

(1981) 02 CAL CK 0008
In the Calcutta High Court

Satyanarayan Kothari

APPELLANT

Vs

The Superintendent, Presidency Jail and Others

RESPONDENT

Date of Decision : 16-02-1981

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3, 5A
Constitution of India, 1950 — Article 22, 226
Customs Act, 1962 — Section 108

Citation : (1981) CriLJ 660

Hon'ble Judges : Nirmal Chandra Mukherji, J; Monoj Kumar Mukherjee, J

Bench : Division Bench

Judgement

Nirmal Chandra Mukherji, J.—This is an application under Article 226 of the Constitution of India for a writ and/or order, or orders, and/or directions in the nature of a Writ of Habeas Corpus in the matter of an order bearing No. F. No. 673/20/80-Cus. VIII passed by Shri B.B. Gujral, Additional Secretary to the Government of India, Ministry of Finance, (Department of Revenue), New Delhi on 28th October, 1980 in purported exercise of powers conferred by Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The said order was passed on the basis of which the petitioner Shri Satyanarayan Kothari has been detained in Presidency Jail, Calcutta. It is the case of the petitioner that he carries on bona fide business in Textiles and Hosiery goods in Barabazar at Calcutta. That on 9th Nov., 1980 some officers of the Custom came to his house and enquired of him. The petitioner at that time was asleep and could not attend the officers who came there. The house of the petitioner was surrounded and kept on guard throughout the night. On the next morning the petitioner was arrested and taken to the Custom House. At the Custom House, the petitioner was served with a copy of the order of detention and also with a copy of the grounds on which the petitioner has been detained. It appears from the order of detention that the petitioner has been detained with a view to prevent him from smuggling goods. It has been stated in the application that the grounds have been expressed in a language and in a manner which is

absolutely ununderstandable to a person of ordinary prudence. The materials as expressed in the grounds clearly show that there has not been any valid satisfaction. A reading of the document mentioned as grounds clearly indicate that materials which are not germane to smuggling of goods have been stated in detail. It is difficult to find out which fact in the grounds really amounts to smuggling. Since a number of facts and incidents have been put together in the document enumerated as grounds the satisfaction becomes totally invalid as based on various extraneous materials. The first paragraph refers to an intelligence report. It is stated that the intelligence report is vague, indefinite and does not amount to smuggling. The paras. 2 (a), 2 (b) and 2 (c) are enumeration as to what had happened when the intelligence report earlier mentioned had been worked out. The facts stated therein do not amount to smuggling and as such those facts constituting the grounds are irrelevant. In paragraph 2 (b) of the grounds all that had happened as a result of search at the Airport of the petitioner and his wife on 8th September, 1980 have been stated. The facts stated therein do not amount to smuggling at all. Seizure on the basis of a reasonable belief may or may not ultimately lead to confiscation but that is no index of smuggling. The statements in paragraph 2 (c) do not amount to smuggling. Zirconium stones are not diamond and their importation is not necessarily smuggling. It is of no consequence that those may be liable to confiscation. It is further stated that the facts alleged in paragraph 2 and its subparagraphs (a), (b) and (c) related to one occurrence of 8th September, 1980. In that incident the Custom Officer on a reasonable belief that the stones were liable to be confiscated had seized them. The ground is vague and has no proximate connection with the purpose of detention. The allegations are irrelevant and those do not come within the mischief and scope of Section 3 of the Act. In Ground No. 3 the steps that had been taken in connection with the seizure have been mentioned. The allegations have no bearing on smuggling. The statements of facts in paragraph 4 only show that the petitioner had been to different parts of the world. It does not disclose smuggling or anything to do with smuggling. Even then the facts stated therein have been relied for the purpose of detaining the petitioner. Such reliance, according to the petitioner, has vitiated the order of detention. Reliance has also been made on the statements made by the petitioner and his wife in their examination u/s 108 of the Customs Act. Such reliance has been wrongly made. It has further been stated that the grounds are vague, indefinite and the petitioner has been prevented from making any effective representation against the said grounds. The grounds, as such, are irrelevant and no satisfaction is liable to be based on the same. Moreover, such a single incident does not amount to course of conduct which may be prevented by ordering detention of the petitioner. It appears from the statements made in paragraph 8 that the satisfaction is based on the alleged smuggling of 8th September, 1980 and similar activities prior to 8th September, 1980. Neither the nature of the activities nor the date or time of such act is known. There is no proximity of alleged smuggling activity prior to 8th September, 1980 to the order of detention. As such the order of detention is based on irrelevant and

extraneous consideration.

2. Mr. Roy, with much emphasis contends that various facts have been mentioned in the grounds from which ultimately two grounds have been deduced. Many of the facts are extraneous and not germane. This shows total non-application of mind on the part of the detaining authority. In the first place, Mr. Roy contends that it was not in the mind of the detaining authority, that a criminal prosecution had already been started against the petitioner for the alleged smuggling and that the said criminal prosecution would have been sufficient and there was no necessity for detention, Mr. Roy next contends that an irrelevant fact has been introduced namely, that the petitioner's wife also participated in. the fact of smuggling. The next submission of Mr. Roy is that the second ground is vague, not proximate and extraneous and if that be so then the detention rests on a single ground, namely, on. the incident which took place on 8-9-1980. In the second ground, it has simply been stated that prior to 8-9-1980 the petitioner was engaged in similar smuggling activities. The ground does not give any particular act of smuggling. The periods of smuggling have also not been mentioned. We will discuss subsequently whether the second ground is vague. Even assuming that the second ground is vague the order of detention can be held as valid if the first ground suffers from no irregularity or illegality. There was an amendment of the Act in 1975 by which Section 5-A was added. Section 5-A reads as follows:

Where a person has been detained in pursuance of an order of detention under Sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly- (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are - (i) vague, (ii) non-existent, (iii) not relevant, (iv) not proximately connected with such person, or (v) invalid for any other reason whatsoever, and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in Sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said Sub-section (1) after being satisfied as provided in that Sub-section with reference to the remaining ground or grounds.

3. Mr. Roy, in support of his various contentions, has relied on a number of decisions. He first relies on a decision, reported in Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, , In this case, it has been held that the Constitutional requirements of article 22(5) will not be satisfied unless the detenu is given the earliest opportunity to make a representation against the detention and no opportunity to make the representation effective unless the detenu is furnished with adequate particulars of the grounds of detention. Mr. Roy submits that the detaining authority, as it appears from the grounds, has relied on

several extraneous matters which have not been communicated to the petitioner and as such, it was not possible for the petitioner to make an effective representation. Mr. Roy next refers to a decision reported in *Anil Dey Vs. State of West Bengal*, . In this case, the detention was based on a single ground which indicated a single instance of theft in respect of railway signal materials, feed and transformer from the junction box near signal which caused disruption of train service for a considerable time affecting supplies and services but it was clear from the affidavit of the District Magistrate that he has derived subjective satisfaction from the circumstances that the detenu was a "notorious stealer of railway stores" operating in Dum Dum Railway yard and as such it was held that "the detention was not bad on ground of insufficient communication or illegitimate reliance on materials". In the present case, even if the second ground fails the detention rests on the first ground which, if not held to be vague or not germane, cannot be struck down as invalid. As has already been noted, because of the amended provision detention can very well rest on a single ground if the other ground or grounds are found to be invalid. The next case, cited by Mr. Roy, has been reported in *Bhutanath Mete Vs. The State of West Bengal*, . In this case, it has been held that "the detention power cannot be quietly used to subvert, supplant or to substitute the punitive law. To detain a person after a Court has held the charge false is to expose oneself to the criticism of absence of due care and of rational material for subjective satisfaction". It was held in this case considering the facts that there was no foul exercise of power merely because the Courts have discharged the accused as a competent affidavit has not been filed. Mr. S.D. Banerji, learned Advocate appearing on behalf of the detaining authority, also relies on this decision. He submits that it has been held in this case that simply because a prosecution has been launched against the detenu that creates no bar to detain a person if otherwise the order of detention is valid and if there is no mala fide on the part of the detaining authority. It is true, in the present case the Customs Authority has started a case against the detenu, but that does not debar the authority from making an order of detention if the authority is satisfied that it is necessary to pass such an order. Mr. Roy next refers to a decision reported in *Kanchanlal Maneklal Chokshi Vs. State of Gujarat and Others*, . Some portion of the principle laid down in this case goes against the detention. In this case, it has been held that "the possibility of launching a single prosecution is not an absolute bar to an order of preventive detention. Nor it is correct to say that if such possibility is not present to the mind of the detaining authority the order of detention is necessarily bad". It has further been held in this case that "where an express allegation is made that the order of detention was issued in a mechanical fashion without keeping present to its mind the question whether it was necessary to make such an order when an ordinary criminal prosecution would well serve the purpose, the detaining authority must satisfy the Court that, that question too was borne in mind before the order of detention was made". In this case, there is no express allegation that the order of detention has been issued in a mechanical fashion. It cannot be said from the facts and circumstances of the case that the detaining

authority was oblivious of the fact that a prosecution was launched by the Custom Authority. Mr. Roy next places reliance on a decision reported in *Srilal Shaw Vs. The State of West Bengal and Others*, . In this case, there was a criminal prosecution and the case was dropped as according to the District Magistrate witnesses did not dare to depose against the detinue for fear of their lives. The reason for dropping the case was found absolutely impossible to accept. Considering the facts of the present case the principle laid down in this case does not apply. The next case relied on by Mr. Roy has been reported in *Shaik Hanif and Others Vs. State of W.B.*, . In this case, their Lordships held that "counter affidavit ought to have been filed by the proper person and should not have been filed by a person who had never personally dealt with the case". It is true that in the present case, there is some irregularity in the matter of verification of the affidavit-in-opposition filed by the respondents Nos. 2 and 3. But the irregularity is not such for which the same cannot be relied on. Mr. Roy next refers to a decision reported in *Krishna Murari Aggarwala Vs. Union of India (UOI) and Others*, In this case, detention order was based on two grounds. One was held to be vague and irrelevant and it was held that the entire order suffers from severe infirmity and must be quashed. As has already been stated, in this case assuming that the second ground is vague and irrelevant we are concerned if it can be held that the first ground is legal and valid. This decision, therefore, does not help Mr. Roy.

4. Mr. Shankerdas Banerji, learned Advocate appearing on behalf of the Authority, contends that none of the grounds is vague. The diamonds which were found with the petitioner and his wife were completely forbidden articles and those could not have been imported without paying duty. Zirconium was found with the petitioner and his wife. On Zirconium duty was required to be paid. No duty was paid on such articles and in the Baggage Declaration Form the articles which were found with the petitioner and his wife were not declared. Again, Mr. Banerji submits that the articles were found very much concealed in the person of the petitioner and his wife. Details of the petitioner prior to visit to foreign countries and the act of smuggling have been referred to. So, the ground No. 1 cannot be said to be a single instance of smuggling. That has very much connection and relevancy with ground No. 2. Mr. Banerji relies on a decision reported in *Anil Dey Vs. State of West Bengal*, . It has been held that "the veil of subjective satisfaction of the detaining authority cannot be lifted by the Courts with a view to appreciate its objective sufficiency. Nevertheless, the opinion of the officer must be honest and real, and not so fanciful or imaginary that on the facts alleged no rational individual will entertain the opinion necessary to justify detention". In this case, it cannot be said that the opinion of the officer is not honest and real and is fanciful or imaginary. Mr. Banerji next relies on a decision reported in *Babulal Das Vs. The State of West Bengal*, . In this case, it has been laid down that "the Supreme Court has been vigilant to see that isolated offences are not exploited by executive authorities for clamping down preventive detention insouciantly to by-pass the normal judicial processes. But, an action

which is so manifestly suggestive of desperate daring, organized ganging and habitual proclivity of violence that it cannot be held unreasonable to infer therefrom a trendy course of criminal conduct...

This case also, according to Mr. Banerji, though the first ground mentions about a single incident as has already been stated it has reference to the second ground and even isolated from the second ground the detention order can be sustained on this single ground. The next case relied on by Mr. Banerji is reported in *Dharua Kanu Vs. State of West Bengal*, . This was also a case on single occurrence. But, it was held, considering the facts of the case that it would affect maintenance of supplies and services essential to the community. Hence, it cannot be said that "the satisfaction of detaining authority was not based on adequate materials". The last case relied on by Mr. Banerji has been reported in *B. Sundar Rao and Others Vs. State of Orissa*, . Relying on this decision Mr. Banerji submits that in this case the grounds supplied to the detenu were sufficient and clear enough for the purpose of making an effective representation. In conclusion, Mr. Banerji submits that the grounds are very much relevant, promixate and germane to the order of detention and it cannot be said that they are vague. Mr. Banerji also submits that no extraneous matter has been considered by the detaining authority and there is no scope for the detenu to say that he could not make an effective representation. None of the grounds can be said to be invalid. On a careful consideration of the arguments advanced by the learned advocates for the parties and considering the principles of law enunciated in the cases, referred to above and after considering the facts and circumstances of the case we are of the opinion that none of the grounds is vague or irrelevant and no extraneous matter has been taken into consideration by the detaining authority while making the order of detention. In such circumstances, we do not find anything to interfere with the order of detention. In the result, the application fails and the Rule is discharged.

Monoj Kumar Mukherjee, J.

5. I agree.