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Court : Delhi

Decided On : Jan-13-1987

Reported in : 1987(12)DRJ219

Judge : Malik Sharief-Ud-Din, J.

Acts : [Constitution of India](#) - Article 21

Appeal No. : Criminal Writ Appeal No. 432 of 1986

Appellant : Naresh Kumar

Respondent : The Administrator and ors.

Advocate for Pet/Ap. : Trilok Kumar and; R.M. Bagai, Advs

Judgement :

Malik Sharief-Ud-Din, J.

(1) The detenu, Naresh Kumar was detained by an order dated 11th March, 1986 passed by the administrator. Union territory of Delhi in exercise of the powers conferred upon the administrator under Section 3(1) read with Section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The detention was with a view to preventing the detenu from abetting the smuggling of goods.

(2) The allegations as detailed in the grounds of detention are that on 22/6/1985 gold was recovered from the television brought by one Ravinder Kumar from Singapore. The gold constitutes of 20 foreign made gold biscuits of 10 tolas each and was recovered from the said Ravinder Kumar while he was passing through the red channel in the customs department. On investigation the customs authorities were informed by him that it was one Naresh Kumar (the present detenu) who introduced him to one Kultar Singh whose brother Kulraj Singh is based in Singapore. According to him, Kultar Singh used to send persons to Singapore to get into contact with his brother Kulraj Singh to smuggle goods into India. The smuggling, according to him, was done by Kultar Singh. Kultar Singh on examination confirmed the testimony of Ravinder Kumar but when the present detenu was examined he made a statement that he used to introduce persons to Kultar Singh for a consideration of Rs. 300.00 . The detenu, however, is involved in the case because of the statement of Kultar Singh that he used to share the profits with the present detenu.

(3) The incident is dated 26/6/1985. The order of detention in this case was passed on 11/3/1986. The detention order was actually executed on 13/10/1986 and declaration under Section 9 was made on 11/11/1986. The primary contention of Mr. Trilok Kumar is that there has been an undue, inordinate and unexplained delay first in passing the detention order and then in the execution thereof and that is sufficient to vitiate the order of detention. This averment has been raised in the grounds Nos. 4 and 5 of. the petition and this has been explained by the respondents in their counter-affidavit by stating as follows :-

'IV. It is wrong and denied. The time taken in passing the detention order is due to investigation and examination of the case at various stages. The Custom Department after completing the investigations sent the proposal for detaining the detenu which was received on 8/10/85. At that time number of proposals were already pending in which cases Screening Committed already considered their cases. It was decided that first pending cases be completed and then put up this case. In the month of October and November, 1986, draft ground of detention, order and translation etc. were prepared and then the meeting of Screening Committed was fixed for 18/12/86 when as many as 22 cases were considered in

the meeting. Minutes in these cases were prepared and got signed by all the members. Action to draft grounds of detention in 22 cases was taken and finally the present case, after preparing the draft grounds, orders and translation of grounds and documents, draft grounds of detention and order were put up 21/2/86, vetted by Law Department on 24/2/86 then put up Deputy Secretary Home on 27/2/86 and finally before the Administrator who made the orders for detention of the detenu and his accomplices on 3/3/86. Formal orders were issued on 10/3/86. As such, there has not been any undue delay in passing the detention order.

V. It is wrong and denied. There has not been any undue delay in detaining the detenu. The detenu cannot be allowed to take benefit of his own wrong in absconding after passing of the detention order. Several attempts were made to detain the detenu. As per letter dated 30/6/86 of Deputy Commissioner of Police, HQ-II, New Delhi, raids were conducted at the house and shop of Shri Naresh Kumar, son of Shri Mehar Chand but he could not be made available and his present whereabouts could not be ascertained. The details of properties held by the detenu will also be sent in due course. Vide letter dated 7/9/86, the Deputy Commissioner of Police, HQ-II also intimated that there is no property in the name of the detenu and the residential premises in question stands in the name of his father. Thereafter, with great efforts, detenu was detained on 13/10/86.'

(4) After considering the contention urged before me I am of the view that the Explanation in respect of the inordinate and unreasonable delay first in passing the detention order and then executing the same is not only vague and unspecific but is rather unusual. It is anything but satisfactory and not sustainable at law. It is not specifically vomited out as to how and why this delay was occasioned. There is no material brought on record to show that even at this belated stage there was any application of mind to the facts of the case by the detaining authority to satisfy that it was a case where detention order must be passed. The detention was with a view to preventing the detenu from abetting smuggling of goods and postponement of passing of detention order on 11/3/86, almost after eight and a half months and then execution thereof on 13/10/86, almost seven months after the passing of detention order cannot be justified. Mr. Trilok Kumar has squarely

and very vehemently refuted the contention of the other side that the delay was caused because of the investigation or that there were large number of cases regarding detention which were requiring immediate attention. It is impossible stated in the affidavit of the respondent that their were about 22 such matters, it is to believe that it will take about eight and a half months to deal with 22 matters. It is absolutely incorrect to say that the case was under investigation. Mr. Trilok Kumar states that in fact the complaint against the detenu was filed in the court on the next day of the incident i.e. on 23/6/1985 and the document delivered did not show that there has been any further investigation. The fact remains that the detenu as in fact detained on the statement of Kultar Singh. There is no other material against him and this statement came to be recorded on 22/6/1985. This shows that there could not be any further investigation at least in so far as the present petitioner is concerned. It is very strange that even though the incident is of 22/6/1985, the proposal for detention was only made on 9/10/85 i.e. near-about seven months of the incident. One is surprised to find as to why it came to the mind of the sponsoring authority so belatedly that there was need for detaining the detenu with a view to preventing him from abetting the smuggling.

(5) In so far as the service of the detention order on the detenu is concerned, it is not in dispute that this took place on 13/10/1986, almost seven months after the detention order was passed. There is a vague assertion in the counter-affidavit that the detenu was absconding. One Satish Kumar, brother of the detenu has filed an affidavit in which he has referred to order sheet of some dates maintained in the complaint that was pending against the detenu in a court of law. This shows that on 22/5/86, 5/6/86, 14/7/86 and 11/8/86 the detenu did appear in the court. How then it can be suggested muchless, asserted, as has been done in the counter-affidavit, that the detenu had been absconding. Under these circumstances, Explanationn sought to be given for explaining the delay in passing the detention order and in executing the same is far from satisfactory. The respondents have failed to explain the inordinate delay which in itself is sufficient to vitiate the satisfaction of the detaining authority, as there does not appear to be even a remote nexus between the alleged prejudicial activity and the detention. Significantly, detention itself in this case has been sponsored almost after a little less than seven months.

(6) With these observations the petition is allowed and the detention order is quashed. The detenu shall be released forthwith from the custody, unless otherwise required.

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