

(1980) 09 SC CK 0026

In the Supreme Court Of India

Case No : Writ Petition (Criminal) No. 482 of 1980

Suryakant Minawala

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-09-1980

Acts Referred:

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

Citation : AIR 1980 SC 2130 : (1980) CriLJ 1480 : (1981) 2 SCC 202 : (1981) SCC(Cri) 408 : (1980) 12 UJ 959

Hon'ble Judges : R. S. Sarkaria, J;P. S. Kailasam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.S. Sarkaria, J.—This is a petition under Article 32 of the Constitution for the issuance of a writ of habeas corpus.

2. Vasantlal D. Minawala (hereinafter referred to as the detenu resides in Bombay, and carries on business as a gold dealer in partnership in the name and style of "Jewellers Danabhai Minawala" at 212/58, Naveri Bazar, Bombay-2.

3. On December 24, 1979, an order, dated December 18, 1979, issued u/s 3(1) of the COFEPOSA, by Shri S.D. Deshpande, the Deputy Secretary, Government of Maharashtra, Home Department (Special), expressed in the name of the Governor, was served on the detenu. On the same date, the grounds of detention were served on the detenu.

4. On January 9, 1980, on behalf of the detenu his Advocate addressed a letter to the Deputy Secretary, Government of Maharashtra, Home Department (Special), copies of which for immediate action were endorsed to (1) the Chief Minister, Government of Maharashtra, Bombay; (2) the Collector of Customs; and (3) the Assistant Collector of Customs (R and I), COFEPOSA Cell, Bombay. In this letter, the Advocate requested the addressees to be furnished with copies of all

the material documents and statements referred to and relied upon in the grounds of detention, to enable the detenu to make an effective representation against the impugned order of detention.

5. By his reply, dated February 1, 1980, addressed to the detenu's Advocate, Shri S.M. Sule, the Under Secretary, Government of Maharashtra, Home Department (Special), stated that since the grounds of detention served on the detenu were clear, elaborate and precise, the request of the detenu for supply of copies of all statements, panchanamas and other documents relied upon in the grounds of detention, it was regretted, could not be granted. This refusal was conveyed to the detenu about 23 days after he had made, through his counsel, a request for the Supply of the basic documents.

6. On January 25, 1980, the detenu was served in the prison with a notice, dated January 23, 1980, issued by the Assistant Collector of Customs, calling upon the detenu to show cause why the seized goods, referred to in the grounds of detention, be not confiscated and why penal action should not be taken against him and the others. A similar notice was served on the writ-petitioner, Suryakant who is the son of the detenu. The son of the detenu, thereupon, approached the Customs Authorities and asked for the copies of the statements of the persons and the other documents referred to in the notice.

7. Pursuant to his request, on February 1, 1980, copies of all the statements of those persons, referred to in the show- cause notice, were furnished to the writ-petitioner by the Customs Authorities. The writ-petitioner made these copies available to the detenu, who thereafter, on February 5, 1980, submitted a representation addressed to the detaining authority and to the Chairman of the Advisory Board.

8. By a letter, dated March 13, 1980, the detenu was informed by the Deputy Secretary to the Government of Maharashtra that his representation, dated February 5, 1980, had been declined by the Government. Thus, it took 37 days for the Government to dispose of the representation of the detenu.

9. Mr. Soli Sorabji, appearing for the writ-petitioner, challenges the validity of the detention on these grounds:

(1) By refusing to supply the copies of the documents and statements relied upon or referred to in the grounds of detention - which was not a refusal under Article 22(6) - the authorities had violated the constitutional imperative in Article 22(5) of the Constitution. Even if the copies supplied to the son of the detenu are deemed to be supplied to him, then also, there was an unreasonable delay of 22 days in supplying the same, as a result of which, the detention stood vitiated.

(2) There was an inordinate and unreasonable delay of 37 days in considering the representation of the detenu, which amounted to an infringement of Articles 22(5) and 21 of the Constitution.

(3) The power of detention under COFEPOSA has been misused and exercised

illegally inasmuch as the order of preventive detention is based on a solitary incident that the detenu and his alleged associates had all declared the goods in question to the Customs Authorities; that the only allegation was that they had understated the value of those goods. There was nothing clandestine about this activity of the detenu which could be dubbed as smuggling.

(4) There was non-application of mind on the part of the detaining authority and the action is based on non-communicated and non-disclosed material.

10. It appears to us, there is a good deal of force in grounds (1) and (2) urged by Mr. Sorabji. For the purpose of this petition, we do not think it necessary to deal with all the points canvassed by the learned Counsel, because the detaining authority had intransigently and unreasonably refused to furnish the detenu with copies of all the documents relied upon in the grounds of detention, and subsequently after a delay of more than three weeks, it reluctantly supplied some copies to the son of the detenu.

11. In the counter-affidavit filed by Shri Sule, Under-Secretary to the Government of Maharashtra, it is said that the detenu's request for supply of the copies of all the statements, Panchnamas and other documents was rejected by the Government in, the light of the comments received from the Collector of Customs. The detenu had made a request through his Advocate for the supply of the copies by a letter of January 9, 1980. The copies, according to the affidavit of Shri Sule, after the initial refusals, were supplied sometime on or before February 5, 1980. It is not alleged that the records of which the copies were sought, were voluminous or that there was any physical impediment to the prompt supply of the copies. On the contrary, the position taken is that the detenu had no right to be furnished with these copies when the grounds of detention served on him were elaborate and full.

12. Time and again, this Court has pointed out that under Article 22(5) of the Constitution, the detenu has got a twofold right. First, the detenu has a right to be served with the grounds of detention as soon as practicable. (Under Sub-section (3) of Section 3 of COFEPOS such grounds must be communicated to the detenu within five days, and in exceptional cases, for reasons to be recorded, within 15 days of his detention.) The second right of the detenu, which is implicit in Article 22(5), is that he should be furnished with all the basic facts and materials, with reasonable expedition which have been relied upon in the grounds of detention. The unreasonable delay of more than three weeks in supplying the detenu with copies of those basic documents had infringed this constitutional imperative, and had stultified and impeded his constitutional right to make a speedy and effective representation.

13. It was on this short ground that we had by our Order dated May 2, 1980, allowed this writ petition and directed the release of the detenu.