

Ranjit Singh and Another Vs. Union of India

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SooperKanoon Citation : sooperkanoon.com/681122

Court : Delhi

Decided On : May-19-1987

Reported in : 32(1987)DLT58

Judge : M.K. Chawla, J.

Acts : [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3 and 7; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 82, 83, 84 and 85

Appeal No. : Criminal Writ Nos. 66 and 83 of 1987

Appellant : Ranjit Singh and Another

Respondent : Union of India

Judgement :

ORDER

1. By this order, I propose to dispose of Cr. Writ No. 66/87 - Shri Ranjit Singh v. Union of India and others and Cr. Writ No. 83/87 - Shri Ganga Ram Kapoor v. Union of India and others, as both arise out of and relate to the same incident. The order of detention dated 18-11-1985 concerns both the petitioners. The detenus have failed the petitions for issuance of a writ of habeas corpus praying for quashing of the order of their detention dt. 18-11-1985, passed by respondent No. 2 Shri K. K. Tiwari, Joint Secretary to the Government of India under section 3 of the [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,](#)

[1974](#) (hereinafter referred to as the COFEPOSA Act). The grounds of challenge in both the petitions are the same though there is a slight change in the date of their respective detention and the service of grounds of detention.

2. The material facts relevant for the disposal of the writ petitions in brief are that at about 0215 hrs. on 8th November, 1985, the officers of the B.S.F. noticed three miscreants coming towards India from the direction of Pakistan. On challenging the miscreants, one of them, namely, Jarnail Singh fired on the officers of the B.S.F. who retaliated in self-defense. On search of the area, two persons, namely, S/Shri Shavinder Singh and Pargat Singh were apprehended. Shri Jarnail Singh, however, managed to escape taking advantage of the crops and darkness. During the search of Shri Shavinder Singh, 70 gold biscuits with foreign markings and Rs. 10/- Indian currency with two letters written in Urdu were recovered. Search of Shri Pargat Singh resulted in the recovery of 60 gold biscuits with foreign marking and Rs. 20/- in Indian currency. A chit bearing the name 'Khanna to John' was amongst the documents recovered. On follow-up one Ganga Ram Kapoor alias John who was to receive the smuggled gold was apprehended at Delhi on the same day. His residential premises at E-325, Greater Kailash-II New Delhi were searched by the officers of the D.R.I. but no contraband or incriminating document was recovered there from. During interrogation, Ganga Ram Kapoor disclosed that he was expecting a phone call from the Hunnar Jang of Dubai disclosing the names of the persons likely to take delivery of the gold biscuits. The D.R.I. Officers then learnt that Shri Kapoor was required to deliver the gold biscuits to a person using the code name 'Mehta' at Subzi Mandi Market in Kailash colony, Shri Kapoor was brought to the appointed place where a hefty person in pathani suit came on foot and met Shri Kapoor. Shortly afterwards, a Sikh gentleman appeared on a two-wheeler scooter and talked to them for a minute. That Sikh gentleman again came on the same scooter and took Shri G. R. Kapoor away. In spite of vigorous pursuit, both of them could not be traced.

3. After scanning the area for sometime, the D.R.I. people succeeded in picking up the man in pathani suit from near the market. The said gentleman disclosed his name as Mohd. Akram, a Pakistani national. During sustained interrogation, Mohd. Akram revealed that the person who had vanished with G. R. Kapoor on the

scooter was Paramjit Singh, resident of K-3, Kailash Colony, New Delhi. On the basis of the disclosures made by Shri Akram, the residential premises of Paramjit Singh were searched but nothing incriminating was found there from.

4. Shri Subhash Kapoor son of Shri Ganga Ram Kapoor was then interrogated who revealed the nefarious activities of his father along with other persons. In due course of time, Paramjit Singh was arrested who named his brother Ranjit Singh as the person concerned in the smuggling of gold. Later, the statements of Shavinder Singh, Pargat Singh and other connected persons were also recorded.

5. On the basis of the facts and circumstances of the case and on perusal of the documents, Shri K. K. Tiwari came to the conclusion that the petitioners have been abetting the smuggling of good and dealing in smuggled good, otherwise than by engaging in transporting or keeping or concealing smuggled goods. He was further of the opinion that with a view to prevent them from indulging in such activities their detention in the COFEPOSA Act is a must. The order of detention was made on 18-11-1985. The grounds of detention were also drawn on the same day.

6. In compliance with the order of detention, the officers of the D.R.I. made endeavor to arrest the named persons. Shri Ranjit Singh was apprehended at Delhi on 22nd/23rd January, 1987. He was served with the grounds of detention in English on 28th January, 1987 where as the grounds of detention and the documents in Punjabi version were handed over to him on 6-2-1987. Shri Ganga Ram Kapoor was involved in a criminal case and he surrendered before the Court on 17-11-1986. The detention order was served on him on 21-11-86 grounds of detention were also made available to him, in Hindi and English, on the same day. But the Urdu version was delivered to him on 6-12-86. Before dealing with the grounds of attack to their detention, it is relevant to note that the orders of detention against Paramjit Singh and Mohd. Akram have already been quashed.

7. The first and foremost contention of the learned counsel for the petitioners is that there was no bona fide and genuine need to detain the petitioners preventively, inasmuch as they were taken into custody after over a period of 14 months (in the case of Ranjit Singh) and one year (in the case of Ganga Ram Kapoor) of the alleged prejudicial activity dt. 8-11-85, thus completely frustrating

the purpose of detention which under the law could be for a maximum period of one year. Besides that, there is no proximity and/or continuity between the alleged prejudicial activity and the date of the execution of the order. The orders of their detention are thus mala fide and motivated inasmuch as the petitioners have been detained on the basis of state order which had exhausted itself.

8. The case of the respondents is that immediately after the commission of the offence, the detenus absconded and were not available at their places of residence. They successfully avoided service of the detention order. It was with great difficulty that service was effected. The delay, if any is not fatal, and the object of detention has not been frustrated.

9. Is this Explanationn a valid one Its answer will settle the fate of the petitions. On facts, it is not disputed that in the case of Ranjit Singh, there is a delay of about 14 1/2 months whereas in the other case the order of detention could not be served for one year. It is the case of the petitioners that they were always available at the usual place of residence. Ranjit Singh goes on to state that he received at his Delhi address a show cause notice dt. 14-4-86 under S. 124 of the Customs Act from the Collector of Central Excise, Chandigarh, which he replied on 1-10-1986 from Jullundur. With this background, it can safely be said that prima facie, the Explanationn of the respondent is not convincing one. It is not shown as to how many attempts were made to locate the petitioners at their residence or business premises and what reports were received by the persons deputed for the purpose. No affidavit of the serving officer has been filed giving the details of action taken in this behalf. The long delay, in my opinion, remains unexplained.

10. Even if it be assumed for the sake of arguments that the detenus were absconding, then the only course open to the respondents was to follow the statutory provisions of Sections 4 and 7 of the COFEPOSA Act. These provisions contain the procedure for execution of detention orders and the powers of the appropriate Government in relation to absconding persons. Under the Act, the detention orders are to be executed in the manner provided for the execution of warrants of arrest under the Cr.P.C. However, if the appropriate government has reason to believe that the person in respect of whom a detention order has been

made, has absconded or is concealing himself so that the order cannot be executed, then in that case the government is required make a report in writing of the fact to a Metropolitan Magistrate having jurisdiction in the place where the said person ordinarily resides. The Metropolitan Magistrate in that situation shall have recourse to the provisions of Sections 82, 83, 84 and 85 of the Cr.P.C. Secondly, the Government may also, by order notify in the Official Gazette, direct the said person to appear before such officer, at such place and within such period as may be specified in the order. Its non-compliance may land him to imprisonment. The COFEPOSA Act is a complete code in itself as far as the service of the detention order on the absconding persons is concerned. The respondents have not taken any steps to follow this procedure. In fact there is no averment in the counter-affidavit. The mere assertion, without proof, that the detenus intentionally avoided service of the order of detention is neither here nor there. The delay, thus has not been satisfactorily explained.

11. The well settled proposition as laid down in the numerous judgments of the Supreme Court as well as other High Courts is that, if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority and it would be legitimate for the courts to draw an inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the petitioner. It was so held in the latest judgment of the Supreme Court reported as *Bhanwar Lal Ganesh Mal Ji v. State of Tamil Nadu*, 1979 SCC (Cri) 318 : (1979 Cri LJ 462), where on similar facts, it was observed as under :-

'The purpose of detention under the COFEPOSA is not punitive but preventive. There must be a 'live and approximate link' so that if there is a long and unexplained delay between the order of detention and arrest of the detenu, the order of detention may be struck down unless the grounds indicate a fresh application of mind of the detaining authority to new situation and the changed circumstances.'

12. It is no doubt true that the courts cannot lay down any time lag as to how far distant, the past conduct should be to justify the conclusion that the person concerned, if not detained may indulge in prejudicial activities, but if there is long gap between the prejudicial activity of a detenu and the detention order, then in that case the detaining authority is duty-bound to explain the delay, with a view to show that there was proximity between the prejudicial activity and the detention order. If it is not reasonably explained, the necessary consequences must follow i.e. an inference may be drawn that there is no nexus between the incident and the order of detention. In this view of the matter, the order of detention is liable to be struck down as invalid.

13. There is yet another aspect of the problem. As stated earlier, Shri Ganga Ram Kapoor surrendered before the Court of the Metropolitan Magistrate on 17-11-86 in a criminal case pending against him. While in judicial custody, he was served with the order of detention on 21-11-86. It Comes to that when the impugned order was passed, the petitioner had not surrendered but when the order was served, the petitioner had already surrendered in respect of a criminal charge against him. What is its effect The judgment reported as Binod Singh v. District Magistrate, Dhanbad, Bihar, : 1986 CriLJ1959 is the complete answer to this query. The relevant observations of the Hon'ble Supreme Court are as under :-

'It is well settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defense. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is an ipse dixit of the officer. If there were cogent materials for thinking that the

detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens.'

14. In view of the authoritative pronouncement of the Supreme Court, it can safely be inferred that though the order of preventive detention when it was passed was not invalid but in the circumstances of the case, the service of the order was not on proper consideration. It is nowhere stated that the detenu has since been released or bailed out in the said criminal prosecution or that the prospects of his imminent release were properly and with consciousness considered by the detaining authority. On this score also, the impugned order is liable to be quashed.

15. In the result, the petitions succeed. The order of detention dt. 18-11-1985 is hereby quashed. Both the detenus be set at liberty immediately if not required to be detained under the orders of a competent court or authority.

16. Petitions allowed.