
(1987) 09 DEL CK 0024

In the Delhi High Court

Case No : Criminal Writ Appeal No. 260 of 1987

V. Aboobacker

APPELLANT

Vs

The Administrator of the Union Territory of Delhi and Others

RESPONDENT

Date of Decision : 01-09-1987

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3

Constitution of India, 1950 — Article 22

Citation : (1987) 14 ECC 183 : (1987) ILR Delhi 534 : (1988) 2 RCR(Criminal) 9

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : P. Misra and R.P. Lao, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) The petitioner is challenging his detention pursuant to a detention order dated 21-5-1986 passed by Delhi Administration against the petitioner u/s 3(1) read with Section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act; 1974. The detention order was made with a view to preventing the petitioner from smuggling gold into India. This was followed by a declaration u/s 9(1) of the aforesaid Act passed by the Govt. of India on 18-6-1986.

(2) The detention is in respect of an incident dated 28-2-1986. The petitioner is a petty domestic servant working at Dubai and on the date of incident he allegedly landed at Delhi Airport and after getting clearance from the immigration counter, the petitioner collected his luggage at the conveyer belt and while he was passing through the green channel he was intercepted by the Customs authorities. His luggage was thoroughly checked but nothing was recovered. Thereafter it is alleged that the petitioner again went towards the immigration counter and went to a toilet and then again came out. The Customs authorities felt suspicious about him, went to the toilet and they found a pouch containing

100 gold biscuits foreign made. Thereafter they are stated to have caught hold of the petitioner who is stated to have confessed that the gold was being smuggled by him into India.

(3) Mr. Misra has offered a lot of criticism regarding the detention order, which according to him has been passed with proper application of mind to the facts. Mr. Misra urges that in this case the discovery itself is clouded inasmuch as admittedly it was not made from the petitioner and even panch witnesses say that they were told by the Customs Officer that the pouch belongs to the petitioner. Mr. Misra, however, conceded that it is not a practice of this court to go into the sufficiency or insufficiency of the material or even its truthfulness as it is a job which is entirely to be performed by the detaining authority and is subject to the scrutiny of the Advisory Board.

(4) Mr. Misra has, however, assailed the order of detention on two main counts. Firstly it is urged by Mr. Misra that the detention order in the present case is in the form of double detention which could only be passed by the detaining authority after indicating his awareness in respect of the fact that the petitioner on the date of passing of the detention order was in jail and there was no imminent likelihood of his being let off on bail. According to Mr. Misra a detention order in such circumstances is a compulsory necessity and the detaining authority on consideration of all facts must state that despite the petitioner being in jail, he found it necessary to pass a detention order. The other contention of Mr. Misra is that there has been an undue and un-explained delay in consideration of his representation dated 27th October, 1986 which was decided and rejected by the detaining authority on 25th of November, 1986, incidentally the date on which the Advisory Board tendered its opinion.

(5) On my careful consideration of the contentions raised I am of the view that in the light of the law laid down by the Supreme Court in Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, it is always necessary for the detaining authority to show its awareness that the petitioner was in jail and that there was imminent danger of his being released on bail. It was also necessary for the detaining authority to indicate clearly that with its awareness in respect of these facts he still found it necessary to pass the order of detention. In the case (supra) the Supreme Court clearly held that if the man is in custody and there is no imminent possibility of his being released the power for preventive detention should not be exercised. In the impugned order of detention the detaining authority in the present case has positively shown his awareness that the petitioner at the time of passing of detention order was in jail. But it is not reflected by the detaining authority that the petitioner's four bail applications had been rejected and the last one being the one rejected by the High Court. Nor has the detaining authority reflected in the grounds that there was imminent possibility of the petitioner being released from jail and despite all those considerations he found it necessary to pass the detention order. It is necessary for the detaining authority to refer to such material and indicate his awareness to

enable the court to find out that all these facts were taken into consideration before passing the detention order. On that count, Therefore, the detention does stand vitiated in the present case. Adverting to the next contention of Mr. Misra the law very clearly says that the detaining authority must consider the representation of the detenu with utmost vigilance. This is so required as the liberty of a citizen is at stake. It will be an act of irresponsibility on the part of the detaining authority if he does not follow this mandate of law and the court cannot give any allowance for the same. What constitutes its delay will, of course, be determined by reference to the facts of each particular case. In the present case admittedly representation was made on 27th of October, 1986 and it was rejected on 25th of November, 1986, almost a month after. It was rejected by the Advisory Board on the same date. One does not know whether the opinion of the Advisory Board influenced the detaining authority in rejecting this representation. The detaining authority is required to approach the representation of the detenu independently of the opinion of the Advisory Board. In any case, in its counter the stand of the respondents is that the detaining authority first considered the representation dated 27-10-1986 and after confirmed the detention order. The respondent has very cleverly avoided to explain as to how the representation of the detenu was dealt with between 27th of October, 1986 and 25th of November, 1986. It has perhaps no explanation to tender and that is how it has not taken the court into confidence as to what the detaining authority has been doing with the representation during this period. This clearly shows that there is an un-explained delay in the consideration of the representation. On that account also the detention stands vitiated.

(6) The petition is allowed and the order of the petitioner passed against him is quashed. He shall be released forth with unless required in some other case.