

(1984) 04 MAD CK 0025
In the Madras High Court
Case No : Writ Petition No. 11558 of 1983

T.O.M. Sabitha

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 26-04-1984

Acts Referred:

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

Citation : (1986) 7 ECC 72

Hon'ble Judges : Sengottuvelan, J;Mahaeswaran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mahaeswaran, J.—This is a petition for the issue of a writ of Habeas corpus to produce the detenu, K.E. Ariff, and to release him from detention.

2. This petition is filed by one Sabitha, wife of the detenu K.E. Ariff. The detenu was arrested on 25th October, 1983 in pursuance of the order of

detention, dated 20th October, 1983 passed by the Joint Secretary to Government of Tamil Nadu. The grounds of detention were communicated

to the detenu on 26th October, 1983 in accordance with the provisions of Section 3(3) of the Conservation of Foreign Exchange and Prevention

of Smuggling Activities Act, 1974 (hereinafter referred to as the COFEPOSA Act). The detenu arrived at Madras Airport on 30th July, 1983 as a

passanger from Singapore by Air India Flight No. 415 and produced his baggage consisting of one brown coloured brief case, dark brown brief

case (Diplomat) and one plastic bag at Table No. 7 for customs examination and

he was cleared on the basis of his oral declaration by the Customs Examination Officer on payment of Rs. 2,950 as customs duty. Later, he was intercepted by an officer of the Customs Intelligence at the exit gate. The baggages were examined and it resulted in the recovery of goods of foreign origin, such as video deck, colour video camera, calculators and wrist watches. The goods were seized by the Customs Officer. The value of the goods seized is roughly Rs. 35,875 and the market value is Rs. 1,07,625. The detenu gave a statement before the Customs Officer on 30/31st July, 1983 and he was produced before the Additional Chief Metropolitan Magistrate, Economic Offences II, Egmore, Madras-8 and was enlarged on bail by the Magistrate with a direction to appear before the Assistant Collector of Customs (Rummaging and Intelligence) Customs House, Madras, for a week from 2nd September, 1983. In his statement before the Customs Officer, the detenu has made reference to his earlier activities and has admitted having indulged in smuggling of goods into India and having sold foreign goods in India. He has detailed the dates of his travel to foreign countries and the detaining authority passed an order of detention on the material before him such as the recovery and the statement of the detenu. No reference is made by the petitioner to the hearing by the Advisory Board which obviously sent a report that there is sufficient cause for detention of the detenu. After that the detenu made a representation which he says was on 7th November 1983. The Government rejected the representation made by the detenu on 1st December, 1983 which was communicated to the detenu on 2nd December, 1983. The detenu challenges the impugned order on the following among other grounds:

1. There was no proper communication of the grounds of detention and, therefore, the constitutional mandate under Article 22(5) is infringed.
2. The detenu in his representation asked for copies of the pages in the passport which were not supplied to him by the Government, and therefore he could not make a proper and effective representation, without the copies of the pages in the passport, and that the non-supply of these documents is a clear breach of the procedural safeguard guaranteed under Article 22(5) of the Constitution of India.
3. The detaining authority has not considered independently the letter dated 8th

August, 1983 retracting the statement made by the detenu and has not stated the grounds, reasons and conclusions.

4. The reasons and conclusions arrived at by the detaining authority are not reflected in grounds of detention, and therefore, the order of the detaining authority is vitiated.

5. The order of detention passed by the detaining authority on the solitary instance of smuggling is not justified.

6. The detaining authority should not have arrived at the conclusion that the detenu was smuggling and dealing in smuggled goods prior to April, 1983.

7. The detenu has made the representation to the Government as early as on 7th November, 1983. But the representation was not considered by the Government till 1st December, 1983. The inordinate delay in considering the representation of the detenu vitiates the detention order.

3. In reply to these contentions, a detailed counter has been filed by the authority which passed the detention order. It is seen therefrom that the

detenu was cleared by the customs on the basis of his own declaration on payment of Rs. 2,970 as customs duty. The respondent denies the

allegation that the customs officials came there and took a brown brief case and one dark brown brief case which were lying about five feet away

from the detenu and asked him whether they belong to him and the detenu stated that they do not belong to him. The detenu was examined by the

customs officials at the exit gate in the manner and in the circumstances set out in the grounds of detention and the detenu signed the mahazar

prepared by the customs officials in their presence. The statement given by the detenu before the customs officials was voluntarily given by him and

has not been extorted by threat or coercion and the detenu had not chosen to retract the statement when he was produced before the judicial

authority, namely, on the night of 31st July, 1983 (Sunday) or on the next day when he was produced before the Magistrate in court.

4. The first ground, namely, that there was no proper communication of the grounds of detention and that, therefore, there is violation of Article

22(5) of the Constitution is not well founded because the grounds of detention were communicated to the detenu on 26th October, 1983.

Chandrasekaran, the Additional Superintendent, Central Prison, has sworn to, an

affidavit. It shows that he read over and translated the contents of the detention order to the detenu. He also read out and translated the grounds of detention in Tamil to the detenu. The detenu has acknowledged the same by signing in Tamil in the original order of detention and in the grounds of detention. Copies of the order of detention and the grounds of detention, both in Tamil and English were served on the detenu and the acknowledgement of the detenu was also obtained. He has also stated that he has translated and explained in Tamil the documents furnished to the detenu on 26th October, 1983 and that the detenu has understood the contents of those documents. It is, therefore, futile for the detenu to contend that he has not understood the contents of the grounds of detention or of the other documents and that there was no proper communication. We have perused the original records and we find that the grounds of detention and other documents have been translated to the detenu and that the detenu has acknowledged receipt of them when they have been so translated to him in Tamil.

5. The next contention is that the detenu in his representation to the Government asked for copies of entries in his passport on which reliance was placed by the detaining authority and that failure to supply them vitiates the order of detention. The detenu has stated that without the said copies of the passport pages, he will not be able to make an effective representation. It has been repeatedly pointed out that the detenu has a constitutional right under Article 22(5) of the Constitution to be furnished with copies of all materials relied upon or referred to in the grounds of detention with reasonable expedition. Mrs. Padmini Jesudurai, the learned Public Prosecutor appearing for the Government, per contra, pointed out that the detaining authority might have relied on or referred to in the grounds of detention about the passport, but the detaining authority only relied on two circumstances, namely, recovery of the contraband from the detenu by the customs officials and the statement made by the detenu before the customs officials. A perusal of the grounds of detention shows that no reliance or reference was made by the detaining authority to the passport.

The detaining authority only extracts the entire statement of the detenu, before the customs officials and also refers to the letter retracting the statement and relies on the recovery of the contraband from the detenu and on

the statement made by the detenu to arrive at a subjective satisfaction. Reliance was placed by the learned Counsel for the detenu on *Kirti Kumar v. Union of India* AIR 1951 SC 1621. That was a case where the document relied on by the detaining authority was not supplied to the detenu. Here, the statement made by the detenu as well as the mahazar for recovery of the contraband and copies of baggage fee receipt were supplied to the detenu. It should further be noted that in *Kirti Kumar's* case AIR 1951 SC 1621, the documents concerned in that case were referred to in the grounds of detention and the documents were also placed before the detaining authority and were, therefore, referred to in the grounds of detention. It was, in those circumstances, the Supreme Court held that once the documents are referred to in the grounds of detention, it becomes the bounden duty of the detaining authority to supply the same to the detenu as part of the grounds or *pari passu* the grounds of detention. In this case, as already pointed out, the grounds of detention do not refer to it nor is it relied on by the detaining authority. But Mr. Natarajan, the learned Counsel, invited our attention to the ruling in *Hansmukh Vs. State of Gujarat and Others*, and contended that even though the documents referred to and relied upon by the detaining authority are communicated to the detenu, he will still be entitled to further particulars of those grounds in compliance with the "second constitutional imperative" spelled out from Article 22(5) in *Khudiram Das Vs. The State of West Bengal and Others*, . In the present case, before us the documents on which reliance was placed, namely, the statement of the detenu, the mahazar and the baggage receipt have been furnished to the detenu. In *Hansmukh Vs. State of Gujarat and Others*, , it has been pointed out that if, however, the grounds communicated are elaborate and contain all the "basic facts" but are not comprehensive enough to cover all the details or particulars of the "basic facts", such particulars also must be supplied to the detenu, if asked for by him, with reasonable expedition. It cannot be said in this case that the grounds communicated to the detenu are not comprehensive enough to cover all the details or particulars of the basic facts. The very statement on which reliance is placed by the detaining authority has been furnished to the detenu. There is a clear reference to the dates on which he travelled to foreign countries and the

amounts in foreign currency he has taken. In his representation to the Government, the detenu has stated that if he was shown the passport and if he was furnished with the details of relevant pages in the passport, he will be able to explain the purpose of his visit and unless the copies of pages in his passport are given to him, he will not be able to explain about this. The passport may not contain the purpose of the visit of the detenu.

Further, the detenu himself has given the details regarding his trips to foreign countries in his statement. In the counter-affidavit of the respondent, it is stated that the detenu himself has given the dates of his visit to foreign countries and the copies of the pages in his passport will not indicate the purpose of his visit and therefore, the detenu cannot contend that the non-furnishing of copies of pages in the passport has deprived him of making an effective representation. Hence, this ground that the non-supply of the copies of pages in his passport prevented him from making any effective representation fails.

6. The third ground is that the detaining authority has not considered the letter dated 8th August, 1983, retracting the statement. This ground is not well founded for the detaining authority in paragraph (iv) of the grounds of detention has clearly dealt with this letter dated 8th August, 1983 addressed to the Collector of Customs. The detaining authority has referred to the contention of the detenu that the Customs Officer recorded a statement and obtained his signature by coercion. The detaining authority has also referred to the reply of the Customs Officer that the statement was given by the detenu voluntarily without any coercion, that no complaint about the coercion was made to any of the officers when the detenu was reporting at the Customs Department in accordance with the direction of the court from 2nd August, 1983 to 8th August, 1983 and that it was only an afterthought. It cannot be said that the detaining authority has not applied his mind independently to this letter dated 8th August, 1983. This contention should also be rejected.

7. The next ground is that the reasons and conclusions arrived at by the detaining authority are not reflected in the grounds of detention and therefore, the order of detention is vitiated. This appears to be a general allegation. The conclusion of the detaining authority is based on the materials, such as the statement, the mahazar, and the seizure of the

contraband. The High Court in its writ jurisdiction under Article 226 of the Constitution is to see whether the order of detention has been passed on any materials before it. If it is found that the order has been passed by the detaining authority on materials on record, then the court cannot go further and examine whether the material was adequate or not, which is the function of an appellate authority or court. It can examine the material on record only for the purpose of seeing whether the order detention has been based on no material. The satisfaction mentioned in Section 5 of the COFEPOSA Act is the satisfaction of the detaining authority and not of the court. In this case, as we earlier pointed out, the detention order was based on the ground that the contraband goods were seized and on the statement made by the detenu. In these circumstances, we are not prepared to hold that the order of the detaining authority, do not contain the reasons for detention and that they are not reflected in the grounds of detention and therefore the order is vitiated.

8. The next ground is that the order of detention having been passed by the detaining authority on a solitary instance of smuggling, is not justified.

We may at once point out that no general or hard and fast rule can be laid down in this behalf and the matter must depend on the facts and

circumstances of each case. In a given case, even from one single incident depending upon its magnitude and expertise it will not be unreasonable

to infer that there was a trend or course of original conduct. While dealing with a case of solitary act in *Debu Mahato Vs. The State of West*

Bengal, the Supreme Court observed:

We must of course make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a

satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act

and attendant circumstances may in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be

likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable

prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances.

9. We are dealing with an act involving economic offence and smuggling activity

clandestinely organised and carried on. The statement of the detenu and also his admission that he was indulging in smuggling of goods in the recent past have been considered by the detaining authority. Under such circumstances, it is not possible for us to accept the contention of Mr. Natarajan that from the solitary instance of smuggling, it would be unreasonable to infer that the detenu will indulge in such activities in future. Therefore, this ground also should fail.

10. The next ground is that the detaining authority should not have arrived at the conclusion that the detenu was smuggling and dealing in smuggled goods prior to April, 1983. This ground is not well founded because the detenu himself has admitted that he has been smuggling goods into India repeatedly in the recent past. This ground should, therefore fail.

11. The last ground taken by the detenu is that the representation sent by him on 7th November, 1983 has not been considered by the

Government till 1st December, 1983. On this aspect, we may point out that the representation dated 7th November, 1983 was given to the

Superintendent, Central Prison only on 12th November, 1983 which was a Saturday. That representation was not sent to the Government on the

same day, but sent on Monday (14th November, 1983) and was received by the Government on 15th November, 1983. It was sent to the

Collector of Customs for remarks on 16th November, 1983. The remarks of the Collector of Customs were received by the Government on 19th

November, 1983. The representation of the detenu and the parawar remarks of the Collector of Customs were sent to the translation department

for translating them into Tamil. The translated materials were received back and the representation was examined in detail. The concerned file was

submitted to the Under Secretary on 24th November, 1983 and thereafter the file was submitted to the Joint Secretary to Government who dealt

with it on 25th November, 1983. It was then submitted to the Chief Secretary to the Government who dealt with it on 27th November, 1983 and

then the file was circulated to the Law Minister who dealt with it on 29th November, 1983. It was then submitted to the Chief Minister who dealt

with it on 30th November, 1983. The representation of the detenu was rejected on 1st December, 1983 and the fact was communicated to him on

2nd December, 1983 and it was acknowledged by him. As pointed out in

Raisuddin alias Babu Tamchi Vs. State of Uttar Pradesh and Another, ,

the question whether the representation submitted by a detenu has been dealt with with all reasonable promptness and diligence is to be decided

not by the application of any rigid or inflexible rule or set formula, not by a mere arithmetical counting of dates, but by a careful scrutiny of the facts

and circumstances of each case. In the instant case we do not find there is any remissness or indifference on the part of the State Government in

dealing with the representation. The order detention is not vitiated, and therefore, this ground also should fail.

12. For the foregoing reasons, the writ petition is dismissed.