

Raj Kumar Gupta Vs. Union of India

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Court : Delhi

Decided On : Mar-31-1992

Reported in : 1992(60)ELT522(Del)

Judge : V.B. Bansal, J.

Acts : [Customs Act, 1962](#) - Sections 108

Appeal No. : Criminal Writ No. 240 of 1991

Appellant : Raj Kumar Gupta

Respondent : Union of India

Advocate for Def. : Ms. Pinki Anand and ; D.N. Goburdhan, Advs.

Advocate for Pet/Ap. : Shri Shailender Bhardwaj and; Navin Matta, Advs

Judgement :

ORDER

V.B. Bansal, J.

1. On 23rd January, 1991 Shri Mahendra Prasad, Joint Secretary to the Government of India, an officer specially empowered the Sec. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short the Act) directed that Raj Kumar Gupta r/o 16-A, Kamla Nagar,

Delhi - 7 be detained and kept in custody in the Central Jail, Tihar, New Delhi with a view to preventing him from smuggling goods.

2. This order was served upon Raj Kumar Gupta on 28th March, 1991 when the grounds of detention along with the documents relied upon were served upon him. Raj Kumar Gupta made a representation dated 22nd April, 1991 against his detention but received no reply and so he filed this petition under Articles 226 and 227 of the Constitution of India read with Sec. 482 of the Code of Criminal Procedure praying for issuance of writ of habeas corpus or any other appropriate writ for quashing the order of detention and his release forthwith.

3. It would, at this stage, be appropriate to give some details of the facts leading to the issuance of the detention order against the petitioner.

4. Raj Kumar was holding Indian passport issued in his favor from Delhi on 30th December, 1988 valid up to 25th July, 1995. The petitioner arrived at Sahar International Airport, Bombay from Singapore on 10th September. The petitioner was apprehended by the Customs Officers of Air Intelligence Unit near baggage screening machine of walkthrough channel of Module-I on suspicion. Two independent witnesses were called and in their presence an enquiry was made from Raj Kumar Gupta as to whether he was carrying any contraband like gold and diamond to which he replied in the negative. However, there was a suspicion in the mind of the Customs Officers that the contraband was hidden in the right hand lower pocket of the Safari shirt Raj Kumar was wearing and so he was questioned. Raj Kumar Gupta admitted that he was carrying contraband gold concealed in the pocket of Safari shirt. Accordingly on search the petitioner was found in possession of 5 F.M. gold bars collectively weighing 1166 gms. of gold. The same was seized by the Customs Officers in the reasonable belief that the same was smuggled into India and was liable to confiscation under the Customs Act. A show-cause notice was waived on the basis of a request in writing made by Raj Kumar Gupta and the case was adjudicated upon by Additional Collector of Customs (P), Sahar Airport, Bombay, who directed that the seized gold be confiscated absolutely and a personal penalty of Rs. 25,000/- be imposed upon the petitioner.

5. The petitioner was examined and his statement under Sec. 108 of the Customs Act was recorded on 10th September, 1990 when it was, inter alia, stated by him that the gold was given to him by one Jaspal at Singapore whom he met on 8th September, 1990 and the same was to given to Jaspal's contact man outside Bombay Airport and he was paid Rs. 5000/- as monetary consideration. It was also stated by him that the contact man was to identify him with his photograph. It was in these circumstances that the detention order was passed.

6. Learned counsel for the petitioner has taken up a number of grounds thereby challenging the detention order. However, it would be convenient to refer to only one ground since the petitioner would succeed on that ground alone and so it is not necessary to discuss the other grounds.

7. Learned counsel for the petitioner has submitted that there has been an inordinate delay in the execution of the order of detention because there was no proximate link between the grounds of detention and the purpose of detention is snapped in arresting the detenu. He has, thus, submitted that on this account alone the order of detention is liable to be quashed. It would at this stage be appropriate to refer to the specific plea taken up by the petitioner in the writ petition. In ground No. 2 it has specifically been pleaded by the petitioner that 'although the impugned order of detention was passed on 23rd January, 1991 yet the same was not executed upon the petitioner till 28th March, 1991 despite the fact that he was all along available during the whole period but it is submitted that the long delay in execution of the impugned order of detention snatches the nexus between the activity alleged and the activity sought to be curbed by passing the impugned order of detention.'

8. Union of India has filed a counter-affidavit sworn by R. P. Kapur, Under Secretary, Department of Revenue, Ministry of Finance, Janpath Bhavan. It would be appropriate to quote the reply to Ground No. 2 which reads as under :-

'Ground II is wrong and denied. It is wrong and denied that the petitioner was all along available between the period between passing of order of detention on 23-1-1991 and its actual execution on 28th March, 1991. The order of detention was received by the concerned Department for necessary action on 25-1-1991. The

execution order of detention was deputed to Commissioner of Police, New Delhi. All the relevant papers along with detention order were sent on 30-1-1991. However, the petitioner failed to attend the remand date at Bombay on 7-2-1991. Thereafter the Delhi Police visited the residence of the petitioner and executed the order of detention upon him on 28-3-1991. In the circumstances it is submitted that there is no undue delay in the execution of order of detention.'

9. A bare reading of the reply of the Union of India makes it abundantly clear that the reply is vague inasmuch as it does not mention what efforts were made and by whom to execute this order of detention against the petitioner. All that has been stated in reply is that Delhi Police visited the residence of the petitioner and executed the order dated 28th March, 1991. The reply does not indicate as to whether residence of the petitioner was visited by any officer prior to 28th March, 1991 and, if so on which dates and at what time. The obvious conclusion that nothing has been brought on record to indicate that efforts were made to execute the detention order expeditiously. It has been held by the Supreme Court in *T. A. Abdul Rahman v. State of Kerala and Others* : 1990 CriLJ578 when there is unexplained and unsatisfactory delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner. Similarly, in case *P. U. Iqbal v. Union of India & Ors.*, Judgments Today 1991 (6) S.C. 496 it has been held that if there is unexplained delay between the date of order of detention and the date of arrest of the detenu, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the live and proximate link between the grounds of the detention and the purpose of detention is snapped in arresting detenu. It has also been held that a question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case. As already referred to there is hardly any Explanationn for the delay in executing the detention order and on this account

alone the detention of the petitioner cannot be sustained.

10. As a result, the writ petition is allowed. Rule is made absolute. The detention order dated 23rd January, 1991 is quashed. Petitioner is ordered to be released forthwith, if not required in any other case.

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