

**Hamza Nozoglu Vs. Union of India and Others**

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**Court :** Delhi

**Decided On :** Feb-17-1992

**Reported in :** 1992CriLJ2221; 1992(1)Crimes1028; 46(1992)DLT517; 1992(22)DRJ427

**Judge :** Dalveer Bhandari, J.

**Appeal No. :** Criminal Writ No. 432 of 1991

**Appellant :** Hamza Nozoglu

**Respondent :** Union of India and Others

**Advocate for Def. :** K.K. Manan and ; Kamal Nijhawan, Advs.

**Advocate for Pet/Ap. :** Ashutosh, Adv

**Judgement :**

ORDER

1. The petitioner has filed a writ petition under Art. 226 of the Constitution of India and has prayed, inter alia, that the writ of habeas corpus be issued, quashing the order of detention dated 6-2-91, passed by the Joint Secretary to the Government of India, u/S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, with a view to preventing him from smuggling goods and also preventing him from engaging in, transporting, concealing and keeping smuggled goods. Acting on intelligence report on 15-1-91, the officers of

the Directorate of Revenue Intelligence, New Delhi (Headquarters) mounted surveillance in Sunder Nagar in the vicinity of a hotel Kailash Inn, 10, Sunder Nagar, New Delhi. The officers found one Caravan (Mini Bus) with foreign registration, parked outside the Inn. Enquiries with the hotel revealed that the owner of the Caravan was a Turkish national named Hamza Nozoglu, who was staying in Room No. 117 of the hotel. The officers visited the Inn and called the petitioner, Shri Hamza and asked him to show the relevant papers and to open the door of the vehicle for its search. This vehicle had crossed Attari Border (Punjab) on 11-1-91 as a carnet depassage No. 508435 issued on 26-12-90. The mini-bus was rummaged and after its extensive search, the officers succeeded in locating 20 packets wrapped with adhesive tape from the wardrobe of the mini-bus. Each packet contained two bars of 1 Kg. each of foreign marked gold totally weighing 40 Kgs. valued at Rs. 1.48 crores. The officers then searched the room No. 117 of the Inn, where they recovered 4110 US \$ and 2700 Iranian Rials and some documents. The search of the mini-bus and the room of the Inn was conducted in presence of two independent witnesses. On being asked, the petitioner could not produce any proof documentary or otherwise in support of legal import/possession of the recovered smuggled gold bars. The officers, therefore, seized the said 40 foreign gold bars weighing 40 kgs. valued at Rs. 1-48 crores along with wrappers of paper and adhesive tapes, 4110 US\$ and 2700 Iranian Rials under reasonable belief that the same were smuggled and were liable to confiscation under the provisions of Customs Act, 1962.

2. One registration book B No. 98967 dated 26-2-90, one driving license Belge No. 10693 dated 13-7-76 and the carnet No. 508435 dated 26-12-90 were taken into possession from room No. 117 of Kailash Inn, 10, Sundar Nagar, New Delhi and seized as the same were relevant to enquiry under the Customs Act. The mini bus was also seized.

3. The petitioner in the present writ petition submits that he has been falsely implicated in the case and he was forced/coerced to sign some blank papers and in fact he never knew the contents of the so-called voluntary statement alleged to have been recorded u/S. 108 of the Customs Act. Though the petitioner has challenged the detention order on various grounds but during the course of

arguments before this court, the petitioner laid stress only on the ground of unexplained delay in consideration of his statutory representation by the respondent. The petitioner submits that unreasonable and unexplained delay in disposing of the petitioner's representation has resulted in infringement of his fundamental right under Art. 22(5) of the Constitution of India, and the detention order be quashed because of this lapse on the part of the respondent. I have heard Mr. Ashutosh, Learned counsel for the petitioner, and Mr. K. K. Manan, learned counsel for the respondent/State. Mr. Manan has taken considerable pains in preparing a chart for the convenience of the court in order to test the veracity of the arguments of the Learned counsel for the petitioner. The admitted facts are set out as under :

The representation of the petitioner dated 30-7-91 was received by the respondent on 31-7-91. On 2-8-91, a letter was sent to the sponsoring authority i.e. DRI, requesting them to furnish paradise comments.

The comments were sent by the sponsoring authority on 16-8-91 vide its letter dated 8-8-91. The papers were compiled and put up before the Joint Secretary on 19-8-91. The file was forwarded to the Joint Secretary, SS & DG with the remarks of Joint Secretary on 20-8-91. The file was then placed before the Minister of State on 23-8-91 and on the same day before the Finance Minister who rejected the representation. On 27-8-91, the file was received back and on the same day, a Memorandum rejecting the representation of the detenu was issued.

4. After carefully looking into the details of the days, it is clear that the representation dated 30-7-91 which was received by the respondent on 31-7-91, was rejected on 27-8-91 and there is no reasonable Explanationn for delay of 28 days in deciding the representation of the petitioner. This long unexplained delay is vocative of the petitioner's fundamental right as enshrined under Article 22(5) of the Constitution.

5. The Supreme Court in Mahesh Kumar Chauhan alias Bante v. Union of India 1990 (2) Cri 472 : : 1990 CriLJ1507 has quashed the detention order because there was unexplained delay of 17 days. The court while quashing the detention order observed as under (at page 1510; of Cri LJ) :-

'Reverting to the facts of the present case as submitted by the learned counsel, except merely mentioning that the representation was forwarded to the concerned sponsoring authority on 25-8-1989 and the comments from the sponsoring authority was received by the Department on 11-9-1989, there is absolutely no Explanation as to why such a delay had occurred. thereforee, in the light of the proposition laid down in Rama Dhondu Borade's case (albeit), we have no other option except to allow this appeal on the ground that this undue and unexplained delay is in violation of the constitutional obligation enshrined in Art. 22(5) of the Constitution of India rendering the impugned order invalid.'

6. In Rama Dhondu Borade v. V. K. Saraf Commissioner of Police, : 1990(25)ECC50 the detention order was quashed for unexplained delay of 10 days. This has been a settled position of law as crystalised by a large number of decisions of the Supreme Court that unreasonable delay in consideration of the petitioner's representation is vocative of his fundamental right under Art. 22(5) of the Constitution of India. Reference may be made to some of the judgments which have been decided by the Hon'ble Supreme Court, where the same principle has been reiterated. Francis Coralie Mulin v. W. C. Khambra : 1980 CriLJ548 Harish Pahwa v. State of U.P., : 1981 CriLJ750 . Aslam Ahmed Zahire Ahmed, Shaik v. Union of India, : 1989 CriLJ1447 and Pratul Kumar Sinha v. State of Orissa : AIR 1989 SC1783 .

7. The conclusions arrived at in all these cases apply with equal force to the circumstances of the present case.

8. The Supreme Court in Gazi Khan alias Chotia v. State of Rajasthan : 1990 CriLJ1420 has quashed the detention order on the ground of 7 days unexplained delay in consideration of the representation of the petitioner. On careful consideration of all these judgments, the legal position which emerges is crystal clear that a long, unreasonable and unexplained delay in consideration of the petitioner's statutory representation is vocative of the petitioner's fundamental right under Art. 22(5) of the Constitution of India. Learned counsel for the petitioner was justified in not urging other grounds taken in the petition.

9. The impugned detention order dated 6-2-91 is hereby quashed. The petitioner shall be set at liberty forthwith unless he is required to be kept in custody for some other case. Consequently, Rule is made absolute and the writ petition is allowed.

10. Petition allowed.

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