

Swaran Kumar Vs. Delhi Administration

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Court : Delhi

Decided On : Oct-11-1984

Reported in : 1985(8)DRJ13

Judge : D.R. Khanna, J.

Acts : [Constitution of India](#) - Article 22

Appeal No. : Crl. Writ No. 92 of 1984

Appellant : Swaran Kumar

Respondent : Delhi Administration

Advocate for Def. : R.P. Lao, Adv.

Advocate for Pet/Ap. : Ashok Gurnani, Adv

Disposition : Petition allowed

Judgement :

D.R. Khanna, J.

1. So far as the merits of the grounds of detention, I will not make any endeavor to prove into them. They pertain to the subjective satisfaction of the detaining authority, and I do not find any circumstances which can bring out that the power under the Conservation of Foreign Exchange and Prevention of Smuggling

Activities Act has been unwarrantedly or without any relevance exercised. The petitioner was alleged to have been apprehended on 8-8-1983 while taking delivery of 415 watches of foreign origin from G.M. Airways along with his brother-in-law. He was arrested under the Customs Act and was bailed out by the Court. The case against him has been filed and the trial proceeding.

2. Since the present detention is the result of that singular act of the petitioner taking delivery of the said watches of foreign origin and he has already been allowed bail in that criminal prosecution, this court has to be very careful in scrutinising the validity of the order of preventive detention. As observed by the Supreme Court in *Vijay Narain Singh v. State of Bihar and Ors.*, : 1984 CriLJ909 the law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.

3. The action under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act was set into motion by the custom authorities when they moved the Delhi Administration for this purpose on 4-10-1983. This was after the petitioner had been released on bail in the case resulting from the said incident of 8-8-1983. The detention order by the Delhi Administration was passed on 19-12-1983. It, however, could not be given effect to as the petitioner according to the Administration was not available. On 4-2-1984 the petitioner surrendered before the Court in which the custom case was pending. He was sent to jail. It was in this state that the detention order was served upon him his detention on any of the grounds mentioned in the detention order, nor has assailed the nexus between the incident and order of detention: In fact this habeas corpus petition has been received from jail and later Mr. Ashok Gurnani appeared in court as his counsel.

4. It is primarily on two grounds that the detention has been challenged by the petitioner. One is that his representation against the detention order which was submitted on 28-2-1984 was kept pending and the decision on that was unduly delayed. In this manner it was not till 23-3-1984 that the representation was rejected. The second ground urged is that the alleged confessions of guilt on which the detaining authority purported to rely had been retracted by him by way of a telegram sent on 13-8-1983 to Collector Customs, Revenue Building, New Delhi, and this important document was not placed before the detaining authority when the detention order was made.

5. So far as the first ground of delay in the disposal of the representation of the petitioner the Delhi Administration has through an affidavit of Shri C.P. Tripathi, Deputy Secretary (Home) tried to explain that the representation of the petitioner was forwarded by the Superintendent Central Jail by letter dated 1-3-1984 and it reached in the office of the Delhi Administration on 5-3-1984, the preceding day being Sunday. Comments from the custom department were called for by the Delhi Administration by letter dated 6-3-1984 and those comments were not received till 20th March 1984. Thereafter the representation was put up before the Administrator who rejected the same on 23-3-1984. In this manner it is stated that there was absolutely no inordinate delay in the consideration and disposal of the petitioner's representation. There is, however, no Explanation when the representation remained pending from 6-3-1984 to 20-3-1984, with the custom's department. No affidavit from any officer of that department has been filed to clarify that transpired in between. It must also be adversely commented upon that in a matter of detention of a person without trial, his representation should have taken six days to reach from the Central Jail, Delhi to the Delhi Administration.

6. In the case of Harish Pawa v. State of U.P., : 1981 CriLJ750 , the detention order was quashed by the Supreme Court when it was found that the representation made by the detenu on 3rd June, 1980 was disposed of on 24th June, 1980. and there was no satisfactory Explanation for the delay in this regard. The Court took exception to even delay or non-action of particular days. Similarly, the Supreme Court in the case Khatoon Begum etc. v. Union of India, : 1981 CriLJ606 , released the detenus when it was found that there were

unreasonable delays in the consideration of representations of the detenus. In the three cases involved before the Supreme Court, the representations were made by the detenus on 12-11-1980. In one case it was rejected on 9-12-1980 and the two others on 10-12-1980. Similarly in 1983 Supreme Court 320 the Supreme Court considered the delay of 28 days in disposing of the representation of the detenus as inordinate which vitiated the detention order.

7. Now in the present case as noted above no satisfactory Explanationn has come as to why the representation remained pending before the custom authorities from 6th March to 19th March 1984. Similarly the representation submitted on 28-2-1984 was not laid before the administration till 5-3-1984. These delays having not been satisfactorily explained must be treated as inordinate. On this ground the detention order has to be quashed.

8. Adverting to the other ground that the telegram retracting the alleged confessions made by the petitioner was not laid before the detaining authority, I find that in the affidavit of Shri Tripathi, Deputy Secretary (Home) there has been a denial in para 4 that any such telegram was received by the custom authorities. As such it has been stated that there was no question of placing the same before the detaining authority. Thereafter the petitioner filed Criminal Miscellaneous 1703 of 1984 with which he attached a certified copy obtained from the telegraph department of the telegram and the receipt which was issued. Thereby he sought to prove that the telegram was in fact sent by him on 13-8-1983 stating that various papers had been got forcibly signed from him after being beaten and coerced. An opportunity was given to the administration to controvert this application, but without result. This telegram was addressed to the Collector Custom and thereforee it was in the fitness of things that an affidavit should have come from Custom Authorities that the Collector, Custom had not received the same. In its absence this application as well as the affidavit of the petitioner attached thereto go un rebutted. This was a material piece of evidence which should have been placed before the detaining authority, and in its absence it cannot be said that all the relevant material connected with the detention was laid before the Administrator. On this ground also the detention order has to quashed.

9. The result thereforee is that the habeas corpus petition is allowed and the petitioner is directed to be set at liberty unless he is wanted in any other case.

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