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Court : Delhi

Decided On : Feb-08-1990

Reported in : 1990CriLJ2212

Judge : Y.K. Sabharwal, J.

Appeal No. : Criminal Writ No. 346 of 1989

Appellant : Ravinder Kumar

Respondent : Administrator of Delhi and Another

Advocate for Def. : Ms. Lao, Adv.

Advocate for Pet/Ap. : R.M. Bagai, Adv

Judgement :
ORDER

1. In this writ petition filed under Art. 226 of Constitution of India challenge is to the order of detention No. F. 5/14/89-Home (P-II) dated February 28, 1989 issued under S. 3(I) read with S. 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'the Act') with a view to prevent, the petitioner from smuggling goods and also preventing him from engaging in transporting, concealing and keeping smuggled goods.

2. Briefly the grounds on which the petitioner was detained are these :-

On 13th May, 1988 the petitioner arrived at Indira Gandhi International Airport, New Delhi from Dubai by flight No. AI916. After customs clearance while he was leaving customs Arrival Hall. The petitioner was intercepted on suspicion at the exit gate by the Customs Officer. On being asked whether he was carrying any contraband gold, watches etc., the petitioner relied in negative. On examination of baggage or personal search nothing was found. Nothing incriminating was found on the body of the petitioner but when metal detector was applied, it gave indication of the presence of something metallic inside the body of the petitioner near the rectum. On repeated questions and persuation, the petitioner admitted that he had concealed three gold biscuits of ten tolas each inside his rectum and in the presence of witnesses he eased out one packet wrapped in a polythene sheet which on opening was found to contain three gold biscuits with foreign markings weighing ten tolas each wrapped in carbon paper. A Goldsmith was called who certified the same to be of 24 carat purity and collectively weighing 349.500 gms valued at Rs. 1,10,092-50(MV). The petitioner could not produce any proof of lawful import of the said gold which was seized. The duplicate passport No. C-387444, ticket, baggage tags and customs baggage receipt were also taken into possession by the Customs Officer. The Statement of the petitioner under Section 108 of the Customs Act, 1962 was also recorded on 13th May, 1988 wherein while admitting the recovery of the gold in the aforesaid manner, the petitioner inter alia, stated that he had no proof of lawful importation and it was for that reason he had concealed the gold biscuits inside rectum to avoid detection of the gold by customs. He also stated that gold had been brought by him for making profit. He further admitted that he had gone to Dubai three times; and that the 3 gold biscuits had been purchased for 18,000 Dihrams and he wanted to sell the foreign biscuits in the local market at Delhi to earn good return. The visits to Dubai along with the date of departure and arrival, as stated in the grounds of detention, are as follows :-

S. No. Date of Departure Date of Arrival 1. 19-12-87 22-12-87 2. 10-3-88 13-3-88 3. 7-4-88 9-4-88 4. 10-5-88 12-5-88

3. The petitioner was arrested on 13th May, 1988 under S. 104 of the Customs Act, 1962, by the Customs Officer and was produced on 13th May, 1988 before

the ACMM, New Deli, and was remanded to judicial custody. The petitioner was ultimately released on bail by order dated 26th May, 1988. A complaint for offences punishable under Sections 132 and 135(1)(a) of the Customs Act, 1962 was filed in the court on 4th August, 1988. On the basis of the aforesaid facts and circumstances, the Administrator of the Union Territory of Delhi came to the following conclusion :-

'that you have smuggled goods and also inducted yourself in transporting, concealing and keeping smuggled goods and if you are allowed to remain at large and not prevented you are likely to indulge in smuggling activities in the same manner or otherwise. Even though prosecution and adjudication proceedings under the Customs Act, 1962 in the subject case have already been initiated against you and that your passport is in possession of Customs Department, still the Administrator of the Union Territory of Delhi is satisfied and considered it necessary to detain you under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing you from smuggling goods and also preventing you from engaging in transporting, concealing and keeping smuggled goods.'

4. The petitioner was detained on 1st of March, 1989.

5. Mr. Bagai, learned counsel for the petitioner firstly contends that the order of detention is liable to be quashed as it shows total non-application of mind as there was no material whatsoever for arriving at the satisfaction that the petitioner wanted to transport, conceal or keep the smuggled goods and the order of detention based on non-existent material is liable to be set aside. It is contended that the question of transporting, concealing or keeping the smuggled goods could arise only after the goods had been smuggled and the petitioner having been apprehended before the goods could be taken out of the Customs barrier, there could be no question of his engaging in transporting, concealing or keeping smuggled goods. Ground (D) urging this 'point' in the writ petition reads as under :-

'Because the detaining authority has passed the order of detention without application of mind as he has ordered the detention of the petitioner with a view of prevent him from smuggling goods and also preventing him from engaging in

transporting, concealing and keeping smuggled goods but there is total absence of any material to show that the petitioner ever engaged himself in transporting, concealing and keeping smuggled goods.'

The reply to the aforesaid ground is as under :-

'This ground is wrong and denied. The detention order has been passed by the Administrator, Delhi, with due application of mind and taking into consideration all the material placed before him. It is further submitted that the detention is perfectly legal and valid in view of the fact that the clandestine manner in which the petitioner was apprehended while attempting to smuggle gold clearly shows that he has the propensity to indulge in such activities in future also keeping in view his frequent visits abroad, i.e., his four visits to Dubai within a period of five months for a very short period. It is further submitted that there can be no manner of doubt that had the alleged smuggled goods, i.e., gold been allowed to be taken away by the petitioner, he must have transported the same in New Delhi itself and he must have either sold or kept it by concealing. In fact, the petitioner himself in his statement recorded under Section 108 of the Customs Act, 1962 has stated that he wanted to sell the foreign gold biscuits in the local market at Delhi to earn good return. That fact is mentioned in the grounds of detention. The act of selling could be done only after the petitioner had transported, concealed and kept the gold with him. All these circumstances clearly show if the petitioner is not prevented, he will definitely smuggle goods and will also engage himself in transporting, keeping and concealing smuggled goods. The object of the Act is that such type of smuggling activities should be prevented is future. It is, thereforee, clear that not only that the Administrator applied his mind and formed 'subjective satisfaction' for passing the detention order as he did but there was every justification for detention of the petitioner from preventing him from smuggling goods and also from transporting, concealing and keeping smuggled goods.'

In support of the contention, learned counsel relies upon a single Bench decision of this court in Suwa Ram v. Union of India (1989) 2 DL 420, and in particular, the observations that 'the question of transporting, concealing and keeping smuggled gold could arise only after the gold had been imported into this country.' These

observations were made on account of peculiar facts of Suwa Ram's case. On facts, learned single Judge, came to the conclusion that it appeared that Suwa Ram was nothing more than a carrier of gold. A conclusion was also arrived at that as the petitioner could not take out goods out of customs barrier, there could be no question of his transporting, concealing or keeping the smuggled goods. It does not appear that Suwa Ram had made any statement to the effect that the he had brought gold to sell in the market to make profit. It also does not appear that in the affidavit the respondents had taken the plea that Suwa Ram had the propensity to indulge in smuggling activities or that he would have transported, concealed or kept the gold had he been successful in taking it out from the custom barrier.

6. The facts in the present case are entirely different. It is apparent from the reply to ground (D) reproduced above that the detaining authority considered the factum of the clandestine manner in which the petitioner was apprehended while attempting to smuggle gold which showed that he had the propensity to indulge in such activities in future also keeping in view his frequent visits abroad, i.e., four visits to Dubai within a period of 5 months for very short durations. It also considered that had the petitioner been successful in taking away the gold he would have transported the same and would have either sold or kept it by concealing it. The petitioner had in his statement under S. 108 of the Customs Act, 1962 had stated that he wanted to sell the foreign gold biscuits in local market at Delhi to earn good return. The act of selling could be done only after the petitioner had transported, concealed and kept the gold with him. From these facts and circumstances the detaining authority came to the conclusion that if the petitioner is not prevented, he will definitely smuggled gold and will also engage himself in transporting, concealing and keeping the smuggled goods. In view of the aforesaid facts and circumstances, the judgment in Suwa Ram's case (1989) 2 DL 420 has no applicability.

7. Ms. Lao, learned counsel for the respondent relies upon the judgment in the case of Om Prakash Kukreja v. State, Crl. W.P. No. 119 of 1985 decided on 12-9-1985. The plea on behalf of the detenu that there was nothing to show that he had any intention to transport or keep the smuggled goods, was rejected by learned single Judge, in the following words :-

'But I do not agree with the learned counsel when he says that there is nothing in the grounds of detention to show that the petitioner had any intention to transport or conceal or keep the alleged smuggled goods. There can be no manner of doubt that had the alleged smuggled goods been allowed to be taken away by the petitioner, he must have transported the same in New Delhi itself and he must have either sold or kept with him. In fact the petitioner himself stated in his statement under Section 108 of COFEPOSA Act recorded on 29th February, 1984 that he had brought the watches for selling them off. That fact is mentioned in the grounds of detention. The act of selling could be done only after the petitioner had transported and kept the watches with him. All these circumstances clearly show if not prevented, the petitioner will definitely transport, keep or sell the smuggled goods. The object of the act is that such type of transporting or keeping the smuggled goods should be prevented in future. Hence the mere fact that on account of seizure on February 29, 1984 the petitioner was incapable of transporting etc. the already smuggled goods does not mean that in future also he will also be incapacitated.

It is, thereforee, clear that not only that the detaining authority applied his mind and formed 'subjective satisfaction' for passing the detention order as he did, but also I am of the opinion, there was every justification for detention of the petitioner for preventing him in future from transporting, keeping or concealing the smuggled goods besides preventing him from smuggling goods.'

8. The facts of the instant case, as narrated above, are different. The pleas taken are also different. The ratio ' decidendi' of Kukreja's case is applicable to the present case and not that of Suwa Ram's case (1989) 2DL 420 which was decided on its peculiar facts. The Court is not entitled to substitute its satisfaction for that of the detaining authority and the adequacy or sufficiency of material is not a ground for quashing an order of detention though the subjective satisfaction of detaining authority is not altogether immune from a judicial review. The facts of the present case neither show that the subjective satisfaction was arrived at in mechanical manner as contended by learned counsel for the petitioner, nor the facts show that the order of detention is based on non-existent material nor it can be held that there is non-application of mind. Thus, there is no force in the first contention of

the learned counsel for the petitioner.

9. Secondly, it is contended that as the passport of the petitioner was seized by the customs officials on 13th May, 1988 and it continues to be in their custody, the petitioner, in any case, stands effectively prevented from smuggling. Counsel further contends that that neither it is reflected in the grounds of detention nor it has been communicated to the petitioner, that he is likely to travel abroad clandestinely for purpose of smuggling and hence the order of detention is liable to be quashed. Admittedly, the Administrator, at the time of passing of the detention order, was aware that the passport of the petitioner was in possession of customs department. In spite of the said awareness. The Administrator considered it necessary to detain the petitioner with a view to preventing him from smuggling goods and also preventing him from engaging in transporting, concealing and keeping smuggled goods. It has been pleaded in the counter-affidavit that further retention of passport was not enough to imobilise the petitioner from indulging in smuggling activities and there have been instances where the people have travelled abroad on fake passport. It has been further pleaded in the counter-affidavit, that it is the subjective satisfaction of the Administrator that in spite of the fact that the passport of the petitioner is in possession of Customs Department, he could still indulge in smuggling activities, which is reflected in the grounds of detention and the subjective satisfaction of the Administrator cannot be challenged in the writ petition.

10. Relying on Full Bench decision of this Court in Mohd. Salim v. Union of India (1989) 3 DL 77 : AIR 1989 Del 340, Mr. Bagai contends that in the grounds of detention it is not stated that the petitioner is likely to travel abroad clandestinely to smuggle goods. Counsel further contends that, assuming it is so stated in the grounds of detention, still the order of detention is liable to be quashed as the material on which such a satisfaction has been arrived at was not communicated to the petitioner and this aspect is open to judicial scrutiny. Counsel is right in contenting that in the grounds of detention the exact words that 'the detenu is likely to travel abroad clandestinely to smuggle goods' have not been mentioned, but on the facts of the present case, it is of no consequence. It is not necessary to use the same words or language. In the instant case it is evident from the ground of

detention as reproduced above that the detaining authority was aware of the passport of the petitioner having been seized but was still satisfied and considered necessary to detain the petitioner with a view to prevent him from smuggling goods. The use of the word 'still' in the context in which it has been used, conveys the same meaning, namely, the detenu is likely to travel abroad clandestinely to smuggle goods. As held in Mohd. Salim's case, a reasonable person's subjective satisfaction that a detenu whose passport has been seized is likely to travel abroad clandestinely to smuggle goods cannot be objectively examined. It is thus not open to this Court to objectively examine the subjective satisfaction arrived at by the detaining authority.

11. It is permissible for the Court to judicially scrutinise whether facts and material which influenced the mind of the detaining authority were communicated to the detenu or not. If it is not, the detention order will have to be quashed being based on undisclosed grounds. Ms. Lao learned counsel for the respondent contends that the subjective satisfaction of the detaining authority was arrived at on account of the peculiar facts, namely, frequent visits of the petitioner abroad for very short durations and more particularly the fact of petitioner having travelled abroad on duplicate passport. In my view there is considerable force in the contention of the learned counsel for the respondent. The fact find mention in the grounds of detention and have been communicated to the petitioner. Consequently, there is not merit in the second contention as well.

12. It is next contended that in the certificate of goldsmith on which detaining authority has relied, the purity of gold has not been mentioned and the relevant portion is blank; and there is also no mention of the value of the gold per ten gms. in the said certificate, and thus it shows non-application of mind. There is no force in the contention. The total weight and the total value of the gold has been mentioned in the certificate and thus omission relied upon by learned counsel is hyper technical and is of no consequence and does not, in any manner, effect the legality of the order of detention.

13. Lastly, it is contended that there was inordinate delay between the date of the incident and the date of passing of order of detention. The petitioner was

apprehended and arrested on 13th May, 1988. The order granting bail was passed on 26th May, 1988 and the order of detention was made on 28th February, 1989. It is contended that the delay in passing the order of detention has not been explained. The respondents in the counter-affidavit have set out various dates and says when proposal to detain the petitioner and others were considered and have satisfactorily explained the delay. Some time is always spent in processing of the case. On the facts and circumstances of the case, it cannot be said that causal connection between criminal activities and purpose of detention has been broken. On facts, it cannot be held that the detention order stands vitiated by delay. I do not find any merit in the last contention as well.

14. For the reasons aforesaid, there is no substance in the petition which is accordingly dismissed.

15. Petition dismissed.

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