

Gaffar Abdullah Mohammed Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Nov-01-1988

Reported in : ILR1988Delhi689

Judge : Malik Sharief-Ud-Din, J.

Acts : [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3(1)

Appeal No. : Crl. Writ No. 367 of 1988

Appellant : Gaffar Abdullah Mohammed

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : R.P. Lao and ; Kamini Lao, Advs. for Respondents 2 and 3

Advocate for Pet/Ap. : Rohit Kochhar and ; Herjinder Singh, Advs

Disposition : Petition allowed

Judgement :

Malik, J.

1. The petitioner who himself is the detenu has challenged the validity of the detention order dated 13th of April 1988 passed under Section 3(1) read with Section 2(f) of the [Conservation of Foreign Exchange and Prevention of](#)

[Smuggling Activities Act, 1974](#) passed by the Administrator, Union Territory of Delhi. The detention order followed an Incident dated 21st of December, 1987 when the petitioner an Indian Passport holder, arrived from Sharjah by Syrian Arab Airlines Flight No. RB-501 while checking in on the red channel he declared certain dutiable items but thereafter he was found carrying gold in some locks, bolts and kundas weighing 2096 grams valued at Rs 6,91,68/-. The detenu could not explain the possession and he was found to be smuggling gold. The detention order was served on the detenu on 14th of April 1988 while he was confined in the jail. There is a declaration under Section 9(1) of the aforesaid Act passed on 9th of May, 1988 as well.

2. The main and principal contention of Mr. Rohit Kochhar is that there has been a long and unexplained delay in the consideration of his representation both by the detaining authority as well as the Central Government and that vitiates the order of detention as it has resulted in the infringement of his right under Article 22(5) of the Constitution of India.

3. The detenu made a representation dated 4th of July, 1988 to the Central Government and on 6th of September 1988 he received a memorandum dated 1st of September 1988 to the effect that his representation has been considered and rejected by the Central Government. Obviously, a representation dated 4th of July 1988 was only rejected on 1st of September 1988, that is almost after nearly 56 days. One does not know how the representation made to the Central Government was dealt with. It is true that the delay by itself if properly explained is not fatal but then it must appear from the records to the satisfaction of the court that no indifference was shown to the consideration of the representation of the detenu. In any case, there is no appearance by the Central Government in this case nor has this delay been explained. Since the Central Government has not filed any return it would be presumed that there is no Explanationn for the delay in the consideration of the representation of the detenu by the Central Government.

4. Next, Mr. Kochhar has urged that even the detaining authority has failed to consider his representation with expedition and promptitude as required by law. The detenu made a representation to the detaining authority on 10th of June 1988

and on 28th of July 1988, he received a memorandum dated 27th of July 1988 to the effect that his representation was considered by the detaining authority and was rejected.

5. Mr. Lao, arguing for the Delhi Administration, has submitted that according to the law laid down by the Supreme Court it is not a rule of thumb that every delay is fatal to the detention. His contention is that there is no hard and fast formula and the fact as to whether the delay vitiates the detention or not will have to be adjudged by reference to the facts of each and every case. He contends that the crux of the matter is that it must be explained to the satisfaction of the court that no indifference was shown to the representation and it was considered at the earliest possible opportunity. Mr. Kechhar has invited my attention to a Division Bench judgment of this court in (Criminal Writ No. 555 of 1987 Rajinder Pd. Khanna v. Union of India and others, decided on 18th of August 1988(1) in which the law on the subject has been surveyed and in essence the court has come to the conclusion that the delay in consideration of the representation will be fatal if it is not properly explained. The Division Bench further made a reference to the case of Saleh Mohammed v. Union of India, : 1980 CriLJ1496 to brush aside the argument that the delay by the ether functionaries of the State would not be attributable to the detaining authority and that if there has been a delay by any other functionary in dealing with the representation the detention order would not get vitiated.

6. Now, in his return Shri A.S. Dagar, Deputy Secretary (Home) has stated as under :--

'It is submitted that the representation dated 10th of June 1988 which was in Malayalam language was sent by the Superintendent Central Jail, Tihar, New Delhi, to the Administration on 10th June 1988 which was inadvertently delivered in Home General Department on 14th of June 1988. Since the representation was in Malayalam language, the concerned department, after going through the said representation, sent the same to the concerned department on 30th June 1988. The representation was received by the concerned dealing Assistant on 1st of July 1988 and on the same day, it was sent to the Customs Department for its translation in. English language additional information documents, if any,

requested by the petitioner in the said representation. The English translation of the representation Along with information, was received in the department on 14th July 1988. The representation, Along with its translation in English, was put up to the Deputy Secretary (Home) on 14th of July 1988 to the Home Secretary on 15th of July 1988 and the Home Secretary, after discussing the same with the Deputy Secretary (Home) put up the same to the Administrator detaining authority on 22nd of July 1988 which was finally rejected by the Administrator on 23rd of July 1988.'

7. This, in short, is the Explanationn tendered in respect of the fact as to how the representation of the detenu was dealt with by the detaining authority. I am in full agreement with. Mr. Lao that there is no inflexible rule to the effect that the delay in all cases ipso facto would be fatal. The detaining authority is well within his right to explain the delay. In the case of Harish Pahwa v. State of U.P. and Ors., : 1981 CriLJ750 , while dealing with this aspect of the matter the Supreme Court has emphasised that the representation must be promptly taken up for consideration and it must be continuously dealt with and the result thereof communicated to the detenu. In short, the detaining authority is under an obligation to satisfy the court that it did not show any indifference to the representation and took it up for consideration as required by law. In the present case, the Explanationn tendered by the Delhi Administration is far from satisfactory. In the first place, the court is told that it was delivered to a different branch of the Home department, though it is not denied that it was to be placed before the detaining authority through the Home department. This allegedly happened on 14th of June 1988 and till 30th of June 1988 the functionaries in the Home General Department did not bother to send the representation to the concerned quarters. The court is told that it was thereafter sent by the dealing Assistant concerned for translation and for seeking other information requested by the petitioner in the representation. The court is further told that this translation was thereafter received on 14th of July 1988 but ultimately it was placed before the detaining authority on 22nd of July 1988 who considered and rejected the same on 23rd of July 1988. On their own showing it is clear that the State functionaries at various levels did not show the desired concern for the representation of the detenu at their own level. That apart, para 9 of the return clearly shows that this representation was placed before the detaining

authority for the first time on 22nd of July 1988, and was dealt with earlier to that date by persons who were not concerned with the consideration of the representation. This court has time out of numbers held that should the detaining authority find it necessary to call for further information or ask for further investigation there cannot be any serious objection to the same provided the decision to that effect is taken by the detaining authority himself. As a matter of fact, the representation of the detenu dated 10th of June 1988 was not placed before the concerned department of the State till 30th of June 1988 and thereafter from 1st of July 1988 till 14th o July 1988 also there is a delay of 13 days which has not been explained.

8. On the facts and circumstances of this case, therefore, I am of the view that has been an unexplained and undue delay in the consideration of the representation of the detenu by the detaining authority as well. The petition is allowed and the continued detention of the petitioner is quashed. The detenu shall be released forthwith unless required in some other cases.