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Court : Delhi

Decided On : Jul-21-1993

Reported in : 1994CriLJ211

Judge : Anil Dev Singh, J.

Appeal No. : Crl. Writ No. 444 of 1992

Appellant : inder Kumar

Respondent : Union of India and Another

Advocate for Def. : Ms. Barkha Babbar, ; P.S. Sharma and ; Hiridyajot Singh,

Advocate for Pet/Ap. : Ashok Kumar, Adv

Judgement :

ORDER

1. By this writ petition under Art. 226 of the Constitution, the petitioner calls in question his detention under S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'COFEPOSA').

2. The facts relating to the detention of the petitioner as given in the grounds of detention accompanying the detention order are as under :

On December 21, 1991, three passengers bound to Hong Kong by Air India Flight No. AI-318 were intercepted by customs authorities. The petitioner was one of

them. On being interrogated the petitioner admitted to have concealed foreign currency in his rectum. He volunteered to eject the same in the normal way. Thereupon in presence of the witnesses, the petitioner ejected two cylindrical packets which contained US \$ 8100, Deutsche Mark 13,500/-, Dutch guilder 4000/-, Saudi Riyal 500/-, Swiss Franc 100 and Japanese Yen 50,000/- equivalent to Rs. 5,08,600/-. On demand by Custom Authorities, the petitioner failed to produce any legal document in support of acquisition/possession and exportation of the foreign currency recovered from him. The petitioner in his statement dated December 22, 1991 recorded pursuant to notice under S. 108 of the Customs Act, 1962 admitted the recovery and seizure of the aforesaid currencies from him. Examination of the passport of the petitioner revealed that during the year 1991 he made 16 trips abroad and earlier also smuggled out of the country foreign currencies equivalent to Rs. 1,50,000/-. The petitioner was arrested in connection with the aforesaid incident on December 22, 1991.

3. Subsequently, however, the Additional Chief Metropolitan Magistrate by his order dated January 22, 1992 admitted the petitioner to bail. On March 7, 1992 a criminal complaint against the petitioner based on the aforesaid incident was filed in the Court of Additional Chief Metropolitan Magistrate. Adjudication proceedings were also initiated against the petitioner by issuing a show cause notice to him.

4. On the basis of the aforesaid incident coupled with the past activities of the petitioner, the detaining authority by its order dated June 22, 1992 directed detention of the petitioner with a view to preventing him from smuggling goods and also preventing him from engaging in concealing smuggled goods. This order was issued under S. 3 read with S. 2 of the COFEPOSA. The petitioner was served with the order of detention along with the grounds of detention on July 13, 1992.

5. Learned counsel appearing for the petitioner has attacked the detention order on a short ground. According to him the detention of the petitioner has been rendered illegal because of the inordinate delay in passing the impugned order of detention. He highlighted the fact that the incident is alleged to have taken place on December 21, 1991 while order of detention was passed on June 22, 1992. Learned counsel submits that there is no proper Explanationn for the delay in

passing the detention order.

6. Learned counsel appearing for respondent No. 2 submitted that there was no delay on the part of his client in issuing the order of detention.

7. After hearing learned counsel for the parties and going through the record, I find that two events clearly stand out : (i) the last prejudicial act was allegedly committed by the petitioner on December 21, 1991 and (ii) the detention order against him was passed by the detaining authority on June 22, 1992. Thus there is a time lag of about six months between the incident and the passing of the detention order. Offending act, in the present case, seems to be quite serious one but at the same time it must be proximate in point of time with the detention as otherwise the detention order is rendered illegal and stands vitiated.

8. The whole object of the detention law is to prevent a person, whose past conduct shows inclination and propensity to indulge in prejudicial activities, from repeating such activities in future. In the present case for about six months from the date of the last blameworthy activity of the petitioner, there had been virtually no fetters on his freedom and he was left free to indulge in the nefarious activity of smuggling. Now after six months the second respondent cannot be heard to say that the petitioner has to be prevented from indulging in smuggling activities. What were the activities of the petitioner during the interregnum is a relevant question which cannot be lost sight of. The detaining authority ought to have taken that into consideration, while making prognosis about the likely future actions of the petitioner. The nexus between the prejudicial activity and the detention order stands severed by the long delay. I must, however, hasten to add that in a given case, if a Court finds that there is some cogent Explanationn for delay in passing the detention order, in that event the detention will not be rendered illegal.

9. thereforee, in the instant case, it has to be seen as to what is the Explanationn of the State for the time lag between the aforesaid incident and the detention order passed to prevent him from indulging in smuggling activities in future. In this regard the learned counsel has invited my attention to the counter affidavit of Mr. M. U. Siddiqui, Deputy Secretary, Delhi Administration, sworn on behalf of respondent No. 2. The relevant portion of the affidavit reads as under :

'The alleged incident of apprehension of the petitioner by the customs department is dated 21-12-1991. The Customs Deptt. took time in completing the investigation and filed a complaint on 7-3-1992 before the Ld. A.C.M.M. Court. Thereafter the case was processed at different level. The proposal dated 23-4-1992 was received in the Home Department on 27-4-92 and the same was examined in the office of the deponent and put up before the Screening Committee for its consideration on 15-5-1992. After receipt of the documents from the Customs Department, the matter was processed in the branch on 5-6-1992 and sent to detaining authority through Dy. Secy. (Home) and Secretary (Home). Detaining Authority passed the order on 13-6-1992. After fairing out the grounds of detention and arranging the documents, along with their translation, fair detention order was issued on 22-6-1992.'

10. This is the only Explanationn given by respondent No. 2 for the delay in passing the detention order. To say the least the Explanationn is extremely vague and fails to give any cogent reason for the delay. Moreover, the counter affidavit does not disclose as to what investigations were carried out after the date of the incident and what material was gathered against the petitioner as a result thereof. Most of the documents accompanying the grounds of detention are of December, 1991. The fact that the petitioner had gone abroad sixteen times was revealed from his passport on the date of the incident itself. In any even criminal complaint against the petitioner was filed on March 7, 1992, which presupposes that all investigations must have been completed by he said date. Yet it took another three months for the detention order to be slapped on the petitioner. It is submitted by the learned counsel for the respondent No. 2 that proposal to detain the petitioner reached the Home Department only on April 27, 1992 and acting on the said proposal the detention order was passed on June 22, 1992. That may be so but the time lag of about two months between the receipt of proposal for detention of the petitioner and the passing of the order of detention has not been properly explained.

11. Learned counsel of the Delhi Administration then submitted that total delay of six months in passing the order of detention is because of the fact that matter was required to be dealt at various levels of the Government. The justification based on

administrative delay in passing the detention order is not tenable. In matters of preventive detention, files must move with speed and entire process culminating in passing of the detention order must be expedited. These matters cannot brook any delay. Where there is no convincing, plausible and cogent Explanationn for the delay in passing the detention order, the same must be struck down. If any authority is needed for this proposition the same can be found in Rabindra Kumar Ghosel v. The State of West Bengal, : 1975 CriLJ1235 ; Anand Parkash v. The State of U.P., : AIR 1990 SC516 ; Gurmeet Kaur v. Union of India, 1993 (1) Cri 558; S. K. Serajul v. State of West Bengal, : AIR 1975 SC1517 and Jagan Nath bids was v. The State of West Bengal, : 1975 CriLJ1329 .

12. In view of the above discussion the detention order dated June 22, 1992 is hereby quashed. The petitioner is directed to be released forthwith, if not required in connection with any other case.

13. Order accordingly.

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