evidence before the Advisory Board to rebut the allegations which are made against him. The Supreme Court has ruled that if a detenu wishes to examine any witness he has to keep them ready at the appointed time and there is no obligation on the Advisory Board to summon the witnesses desired to be examined by the detenu.

(21) The detenu in his representation dated 23rd April, 1982 to the detaining authority had requested for the production of the witnesses mentioned in para 11 before the Advisory Board. In the said representation the detenu had also requested for being supplied full documents that has been relied upon or referred to or taken into consideration by the detaining authority while passing the detention order. On 30th April) 1982 before the Advisory Board the detenu made an application requesting : (a) that he be allowed to be assisted by an advocate or by his next friend; and (b) that all the documents mentioned in the representation be supplied to him and his defense witnesses be also summoned.

(22) We may mention that the detenu was allowed to have the assistance of an advocate.

(23) On 14th May, 1982 the detenu made another application before the Advisory Board for summoning the witnesses mentioned therein in support of his defense. He also requested that all the documents which are referred to in the grounds of detention should be supplied to him to enable him to support his defense.

(24) We find from the record that the detenu had no witness present with him for being examined before the Advisory Board. The detenu wanted title detaining

authority to produce the witnesses mentioned in the representation dated 23rd April, 1982 and in the application dated 14th May, 1982 before the Advisory Board. This right the detenu did not possess. The Supreme Court in the case A.K. Boy supra) has given the detenu the right to examine any witness who may be present with him but the detenu has not been given the right to summon the evidence or require the Advisory Board or the detaining authority to produce witnesses that the detenu may want them to produce in his defense. Therefore, the non-summoning of the witnesses by the Advisory Board or the non-production of the witnesses by the detaining authority would not bring the case of the petitioner within the rule of law laid down in A.K. Boy (supra).

(25) Mr. Harjinder Singh contended that by not supplying the documents which the detenu wanted the detain authority to supply, the detenu had been deprived of his right to lead evidence in defense to prove his innocence. We have earlier discussed this aspect of the case and we find that there is no document or statement which the detaining authority had taken into consideration in the making of the detention order but had not supplied it to the detenu. Therefore, the grievance of the detenu that he could not make any effective representation before the Advisory Board because of material documents having been kept back from him has no substance.

(26) Mr. Harjinder Singh next contended that the basis of the order of detention is the incident of 23rd February, 1981 but the detention order was made on 29th September, 1981 after a great deal of delay. More than one person was concerned in the racketeering in foreign currency in black market. With reference to some of the documents seized from the detenu it transpired that the detenu was engaged in illegal sale and purchase of foreign currency from 1975 and continued the prejudicial activities in 1979, 1980 and 1981. The investigation in such cases is always prolonged and time consuming. We do not think that there was undue or unnecessary delay in making the order of detention.

(27) Mr. Harjinder Singh next contended that the order of detention was passed on 29th September, 1981 and the detenu was arrested on 8th March, 1982 and that by then the detention order has lost its efficacy, in any case it is contended that there was no need to continue the order of detention when the matter was examined by the Advisory Board in May, 1982. The order of detention was passed on 29th September, 1981. The detenu obtained an injunction order from the Calcutta High Court restraining the authority from giving effect to the said order. It was because of the injunction order passed by the Calcutta High Court that the detention order could not be executed till March, 1982. We do not think that the detenu can take advantage of the period that elapsed between September and March because of the injunction order obtained by him from the Calcutta High Court. Mr. Harjinder contended that the detenu was in Jail from 23rd February, 1981 to 20th April, 1981 and he had further scrupulously observed the conditions imposed by the Calcutta High Court on him while granting interim injunction and Therefore, there is no need to keep the detenu in

detention under the preventive laws the object of which is to prevent a person from indulging in similar activities in the future. We have given our careful thought to the above contention and we are of the view that it is for the detaining authority to decide whether the detention order has served its purpose or not. We are only concerned with the question whether the detention order has been passed in accordance with law.

(28) We find no legal infirmity in the impugned order of detention. The petition, Therefore, is dismissed.