
(1995) 12 CAL CK 0006
In the Calcutta High Court
Case No : Criminal Misc. No. 5039 of 1995

Sneha Khemka

APPELLANT

Vs

K.L. Verma, J.S. GOI and Others

RESPONDENT

Date of Decision : 19-12-1995

Acts Referred:

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

Citation : (1996) 63 ECR 533

Hon'ble Judges : P.K. Samanta, J;Mukul Gopal Mukherji, J

Bench : Division Bench

Judgement

P.K. Samanta, J.—This writ application filed by Smt. Sneha Khemka for and on behalf of her husband, Bimal Khemka seeks to impugned order of detention bearing No. F 673/89/95 -Cus. VIII dt. 22.8.1995 issued by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 pursuant to which the said detenu has been put under detention on 28th of August, 1995 and kept in Presidency Jail, Alipore and on that very date the grounds of detention were served on the detenu. The detenu was found involved in under invoicing and evasion of customs duty to the tune of Rs. 21.53 lakhs (approximately) and hence the order of detention.

2. On 16th June, 1995 the detenu was taken to the Customs House and it is alleged that the Customs Officer compelled him to make statement under duress and he was produced before the Id. Chief Metropolitan Magistrate, Calcutta on the 17th of June, 1995. On that very day he made an application before the Id. Chief Metropolitan Magistrate, Calcutta and retracted his statement giving out that his statement was obtained under threat, and duress. The Id. Chief Metropolitan Magistrate passed an order regarding inter alia that the detenu in fact retracted his confessional statement which he made earlier before the Customs Officers. The detenu also complained of having suffered multiple

injuries on his person as a result thereof he had to be hospitalised in jail. A copy of the medical report filed by the Supdt, Presidency Jail was sent before the Id. Chief Metropolitan Magistrate, Calcutta and from the jail hospital on the 20th June, 1995 he filed another statement by way of a prisoner's petition giving out inter alia that the statement was forcibly obtained from him on 16th June, 1995 which was by no means a voluntary statement. On 20th June, 1995 he was granted bail by the Id. Chief Judge, City Sessions Court. On 5th July, 1995 there was a proposal for detention forwarded to the Ministry by the Sponsoring Authority. On 3rd of August, 1995 the detenu moved a Writ Petition for quashing of the statement purportedly obtained from him on the 16th June, 1995 by the Customs Officers. It is submitted by the detenu that as and when an assurance was given that the statement was not going to be used against him the writ court did not pass any order of injunction and the detenu was given liberty to apply afresh in the said writ proceeding to obtain a further interim order, if subsequent events justified the necessity for the same. On the 8th of August, 1995 the Customs Authorities obtained a statement from one Prasenjit Nag, Proprietor of Messal Services and on the 14th of August, 1995 another statement was obtained from the proprietor of M/s. Riddhi Associates. On 14th of August, 1995 detenu obtained a copy of the application for cancellation of his bail as filed by the Customs Authorities to which the brother of the detenu filed an Affidavit -in-Opposition and on the 22nd August, 1995 the order of detention was passed against him by the Joint Secretary u/s 3(1) of the COFEPOSA Act. It was contended by the petitioner that his real name is Bimal Khemka and not Bimal Chandra Khemka as mentioned in the order of detention or in the grounds of detention, and the order of detention standing in the name of Bimal Chandra Khemka was executed so as to effect his arrest pursuant to which he was lodged in Presidency Jail, Alipore.

3. The first representation that the detenu made was on the 4th of September, 1995 to the Detaining Authority giving out inter alia that his actual name is Bimal Khemka, that his statement is involuntary as the same was obtained under duress and with the use of third degree method and the confessional statement was retracted by filing a petition before the Id. Chief Metropolitan Magistrate. It was contended on his behalf on the said representation that the medical report of the Jail Authority was suppressed from the Detaining Authority and the detenu had nothing to do with the prejudicial activities and a false case has been fabricated against him and that the detention order has been passed violating the High Court's order and there was really no ground for issuing detention order when the goods were cleared by the Customs Officer under proper import licence which were valid on the date of clearance. The detenu was not concerned with the imports made by the Grand Sales Agency, M/s. Riddhi Associates or Messal Services etc. He however, contented that the statement obtained from M/s. Riddhi Associates, Shnkar Singh, Kedar Nayak, Prosenjit Nag and Others were not placed before the Detaining Authority and copies of such statement was also not supplied to him and the Bs/E were also not placed before the Detaining

Authority nor supplied to him and even though he requested for the same it was not furnished to him and no action was taken u/s 129(D) of the Customs Act and there was complete non-application of mind and the representation was rejected by the Detaining Authority mechanically. Be that as it may the said representation sent on 4th September, 1995 was received by the Ministry on 11th September, 1995 and it was forwarded to the Sponsoring Authority on the 12th September, 1995. On the 18th September, 1995 the Sponsoring Authority sent its comments to the Ministry and on the 21st September, 1995 the Detaining Authority rejected the representation. However, this representation was not placed before the Central Government and it was not considered by the Central Government at all.

4. The second representation of the detenu to the Detaining Authority dt. 11/12.9.1995 reached the Ministry's office on 22.9.1995. It was forwarded to the Sponsoring Authority and was received by the latter on 25.9.1995. On 28.9.1995 the comments on the representation were sent to the Ministry by the Sponsoring Authority and on the 9.10.1995 the representation of the detenu was rejected by the Detaining Authority. Even though there was a consideration of the representation after a delay of 27 days which Mr. Pradip Ghosh, Id. Advocate appearing for the petitioner contended to be fatal, in view of the said representation having been considered by the Central Government on the 16.10.1995, we are constrained to hold that it was not said to have been independently considered by the Central Government irrespective of the stand taken by the Joint Secretary to the Ministry. That apart the representation dt. 13/14.9.1995 which was sent to the Central Government and which was received by the Ministry on the 22.9.1995 and for which the Ministry asked for comments of the Sponsoring Authority and comments were ultimately sent on 28.9.1995, the representation was actually submitted to the Central Government for its consideration on the 9.10.1995 and on the 16.10.1995 it was rejected by the Central Government but there is no clear indication in the relevant file that it was independently considered by the Detaining Authority.

5. As regards the delay the Central Government has not explained the reasons on the part of its delayed consideration after it was sent before the Advisory Board by the detenu. It was on the 1.12.1995 that after its consideration by the Advisory Board the Central Government considered and rejected the representation after a delay of about 78 days.

6. In *Kamlesh Kumar Ishwardas Patel v. Union of India and Ors.* reported in *Judgment Today* 1995 (3) SC 639, *Kubic Darusz Vs. Union of India (UOI) and Others*, and *Sm. Gracy v. The State of Kerala and Ors.* reported in 1991 (2) SCC the proposition of law has been well established that all the representations as made to either of the three Authorities namely, the Detaining Authority, the Central Government and the Advisory Board have to be considered by all the three authorities independently of each other and unless there be a separate consideration of each one, there will be no sufficient compliance of law in so far

as the provision under Article 22(5) of the Constitution of India is concerned. In this view of the matter we are constrained to hold in the facts and circumstances of the present case, that the order of detention has been rendered otiose in view of the non-consideration of all the representations by all the three Authorities on account of which the detenu is liable to be released from detention. In view of the findings as aforesaid we accordingly set aside the order of detention and direct the release of the detenu Bimal Khemka also Bimal Chandra Khemka with a mandate on the Superintendent, Presidency Jail to release the detenu forthwith. Let the order of release be communicated to the Superintendent, Presidency Jail through a Special Messenger at the cost of the petitioner. The detenu Bimal Khemka is also described as Bimal Chandra Khemka in Order No. F. 673/89/95-Cus. VIII.