

(1989) 05 DEL CK 0025

In the Delhi High Court

Case No : Criminal Writ No. 643 of 1988

Suwa Ram through Baghu Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-05-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3, 3(1), 9(1)

Citation : (1989) 25 ECR 142

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Judgement

B.N. Kirpal, J.—The challenge in this petition is to the order of detention passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA Act") against the petitioner with a view to preventing him from smuggling goods into India and also engaging in transporting, concealing and keeping smuggled goods viz. gold.

2. Briefly stated, the facts are that the petitioner arrived from Dubai at the Indira Gandhi International Airport, New Delhi on 9th December, 1987. The petitioner went to the red channel and declared goods worth Rs. 2650/-. Some duty was paid and thereafter his suitcase was examined and it was found that it, inter alia, contained two cast iron locks and one electric iron. On breaking open the locks it was found that gold in the form of one cylindrical solid shape was present and one piece of gold in the shape of "V" was recovered from the electric iron. Special cavities are alleged to have been made in the said locks and electric iron for concealing the gold. The said gold was seized as the petitioner could not produce evidence of its lawful import.

3. The gold which was recovered was tested and it was found that it weighed 1510 grams of 24 cts. purity valued at Rs. 5,13,400/-. According to the grounds of detention which were served on the petitioner, it is stated that a voluntary statement was recorded on 9th December, 1987 in which it was stated by the

petitioner that he had come from Dubai and a friend of his named Ishwar Ram had told him to take one iron and two locks with a direction to deliver the same to one person named Ashok who was staying in Hotel Regal, Fatehpuri, Delhi. The petitioner is alleged to have been told by Ishwar Ram that gold was concealed in the manner indicated above and that for this consideration the petitioner would be given a free ticket to and fro to Delhi from" Dubai. The ticket is stated to have been handed over to the petitioner on 8th December, 1987. The petitioner was told that Ashok would himself come and collect the locks and the press. From the grounds of detention it further appears that the Customs officials went to Hotel Regal but the person whom they were looking for could not be located. It appears that the word "Ashok" could have been a code name for the person who had to take the locks and iron. On 22nd December, 1987 a bail application was filed which was rejected but on second bail application being filed on 4th January, 1988 the petitioner was released on bail on 6th January, 1988.

4. On the aforesaid allegations as contained in the grounds of detention, the detaining authority concluded that the petitioner had "been smuggling goods into India and also engaging in transporting, concealing and keeping smuggled goods viz. gold". It was further stated that even though the prosecution under the Customs Act was likely to be initiated against the petitioner, still the Administrator of the Union Territory of Delhi was satisfied that the petitioner should be detained under the provisions of COFEPOSA Act "with a view to preventing you from doing the above-said acts in future". As already stated, on 2nd March, 1988 the order of detention was passed u/s 3(1) of the COFEPOSA Act. Along with the grounds of detention, the petitioner was also supplied with material which has been relied upon in the grounds of detention.

5. A declaration dated 4th April, 1988 was also issued u/s 9(1) of the COFEPOSA Act. Thereafter on 11th August, 1988 the petitioner made a representation to the Advisory Board, but without success.

6. The petitioner has filed the present writ petition challenging the aforesaid order of detention. It is, inter alia, contended that Hindi Translation of some material documents had not been supplied to the petitioner and, Therefore, the detention of the petitioner should be set aside. A further contention raised on behalf of the petitioner is that the order and the grounds showed complete non-application of mind on the part of the detaining authority inasmuch as the order was passed on non-existent material or grounds.

7. For the view that I am taking, it is not necessary for me to decide the first question as to what is the effect of the alleged non-supply of 4 of the documents in Hindi.

8. As already noted above, the order of detention has been passed with a view that the petitioner should be prevented from smuggling goods into India and also engaging in transporting, concealing and keeping smuggled goods, namely, gold. In the grounds also, this conclusion is repeated. The detention has, Therefore,

been ordered for two reasons, one with a view to prevent the petitioner from smuggling goods into India and, secondly, with a view to prevent him from engaging in transporting, concealing and keeping smuggled goods, namely, gold. This is the opinion which has been formed by the detaining authority and the question which arises is whether there is any material on the basis of which such a conclusion could have been formed. Learned Counsel for the respondents is right in submitting that it is not open to this Court to enquire as to whether the material on which the opinion is formed is sufficient or not. The opinion which has to be formed u/s 3 of the COFEPOSA Act is subjective. It is not for the Court to appraise the material on record and come to a different conclusion. The investigation of the Court in this regard is very limited but it is open to the Court to see and examine whether the order of detention which has been passed shows application of mind and whether any material exists on which such a conclusion could be arrived at.

9. From what has been stated hereinabove, it is clear that the opinion has been formed by the detaining authority on the basis of a single incident of smuggling. The incident took place on 9th December, 1987 when the petitioner was caught at the time he was clearing his baggage after having arrived from Dubai.

10. At this stage what is important to note is that the petitioner had made a statement before the Customs Authorities to the effect that the gold had been given to him for being transported to India, hidden in locks and iron press, by a friend of his. It was further stated by the petitioner at the time his statement was recorded that the ticket was given to him on 8th December, 1987 and the petitioner had been promised that he will get to and fro ticket to Delhi from Dubai. In the writ petition it has been contended by the petitioner that this statement which was made by him before the Customs Authorities was not a voluntary statement. In the counter-affidavit filed on behalf of the detaining authority, it has been averred as follows:

Para (i) & (ii) of the petition is wrong and denied. The detenu in his voluntary statement dated 9.12.1987 admitted that his friend Ishwar Ram told him about the concealed gold in two locks and electric iron before-hand and consideration for this act was free ticket to and fro to Delhi from Dubai. The detenu had tendered his statement voluntarily and without any pressure or threat.

11. The petitioner in the writ petition had stated two things. Firstly that the statement which was made was incorrect and, secondly, it was involuntary. In other words, the story which was alleged to have been told by the petitioner was not correct or a true story and, secondly, the petitioner had been coerced to make such a statement. The respondents by denying the correctness of sub- paras (i) and (ii), in their reply-affidavit, have, however, stated that the statement which was recorded on 9.12.1987 was voluntary which contained admission on the part of the petitioner. The implication of this averment of the respondents is clear and that is that the story which was put forth by the petitioner on 9.12.1987 was correct. The detaining authority, Therefore,

proceeded on the basis that it was the petitioner's friend Ishwar Ram who had handed over to the petitioner two locks and an electric iron which contained concealed gold.

12. From the aforesaid facts, the inference which has been drawn by the respondents is that the petitioner has been smuggling gold into India and engaging in transporting, concealing and keeping smuggled goods, namely, gold.

13. The grounds of detention do not mention any instance or activity on the part of the petitioner relating to transporting, concealing or keeping smuggled goods. As already stated, it is on the basis of a single incident of 9.12.1987 that the petitioner was caught. He was apprehended before the smuggled gold could be taken out of the Customs barrier. The question of transporting, concealing and keeping smuggled gold could arise only after the gold had been imported into this country. There is nothing stated either in the grounds of detention or in the affidavit in reply to suggest that the petitioner had been engaging in such an activity. Moreover, the use of the words "also engaging" indicates that according to the respondents the petitioner had engaged in transporting, concealing and keeping smuggled goods on more than one occasion. There is no such material on record or in the detention order. Similar is the case with, regard to smuggling of gold. In the grounds of detention it is said that "you have been smuggling goods into India". The use of these words "have been smuggling" indicates that according to the detaining authority the petitioner had been indulging in the smuggling of goods on more than one occasion. There is no such averment or material on the record to suggest that even according to the respondents the petitioner had indulged in any such activity previously. It is clear, Therefore, that the grounds of detention are based on non-existent facts.

14. It is true that on a solitary instance of smuggling, in appropriate cases, an order of detention can be passed if after taking all the material into consideration the detaining authority comes to the conclusion that detenu is likely to indulge in such activity in future unless he is detained. In this regard, reference may usefully be made to the case of Debu Mahato Vs. The State of West Bengal, . In that case the petitioner had been detained by an order passed u/s 3 of Maintenance of Internal Security Act, 1971. It was alleged that the petitioner had on one occasion removed three bales of empty gunny bags by breaking open a railway wagon. In the order of detention it was stated that the same was being passed with a view to preventing Debu Mahto from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. It was contended on behalf of the petitioner that the single solitary ground could hardly sustain the inference that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services and that it was necessary to pass an order of detention so as to prevent him from doing so in future. It was alleged that the satisfaction in this behalf was no satisfaction at all and could not support the making of the order of detention. The State had, in addition to the aforesaid incident, also, in its affidavit, relied on the fact that

wagon breaking had become a menacingly frequent crime and it was in the context of this background that act of wagon breaking had been committed by the petitioner. Dealing with this contention, the Supreme Court observed that even a single act of wagon breaking by an individual may be regarded as affording justification for reaching a satisfaction that the individual may have to be detained in order to prevent him from acting in a prejudicial manner but the detaining authority must state that such wagon breaking had become very rampant and that it was necessary to pass the order of detention. On the facts of that case the Court observed that the single isolated act of wagon breaking could not have possibly persuaded the detaining authority that the detenu would in all probability indulge in further acts of wagon breaking. No criminal propensities for wagon breaking could reasonably be inferred from a single solitary act of wagon breaking committed by the petitioner in the circumstances of that case. Dealing with the nature of the order of detention, the Supreme Court observed as follows:

The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behavior of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. But whatever it be, it must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. It may be easier to draw such an inference where there is a series of acts evincing a course of conduct but even if there is a single act, such an inference may justifiably be drawn in a given case. Here, however, that is not possible. We do not think that one single act of wagon breaking attributed to the petitioner was of such a character that any reasonable man could be satisfied, merely on the basis of the commission of such a solitary isolated act, that the petitioner would be likely to indulge in further acts of wagon breaking in future and in order to prevent him from doing so, he must be detained. The satisfaction of the District Magistrate recited in the order of detention was, Therefore, no satisfaction at all or was in any event colourable and it could not form the basis for the making of the order of detention.

In this context, reference may also be made to a Division Bench Authority of this Court in the case of Ved Prakash Mittal Vs. Union of India and Others, where dealing with economic offences, this Court observed as follows:

In the case of economic offences, every infraction of the specified law may not justify the passing of a detention order. Whereas the normal laws are primarily concerned with the act of commission of the offence, the detention laws are concerned with the character of the person who has committed or is likely to commit an offence. The detaining authority has, Therefore, to be satisfied that the person sought to be detained is of such a type that he will continue to violate the laws of the land if he is not preventively detained. For example, a person who is alleged to have illegally imported some goods cannot be preventively detained on that account alone unless the detaining authority is, inter alia, of the

opinion that the said person has the propensity to and is likely to act in similar manner in future and it is not possible to otherwise prevent him from acting as such. Such an opinion can be formed only after all such facts and circumstances have been taken into consideration. The commission of isolated acts of infraction of law, not done in an organized or systematic manner, may not be sufficient for the detaining authority to justifiably come to the conclusion that there is no alternative but to preventively detain the person.

15. In the present case, there is an isolated act of smuggling which has been alleged. There is nothing stated in the grounds of detention or in the affidavit which can possibly show that the petitioner had been indulging in such activity in the past or, if he is not prevented from doing so, would continue to smuggle gold in the future. In fact the grounds do not specifically state that if the petitioner is not detained, he is likely to smuggle gold in the future. The grounds no doubt say that he is being detained with a view to preventing him from smuggling gold but that is different from stating that because he is likely to smuggle gold in the future that is why it is necessary to detain him. There is nothing to indicate that the petitioner, though having committed an isolated act, is a party to an activity of smuggling which is being conducted in an organized or systematic manner. It appears that in the instant case the petitioner is nothing more than a carrier of gold for his friend Ishwar Ram and there is no material on which the detaining authority could have formed the opinion which it did.

16. For the aforesaid reasons, the rule is made absolute and it is directed that the petitioner be released forthwith unless he is required to be detained in any other case or proceedings.