
(1998) 08 BOM CK 0040

In the Bombay High Court

Case No : Criminal Writ Petition No. 816 of 1997

Satish Ratilal Rawal

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 22(5), 226
Penal Code, 1860 (IPC) — Section 302

Citation : (1999) 5 BomCR 61 : (1999) BomCR(Cri) 61 : (1998) CriLJ 4310 : (1999) 1 RCR(Criminal) 333

Hon'ble Judges : Vishnu Sahai, J;N. Arumugam, J

Bench : Division Bench

Advocate : S.L. Maneshinde, for the Appellant; R.M. Agarwal and R.L. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Through this petition preferred under Article 226 of the Constitution of India, the petitioner (detenu) has impugned the order dated 27th June 1997, passed by Mr. Somnath Pal, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi detaining him under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The detention order along with the grounds of detention bearing the said date was contemporaneously served on the petitioner on 10-7-1997.

2. We have heard Mr. S.L. Maneshinde for the petitioner, Mr. R.M. Agarwal for respondents 1 and 2 and Mr. R.L. Patil, A.P.P. for respondents 3 and 4.

3. Since this petition deserves to be allowed on a legal ground namely, that although the detenu at the time of the passing of the detention order was on bail but since at the time of its execution was in judicial custody, having surrendered, to his bail two days earlier, and awareness of this fact, as also of the real danger of his being released has not been shown by the Detaining

Authority and hence the detention order was vitiated in law, we are not advertent to his prejudicial activities contained in the grounds of detention. In this connection it would be necessary to refer to paragraph 6 of the decision of the Supreme Court rendered in the case of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, , wherein it has been observed thus:

"6. In this case there were grounds for the passing of the detention order but after that the detenu has surrendered for whatever reasons, therefore the order of detention though justified when it was passed but at the time of the service of the order there was no proper consideration of the fact that the detenu was in custody or that there was any real danger of his release. Nor does it appear that before the service there was consideration of this aspect properly. In the facts and circumstances of this case, therefore, the continued detention of the detenu under the Act is not justified."

4. A perusal of the said paragraph would show that where the detenu has surrendered for whatever reasons and at the time of the service of the detention order was in custody and there was no proper consideration of this fact or of a real danger of his being released, the detention order would be vitiated.

In that case the detenu had surrendered in a case u/s 302 I.P.C. and the return filed by the District Magistrate reflected that the surrender was made to frustrate the service of the detention order. In spite of the said averment since awareness referred to above was not shown by the authorities the detention order was quashed.

5. In the instant case it is common ground between Counsel for the parties that although at the time when the detention order was passed the detenu was on bail but at the time of its execution he was in judicial custody, having surrendered to his bail. That being the position it was necessary for the authorities to show the awareness mentioned in paragraph 6 of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, , but the same has not been done. Although the detaining authority has filed a return but in the same he has not averred to the real danger of detenu being released in near future and resorting to prejudicial activities. Consequently the impugned detention order would have to be quashed.

6. We feel it relevant to point out that the said decision of the Supreme Court Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, was followed in a Division Bench decision of the Delhi High Court, rendered in the case of Kuldip Singh v. Union of India 1995 L. J. 3737 . A perusal of para 14 of the said decision would show that while the detenu was in judicial custody the detention order had been served upon him but the detaining authority did not specify whether there was reasonable likelihood of his being released and if released whether he would involve himself in prejudicial activities under the COFEPOSA. In that view of the matter relying upon Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, the Delhi High Court quashed the detention order detaining the

detenue under COFEPOSA.

In a very recent decision 199S L.J. 1837 rendered in the case of Manjit Singh Dhillon v. Union of India and others, a learned Single Judge of the Punjab and Haryana High Court, in paragraph 23, has held that although when the service of the detention order was made on the detenue he was in judicial custody, having surrendered just two days prior to the service, but as the detaining authority did not take into consideration this fact and did not satisfy itself whether it was still imperative to detain him under COFEPOSA Act, his detention was unsustainable and it quashed the detention order.

The ratio laid down in the said cases has also been laid down in two Division Bench decisions of our Court viz.

(i) Cr. Writ Petition No. 1235 of 1987 Mrs. Rukhsana Abdul Majeed Ali Mohammed v. Tarun Roy and others, decided on 26th February, 1988, and

ii) Criminal Writ Petition No. 26 of 1990 Chemmala Mohammad Mustafa v. Shri L.Hmingliana and others, decided on 11th April 1990 by the Nagpur Bench of this Court.

In both these decisions the ratio laid down in Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, has been followed.

7. In our view the decisions referred to above would have a blanket application to the instant case.

8. Mr. R.M. Agarwal learned Counsel for respondent 1 and 2 strenuously urged that the petitioner was on bail when the detention order was issued and with a ploy to frustrate it in law he surrendered to the same on 8-7-1997 i.e. two days prior to its service. He urged that since the law would not allow the petitioner to take advantage of his own wrong it would be inequitable for us to hold that the detention order would stand vitiated on the said ground.

We have considered Mr. R.M. Agarwal's submission but we regret that in the teeth of the ratio laid down in Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, and the other decisions mentioned earlier it would not be possible for us to accept the same.

9. Mr. R.M. Agarwal made some other submissions but we do not think that they are relevant in the context of the legal point on which we are allowing this petition. Hence we are not adverting to them.

10. For the said reasons, in our view, the impugned detention order dated 27th June 1996 passed by the respondent No. 2, a true copy of which has been filed as Exhibit "A" to the petition, is quashed and the petitioner Satish Ratilal Rawal who is in custody is directed to be released forthwith unless required in some other case.

Rule is made absolute.

11. Petition allowed.