

(1992) 07 DEL CK 0044

In the Delhi High Court

Case No : Criminal Writ Appeal No. 474 of 1991

Satnam Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-07-1992

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 22(5)

Citation : (1992) CriLJ 3961 : (1992) 2 Crimes 1133 : (1992) 23 DRJ 365 :
(1992) 3 RCR(Criminal) 637

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Naveen Malhotra and Jagdev Singh, for the Appellant;

Judgement

Usha Mehra, J.

(1) The petitioner, Satnam Singh, has been detained by an order dated 5th June, 1991, passed by Shri Mahendra Prasad, Joint Secretary to the Government of India. The detention order is u/s 3 Sub-Section (1) of Conservation of foreign Exchange and prevention of Smuggling Activities Act (as amended), 1974 (For short Cofeposa Act). This order has been passed to with a view to preventing the petitioner Satnam Singh, son of Shri Kishan Singh, from engaging in transporting and keeping smuggled goods and dealing in smuggled goods otherwise than by engaging in concealing smuggled goods. Along with the detention order grounds of detention of even date was served upon the detenu (petitioner). He was also informed of his entitlement to make representation against his detention both to the Central Government as well as to the Advisory Board. By this petition he has challenged the aforesaid detention order.

(2) Earlier the petitioner was arrested on 17th April, 1990 by the Custom Officers from outside the Indira Gandhi International Airport, New Delhi, Along with Shahzad Ali, on the allegation that he was engaged in smuggling or carrying

smuggled goods Along with Co-accused Shamsuddin Ismail. The gold was concealed in the washing machine and it weighted 4 kg. and 450 gms. A complaint under Sections 135 and 132 of the Customs Act against the petitioner was filed on 26.5.90 on which show cause notice was also issued. Petitioner was produced before the Magistrate. He was remanded to the judicial custody and was released on bail on 29th November, 1990. When he was under arrest his statement was recorded but after being released on bail he extracted the said statement on the ground that the same was obtained under coercion. The detention order dated 5.6.91 was served on the petitioner on 10th July, 1991.

(3) On 30th July, 1991, petitioner made a representation under Article 22 of the Constitution of India asking for documents and legible copies of the documents. On 13.8.91 petitioner send a representation to the Advisory Board. On 16.8.91 he made another representation to the Advisory Board when he was produced. On 4.9.91 his detention was confirmed by the Central Government. The representation which he made on 30th July, 1991 was rejected by the respondent on 30th August. 1991.

(4) The basis for issuing the detention order as per respondent is that on 17.4.90 one Shamsuddin Ismail Bebal, son of Sh. Ismail Abdul Bebal, arrived at Indira Gandhi International Airport, New Delhi, from Dubai by flight No. EX-702. He reported at Red Channel Counter and made a declaration of his goods to be worth Rs.2,760/- which comprised of one National washing Machine, Toys, Whisky and miscellaneous items. On being suspicious, the Customs Officers examined the washing machine through X-rays which detected unusual part. On opening the washing machine and unusual part some powdery substance started falling. That unusual part was dismantled and from the base of it yellow metal strips were found. On further examination of washing machine 39 yellow metal strips were recovered Shamsuddin disclosed that he was to hand over the washing machine with the concealed gold to Shahzad outside the arrival hall, though he had no idea about the identity of that person. Shamsuddin was taken out side the arrival hall/shadowed by Customs Officers in plain clothes. Two persons who came forward were apprehended. The disclosed their names as Surjit Singh and Shahzad Ali Khan.

(5) The petitioner and Shahzad Ali Khan were detained for questioning. The gold was tested and found to be of 24 carat purity, weighing 4450 gms. valued Rs. 8.67.750/- (International Value) and Rs. 15.13.000.00 (Market Value). The gold Along with the washing machine was seized. Residential premises of the petitioner was searched Along with one Kamaljit Singh wherefrom 23 washing machines of different brands without motors/rotors, one Sony 20" colour Tv, two Samsung refrigerators and one General Air conditioner Along with dismantled parts of the above said washing machines, Indian passport of petitioner. 23 baggage receipts in the name of various persons showing payment of duty and some other documents were seized.

(6) That on 17.4.90 petitioner made a statement u/s 108 of the Customs Act

interalia stating (hat he was working as an Electrician in a Tent House and had also a T.V. repairing show and that he has one brother Kamaljit Singh who is a carpenter and had an interior decorator shop at Dubai: that his brother has been visiting Indian on various occasions for various purposes and that his brother received a telephone call from Dubai that Guffar Ali Khan had see a washing machine through one person who would be wearing white shirt and blue trouser and petitioner in to receive him at the Airport. It was also stated the Shahzad Ali was to receive the same passenger.

(7) Petitioner knew Shahzad Ali for the last two to three months. Gaffar Ali was a good friend of Kamaljit Singh, petitioner's brother. Petitioner and Shahzad Ali reached the Airport and waited for the passenger from Dubai who was to bring the washing machine with the concealed gold. It was further stated that the petitioner knew about the concealing of the gold. Previously also whoever had been bringing the concealed gold used to be paid Rs. 2,000.00 . Further voluntary statement was recorded on 18.4.90 in which petitioner indicated that a person named Patel was also involved who happened to be a friend of Gaffar Ali. He further disclosed that every time the machine was used to bring concealed gold weighing from 2 to 5 Kg.; that in the compressor of the air conditioner 30 to 35 gold biscuits used to be concealed and in the refrigerator concealment was of 28 to 30 gold biscuits.

(8) Summons were also issued to Kamaljit Singh for appearance which were received by his father. Another summon for his appearance were issued, but he did not appeal. Show cause notices were issued to the accused persons. Efforts were made to trace out Kamaljit Singh, but could not trace him out.

(9) The challenge to the order of detention is on several grounds but at the time of arguments Mr. Naveen Malhotra, counsel for the petitioner restrictive his arguments to two grounds namely: (1) long delay in passing the detention order hence the link stood snapped; and (2) the representation made under Article 22 of the constitution was not disposed expeditiously.

(10) To elaborate the contention of Mr. Malhotra, counsel for the petitioner, we have to understand the concept of snapping of the link between the detention and passing the detention order. The question of appreciation of facts in each case would determine the factor whether the delay in issuing the order of detention was such by which the live link between the prejudicial act and the purpose of preventive detention stood snapped.

(11) The detaining authority in this case has filed the counter affidavit and in reply to ground (c) an attempt has been made to explain the delay in passing the detention order. It has been stated in the reply to ground (c) inter alias that "in the month of June, 1990 the customs Collector forwarded the proposal. On considering the material it was decided to call for few more information pertaining to the case. The sponsoring authority was requested for 7 or 8 times on telephone and also vide a letter to sent the comments. The sponsoring

authority submitted the information asked for only in May, 1991. After considering the said information the detention order was passed on 5.6.91". Before proceeding further. One wonders whether this can be called an Explanation worth the name to be considered for 14 months delay. There is in fact no material on the record to show when the proposal was received by Cofeposa Unit and when the comments were called from sponsoring authority. What Cofeposa unit was doing for nearly one year i.e. from June 1990 to May 1991. In fact this reply lacks complete information rather it is vague. In reply to ground (d) instead of justifying its action and explaining the delay the respondent has attributed the delay to the procedural formalities, because of which it took time in issuance of the detention order. Instead of explaining its action and justifying the delay the respondent simply took the plea that the link did not snap. The facts which have come on record show that the incident took place on 17.4.90. Complaint was filed on 26.5.90. Show cause notice was issued by the Customs Department in adjudication proceedings on 9th October, 1990. This shows the investigation was complete. But the detention order for the same incident was passed on 5.6.91 i.e. approximately after a period of 14 months. Thus, to my mind, the link stood snapped. There could not have been any proximity between the incident and the avowed purpose of the detention namely the preventing and smuggling activities. As per the respondent's own affidavit the proposal for detaining the petitioner was initiated in June, 1990 i.e. almost after two months from the incident. There is in fact no Explanation worth the name why the detaining authority kept sitting for the so-called information from the sponsoring authority for a period of one year. This delay, as already observed, from June, 1990 to May, 1991 has remained unexplained. In fact the so-called Explanation which has been furnished in a very halfhearted manner by the respondent cannot be called a satisfactory explanation. This shows the lack of satisfaction of the detaining authority. No Explanation has been given as to how there could be an apprehension of smuggling when the petitioner was earlier arrested and remained in Jail for about 8 months and even after 29.11.90 when he was released on bail. No reasons have been assigned nor any apprehension indicated that even after 29.11.90 there were chances of petitioner's indulging in the smuggling activities. It appears that the respondent in a very lukewarm manner has filed this counter affidavit as if it was not necessary for respondent to justify the delay of 14 months in passing the detention order. The detaining authority has not explained what it was doing between 17th April 1990 to June, 1991. In reply to ground (c) the respondent very conveniently forgot to tell what the authorities were doing from April 1990 to June, 1991. This shows an attitude of callousness on the part of respondent the excuse of procedural formalities, to my mind, is no ground to justify the delay, the counsel for the petitioner in order to stress that unexplained delay vitiates the detention has placed reliance on the Division Bench Judgments of our own High Court in the case of Amir Sadruddin Khan Vs. Administrator, Union Territory of Delhi and Others, and in the case of Kirpal Singh V. Union of India & Ors. reported in 1991 J.C.C., 368. In both the cases it was held that long delay in passing detention order and also execution of

the same when remained unexplained then such an order is liable to be held illegal and quashed. In the present case also there was additional material before the detaining authority after 29.10.90 which necessitated the passing of the detention order/then the one which was available on the date of occurrence for which criminal proceedings had already been initiated. From the counter affidavit, as already observed above no reasonable Explanation regarding the delay in passing the order can be inferred Therefore, this detention order is liable to be quashed. Counsel for the petitioner has further relied on the decision of Supreme Court in the case of Issac Babu Vs. Union of India. reported in (1190) 4 SCC 134. In that case also delay was not satisfactorily explained in passing the order of detention, Therefore, the order was quashed. In the present case also from the reply to ground (c) as already observed above, 14 months delay has not been explained. Supreme Court has gone to the extent of saying that delay in passing detention order is sufficient to vitiate the proceedings.

(12) Beside the delay in passing the detention order and the snapping of link between the ground of detention and passing of the order, the other ground token by the petitioner is that his representation seeking copy of the documents relied by the respondents was not disposed of expeditiously. It is a well settled principle of law that the representation made by the petitioner under Article 22 of the Constitution has to be disposed of expeditiously and if there is a delay it has to be explained. But there is no Explanation for the delay of 17 days i.e. from 2.8.91 to 19.8.91, in disposal of the representation. In reply to grounds (1) & (2) the respondent has taken the plea that the representation of the petitioner was on 1.8.91 and not of 30.7.91 and the same was received by the Cofeposa Unit on 7.8.91. On the same day comments were sought from the sponsoring authority. The sponsoring authority sent the said comments vide order dated 19.8.91 which were received in the Cofeposa Unit on 20.8.91. Why the sponsoring authority took 17 days in sending the comments, nothing has been explained. Not even a whisper in there why this much time was taken for any particular reason.

(13) Therefore, it is apparent that there is an unexplained delay of 17 days in disposal of the representation, which is against the well settled principle of law. Therefore, vitiate the proceedings. This tantamount to depriving reasonable opportunity to the petitioner to defend his case. The liberty of an individual is more important and this cannot be taken lightly by the respondent authority by merely saying that the sponsoring authority did not sent the comments, and hence the representation could not be disposed of earlier. Whether the comments were sent or not, this is no excuse to delay the disposal of the representation made by the petitioner. The contention of counsel for the respondent that the sponsoring authority is not a party and the delay was on the part of the sponsoring authority, to my mind, has no force because the law requires that the representation of the petitioner has to be disposed of expeditiously and without delay. It is none of the business of the petitioner to find out whether the sponsoring authority was responsible for the delay or not. Suffice it to say that it was the responsibility of the respondent to have collected the comments

expeditiously. The office of the sponsoring authority is situated in Delhi and so is the office of Cofeposa Unit. It could not have taken 17 days for receiving or sending the comments, from one authority to the other, on the representation of the petitioner. Petitioner cannot be made to suffer because of any lapse on the part of the sponsoring authority. Nor sponsoring authority has cared to file any affidavit explaining the reason for the delay of 17 days which it took in sending the comments. Therefore, this is a clear case of callousness on the part of respondents in disposing the representation of the petitioner. Because of this unexplained delay of 17 days the detention order is liable to be quashed.

(14) The contention of the counsel for the respondent that the sponsoring authority ought to have been impleaded as a party, to my mind, has no force. It is not necessary for the petitioner to implead the sponsoring authority as the respondent. He has come in this writ petition against the detention order passed against him by the Central Government. Therefore, even if the sponsoring authority is not impleaded as a party this will not affect the right of the petitioner. It was for the Union of India to have filed comprehensive affidavit and also explained the stand of the sponsoring authority. Having not done so it cannot blame the petitioner.

(15) Mr. Jagdev Singh, counsel for the respondent further contended that it is not in all the cases that the link is snapped because of delay and for this purpose he has placed reliance on the decision of the Supreme Court in the case of TA. Abul Rahman V. State of Kerala and Ors. reported in Judgments Today 1989 (3) S.C.444. There is no quarrel with the proposition of law laid down by Supreme Court, that the live link does not snap automatically because of the delay. But the circumstances of each case has to be viewed and weighed in each case. As pointed out above the facts of this case clearly shows that the live link between the ground of detention and the passing of order of detention stood snapped. There was nothing afresh before the detaining authority for passing the detention order even after the petitioner was released on bail on 29th November, 1990.

(16) For the above reasons, I accept this petition, set aside the order of detention and the Rule issued is made absolute. The detenu be released if not required in any other case.