

Baljit Singh Vs. Union of India and ors.

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Court : Delhi

Decided On : Aug-13-1993

Reported in : 51(1993)DLT413

Judge : S.C. Jain, J.

Acts : [Customs Act, 1962](#) - Sections 11 and 108; [Foreign Exchange Regulation Act, 1973](#) - Sections 13(1)

Appeal No. : Criminal Writ Petition No. 364 of 1992

Appellant : Baljit Singh

Respondent : Union of India and ors.

Advocate for Pet/Ap. : N.C. Chawla and; P.S. Sharma, Advs

Judgement :

S.C. Jain, J.

(1) The facts giving rise to this petition in brief are that on 15.8.91 the petitioner, Baljit Singh was intercepted on suspicion by A.I.U. Officers on his arrival from Delhi by flight No. AI-144 as a domestic passenger at Sahar Airport, Bombay. A search of his baggage, i.e. one handbag, in the presence of Panchas resulted in the recovery of foreign currency and Indian currency which were cleverly concealed in sweetmeat boxes. The said foreign currency and Indian currency equivalent to

Indian Rs. 2,32,676.00 were seized under Panchnama in the reasonable belief that the same were attempted to be smuggled out of India and hence liable for confiscation under the provisions of [Customs Act, 1962](#). In his statement dated 15.8.91 he admitted possession, carriage and recovery of foreign currency and Indian currency from the two sweetmeat boxes carried by him in his hand bag and that the same were given to him by one Joginder Singh at Delhi for carrying to Singapore and to deliver to him (Joginder) there; that he had undertaken this job for monetary consideration of Rs 5,000.00 including to and for airticket and other local expenses at Singapore. The export of Foreign currency and Indian currency unless covered by a valid permit issued by Reserve Bank of India is prohibited in terms of Section 13(1) of [Foreign Exchange Regulation Act, 1973](#) read with Section 11 of the Customs Act. On the basis of this statement made by him and the recovery of foreign and Indian currencies he was detained. The foreign and Indian currencies were seized. His statement was recorded which he retracted on 17.8.91 when produced before the Chief Metropolitan Magistrate, Bombay. An adjudication order was passed by the Additional Collector of Customs, Bombay on 16.8.91, which was dispatched on 11.10.91 imposing a penalty of Rs.30,000.00 and confiscating the seized currency. The penalty amount stands deposited.

(2) On 24.4.92 an order of detention under Section 3(1) of COFEPOSA was passed against the petitioner on the basis of the said incident. Without waiting for the order of detention and the grounds of detention being served upon him, the petitioner filed the present writ petition challenging the order of detention dated 24.4.92.

(3) Relying upon the decision of the Supreme Court in *The Additional Secretary to the Government of India and Ors. v. Smt. Alka Subhash Gadi and Anr.*, 1991(53)ELT481(SC) learned Counsel for the petitioner argued that the impugned order of detention has been passed on vague, extraneous grounds and that it has been passed for a wrong purpose, and in any case, the impugned order has lost its purpose inasmuch as the incident took place on 15.8.91 and the order of detention was passed on 24.4.92 and that the same has not yet been executed. According to the learned Counsel the object of preventive detention being to forthwith put a stop to prejudicial activity of a person, no useful purpose would be

served in putting the petitioner under detention after more than ten months of the date of incident coupled with the fact that the petitioner has not been observed to have undertaken any such or similar prejudicial activity.

(4) The next submission of the learned Counsel for the petitioner c respect to the putting reliance by the Detaining Authority on irrelevant documents. According to the learned Counsel, as per the list of documents relied upon by the Detaining Authority some irrelevant documents have been taken into consideration i.e. irrelevant material listed at Seriall numbers 4,7,9and 12 of the list of documents. He submits that there is total non-application of mind in passing of the detention order for the purpose of preventing the petitioner from smuggling goods inasmuch as by the very fact that the travel documents and passport of the petitioner were seized.

(5) It is pertinent to note that despite service, at the time of final hearing of this writ petition, none appeared for the respondent No. 1. c India or respondent No. 2. Government of Maharashtra. It is also surprising that no counter affidavit has been filed by the said respondents.

(6) Mr. P.S. Sharma, Standing Counsel for Delhi Administration made appearance on behalf of the respondent No. 3 and submitted that without the grounds of detention having been served upon the petitioner, how could he say that irrelevant documents were relied upon by the Detaining Authority while passing the detention order.

(7) This writ petition has been filed to challenge the detention order at the pre-execution stage and, thereforee, the Court has to confine within the four corners of the decision passed by the Supreme Court in The Addl.Secretary to the Govt of India and Ors. v. Smt. Alka Subhash Gadia and Am.(supra).

(8) The law is now well settled that even in a case of preventive detention it is not necessary for the proposed detenu to wait till the detention order is served upon him before challenging the same through a writ petition.This question was considered and answered by the Supreme Court in c of The Additional Secretary to the Govt. of India and Ors. v. Smt. Alka Subhash Gadia and Anr. (supra). It has

been held that in such cases the Courts have powers to entertain the writ petition even before the detention order is served or the detention is effected. The Court observed as under :

'...SECONDLY, as has been rightly pointed out by Shri Sibbalal appellants, as far as detention orders are concerned if in such a case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the Courts have no power to entertain grievances against any detention order prior to its execution. The Courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the Courts are prima facie satisfied; (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds; or (v) that the authority which passed it had no authority to do so. The refusal by the Courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other grounds does not amount to the abandonment of the said power or their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.... Thirdly, in the rare cases where the detenu, before being served with them, learns of the detention order and the grounds on which it is made, and satisfies the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above. The Court no doubt even in such cases is not obliged to interfere with the impugned order at that stage and may insist that the detenu should first submit to it. It will, however, depend on the facts of each case. The decisions and the orders cited above show that in some genuine cases, the Courts have exercised their powers at the pre-execution stage, though such cases have been rare. This only emphasises the fact that the Courts have power to interfere with the detention orders even at the pre-execution stage but they are

not obliged to do so nor will it be proper for them to do so save in exceptional cases. Much less can a detenu claim such exercise of power .as a matter of right. The discretion is of the Court and it has to be exercised judicially, on well-settled principles....'

(9) In the present case, admittedly, the petitioner was apprehended on 15.8.91 while he was traveling by Air India flight from Delhi to Bombay as a domestic passenger and adjudication proceedings were started against him on 16.8.91 i.e. on the next day and a penalty of Rs. 30,000.00 was imposed upon him on that very day, but the said order was communicated to him on 11.10.91, but no steps were taken to pass a detention order against this petitioner till 24.4.92. It is not the case of the department that the petitioner was not available and his statement under Section 108 of the Customs Act was not recorded. His statement under Section 108 was recorded on the very day of his apprehension, which he retracted on 17.8.91 when he was produced before the Magistrate. The statement of the petitioner and other relevant documents are available with the Detaining Authority and there was no hitch in passing the detention order immediately thereafter and no Explanation has come forth from the department as to why the department waited till 24.4.92 on which date this detention order was passed under Section 3(1) of COFEPOSA. The detention order, which still remains to be executed, was passed about 8 months after the date of the incident. Regarding its execution it is the contention of the petitioner that it was never served upon him, though he was available at the address given in Delhi. The affidavit of Mr. Ranjit Singh S.H.O. of P.S. Shahdara, to whom the detention order was sent for execution, shows that on receipt of an information from the Maharashtra Government about the detention order passed against the petitioner, he sent A.S.I, Iqbal Singh to trace the petitioner as per address given in the petition at House No. 1 /9398 Gali No, 7. West Rohtas Nagar, Shahdara. Delhi-32 and DD. No. 40B was recorded on 18.8.92 and thereafter he visited the house of the petitioner on 20.9.92 to find out the whereabouts of the petitioner, but the uncle of the petitioner expressed his inability to produce the nephew (the petitioner). He further states that the petitioner has been avoiding intentionally and concealing himself to avoid execution of the detention order.

(10) It is apparent from the record that after the passing of the detention order on 24.4.92 it was for the first time on 18.8.92 that is about after 4 months that this detention order was sent to the S.H.O. concerned for execution. As to why this detention order was not sent for execution till 18.8.92 has not been explained. Even on 18.8.92 the detention order was not executed and why the S.H.O. waited till 20.9.92 for visiting the house of the petitioner has also not been explained. It means that no sincere efforts were made by the department for getting the detention order served. About four months had passed when S.H.O. had gone for its execution. What useful purpose was going to be served in passing this detention order for preventing him from smuggling, when the said order remained unexecuted for 1 year ? The object of the preventive detention was to forthwith put a stop to the prejudicial activities of a person. No useful purpose will be served by putting a person in detention after more than 10 months of the date of incident coupled with the fact that the petitioner has not been observed to have indulged in any prejudicial activities.

(11) The issuance of the detention order against the petitioner, in the circumstances of this case, is unwarranted and is outside the scope of COFEPOSA, as it has been made after a long delay defeating the purpose of the said Act and it falls within the exceptions as enumerated in the case of the Additional Secretary to the Govt. of India and Ors. v. Smt. Alka Subhash Gadi and Am. (supra) and this writ petition at the pre-execution stage is definitely maintainable in view of the special circumstances of this case.

(12) HON'BLE Supreme Court in the case of T. A. Abdul Rahman v. State of Kerala, (: 1990 CriLJ578] has held that unexplained delay throws considerable doubt on the genuineness of the subjective-satisfaction of the Detaining Authority and vitiates the order of detention.

(13) As far as the other contention of the learned Counsel for the petitioner regarding putting reliance on the irrelevant documents, I do not find any force in it. When the grounds of detention have not been served upon the petitioner, how can he have the list of documents relied upon by the Detaining Authority and how can he say that reliance has been placed on irrelevant documents also

(14) Any how the impugned order has lost its purpose inasmuch as the order of detention was passed on 24.4.92 and the petitioner has not been detained so far, though a period of more than one year has elapsed. the petitioner was apprehended on 15.8.91. His statement under Section 108 of the Customs Act was recorded on that very day; the adjudication proceedings were started on 16.8.91 and he was imposed a fine of Rs. 30,000.00 but the detention order was passed on 24.4.92, which remained unexecuted though more than one year has passed and no sincere efforts appear to have been made to execute the detention order, I, therefore, quash the Impugned detention order dated 24.4.92 and allow this writ petition only on thisground. Rule is made absolute. Ordered accordingly.

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