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Court : Delhi

Decided On : Oct-17-1989

Reported in : 1990CriLJ71

Judge : P.K. Bahri, J.

Acts : [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3(1) and 9(1); ;[Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 482

Appeal No. : Criminal Writ Petn. No. 326 of 1989

Appellant : Satnam Singh

Respondent : Union of India and Others

Judgement :

ORDER

1. This petition has been brought under Art. 226 of the [Constitution of India](#) read with S. 482 of the Code of Criminal Procedure seeking quashment of the detention order dated March 27, 1989, passed by a Joint Secretary to the Government of India, under S. 3(1) of the [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) (for short 'COFEPOSA Act') with a view to preventing the petitioner from engaging in transporting and concealing smuggled goods and dealing in smuggled goods otherwise than by engaging in keeping smuggled goods and the declaration dated April 10, 1989, issued under S. 9(1) of

the COFEPOSA Act.

2. The facts of the case, in brief, are that on a secret information the officers of the Directorate of the Revenue Intelligence, New Delhi, intercepted a truck No. PAT-410 on March 5, 1989, at Kundli along with the petitioner and Sukhwinder Singh and Dilbagh Singh, driver and cleaner of the truck were also found present in the truck and were apprehended, 199 foreign marked gold biscuits were recovered from the cavity on the right-hand side door of the said truck. This truck was registered in the name of Jitender Singh, brother-in-law of the petitioner, but was purchased by the petitioner and that one Amrik Singh, a close friend of petitioner's father, is stated to have been indulging in large-scale smuggling of gold from Dubai to India for the last 10 or 12 years and he has been smuggling gold through Indo-Pak Border and he had employed a number of persons in that connection and the petitioner's father had been helping Amrik Singh in transportation of smuggled gold from Amritsar to other places and was getting Rs. 30,000/- for each consignment of 100 smuggled fold biscuits and the petitioner, after coming of age, had started helping his father in this work. On March 4, 1989, as directed by his father, the petitioner met one Binda, a carrier of Amrik Singh, Binda introduced him with another man and told him that that person whole deliver 199 smuggled gold biscuits which the petitioner should carry in his truck to Delhi. In this way, the petitioner was handed over 199 smuggled gold biscuits and he with the help of Sukhwinder Singh and Dilbagh Singh concealed the said gold biscuits in the aforesaid truck. On the information given by the petitioner, residential premises of the petitioner at 175, Basant Avenue, Amritsar, were searched on March 6, 1989 and 100 foreign marked gold biscuits were recovered.

3. Various grounds have been urged by the learned counsel for the petitioner in support of the writ petition but it is not necessary to refer to all of them because, in my view, this writ petition is liable to succeed on a very short ground.

4. In para 15 of the writ petition, it is averred that the petitioner had made a representation dated April 6, 1989, copy of which is Annexure D, in which he had sought certain relevant and important information clarifications and documents which could have enabled the petitioner to make an effective and purposeful

representation but the same was not at all considered by the authorities. Hence, the continued detention of the petitioner has become bad on the score alone.

5. The petitioner in the rejoinder has also taken up another plea that he had sent reminder representation dated June 15, 1980. The authorities rejected the interim representation vide memo dated July 3, 1989. The petitioner also made a representation dated July 28, 1989 and there has occurred undue and unexplained delay in considering the said representation. Rather the plea take is that the information and the documents sought by the petitioner were not supplied in right earnest to enable the detenu to make a purposeful and effective representation to the Advisory Board inasmuch as letter dated July 3, 1989, purporting to convey the information sought for was received by the detenu on July 5, 1989, itself.

6. In the affidavit dated July 20, 1989, filed by Shri A. K. Batabyal, Joint Secretary to the Government of India. Ministry of Finance, who had passed the detention order, it was pleaded that no representation dated April 6, 1989, had been received by the Ministry and then it was mentioned that the petitioner's co-detent had made a representation dated April 17, 1989 and the petitioner was on parole for the period April 13, 1989 to May 10, 1989 and thus, the question of his making any representation dated April 6, 1989, did not arise. It is pertinent to mention that in the reminder dated June 15, 1989, sent by the petitioner, copy of which is Ex. R5 filed along with the rejoinder, the petitioner had intimated that he had forwarded the interim representation to the Superintendent (Jail) for onward transmission to the Government of India and the said representation was sent to the Superintendent (Jail) by registered A.D. and he had enclosed the copy of the A.D. card along with this representation. No affidavit of the Superintendent (Jail) has been filed to show that no such representation had been received by the Superintendent (Jail) as per the A.D. receipt, copy of which is Annexure R6. So, it has to be held that the petitioner did send the representation, copy of which is Annexure D, to the Superintendent (Jail) which was received by the Superintendent (Jail) on April 6, 1989, by registered post and till today the fate of the said interim representation is not known. It is to be mentioned here that in para 2 of the representation the detenu wanted the authorities to inform whether all the

relevant documents were perused by the detaining authority in arriving at his satisfaction to detain the detenu. If not, the same has the effect of vitiating the continued detention of the petitioner. The petitioner wanted to be informed in what language or languages the detaining authority had perused the documents relied upon and whether the detaining authority had perused any more documents other than the documents relied upon and supplied to the detenu. The learned counsel for the petitioner has pleaded that the statements of the detenu and co-detents were recorded in Punjabi language and the detaining authority did not know the Punjabi language and no copies of the English translations of the said statements had been supplied to the detenu. Thus, the detenu needed the aforesaid information to make an effective and purposeful representation on the plea that the detaining authority had not applied his mind to the most material documents, viz. the statements of the detenu and the co-detents recorded in Punjabi language and in case the detaining authority had perused the English translations of the said statements, then copies of the English translations not supplied to the detenu also rendered the detention order void. As such information was not being supplied to the detenu in right earnest, the detenu had sent another reminder, copy of which is Ex. R5 filed along with the rejoinder, in which the detenu again asked for the said information and he also pointed out that retraction dated March 20, 1989, has not been considered by the detaining authority while arriving at the subjective satisfaction. He also highlighted that certain contents of the document particularly appearing at Serial Nos. 20 and 28 of the list of documents, have not been conveyed to the petitioner and he wanted the same to be conveyed to him. He also wanted that if English translations have been considered by the detaining authority, the same be also supplied to the detenu. So, he prayed that if the detention order is not to be revoked on the aforesaid ground, he may be furnished the necessary information and documents at the earliest. Vide reply dated July 3, 1989, of which copy is Ex. R2, the petitioner was intimated that his representation for revocation of the order of detention has been carefully considered but the same has been rejected. It was intimated to the detenu that although the statements of the petitioner as well as of co-detents were in Punjabi language and were placed before the detaining authority who did not know Punjabi language yet English translations of the same were placed before the detaining authority and that

retraction of the petitioner was not available on the court record and thus could not be placed before the detaining authority.

7. It was also mentioned therein that the compliance report at the back of the search authorisations were referred to in the grounds of detention and due to inadvertence the Punjabi translation of the same could not be supplied to the detenu. Along with this letter the Petitioner was supplied the English translation of the Punjabi statements of the petitioner and co-detent.

8. A crucial question which arises for decision is whether there has occurred undue and unexplained delay in supplying the information and copies of documents to the petitioner to enable him to make an effective and purposeful representation. As indicated above, the first representation of the petitioner received by the Superintendent (Jail) on April 6, 1989, remained unattended. No Explanation whatsoever has been given as to where that representation had been sent. After all it could be only in the knowledge of the Superintendent (Jail) as to what happened to the aforesaid representation which he received by registered post. The information asked for in the said representation was definitely relevant information which could have enabled the detenu to make an effective and purposeful representation. The law requires that the authorities must afford earliest opportunity to the detenu for making an effective representation. This earliest opportunity which should have been afforded to the detenu by supplying the necessary information asked for in the first representation was denied by delayed supply of such information on reminder being sent in June 1989. So, on this short ground alone it must be held that the right of the detenu to make an effective and purposeful representation at the earliest opportunity has been thwarted which makes the continued detention of the petitioner void.

9. I allow the writ petition and quash the continued detention of the petitioner and direct that the petitioner be set at liberty forthwith, if not required to be detained in any other case.

10. Petition allowed.

