

**Punit Sakhuja Vs. Uoi and anr**

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**SooperKanoon Citation :** [sooperkanoon.com/956623](http://sooperkanoon.com/956623)

**Court :** Delhi

**Decided On :** Apr-04-2013

**Judge :** Sanjiv Khanna

**Appellant :** Punit Sakhuja

**Respondent :** Uoi and anr

**Judgement :**

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

04. 04.2013 WRIT PETITION (CRIMINAL) NO.288/2013 NAVPREET KAUR CHADHA Through: ..... Petitioner Mr. Pradeep Jain, Mr. A.Samad, Mr. Shubhankar Jha, Mr. Dveep Ahuja, Mr. Tarun Chawla and Mr. M.J.Michael, Advocates. versus UOI & ANR Through: ..... Respondents Mr. S.K.Dubey, Mr. Saqib, Mr. Akshay Chandra, Advocate for UOI. Mr. Nilesh Gupta, Assistant Director (COFEPOSA). AND WRIT PETITION (CRIMINAL) NO.289/2013 PUNIT SAKHUJA Through: ..... Petitioner Mr. Pradeep Jain, Mr. A.Samad, Mr. Shubhankar Jha, Mr. Dveep Ahuja, Mr. Tarun Chawla and Mr. M.J.Michael, Advocates. Versus UOI & ANR Through: W.P.(CRL.)288 & 289 of 2013 ..... Respondents Mr. S.K.Dubey, Mr. Saqib, Mr. Akshay Chandra, Advocate for UOI. Mr. Nilesh Gupta, Assistant Director CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE SIDDHARTH MRIDUL JUDGMENT SANJIV KHANNA, J.

(ORAL) CRL.M.A. 4081/2013 in W.P.(CRL) 288/2013 CRL.M.A. 4080/2013 in W.P.(CRL) 289/2013 There is no need for the petitioners to file the present applications seeking permission to file an amended writ petitions as we had already permitted the petitioners to amend the writ petitions vide our order that 01.04.2013. The applications will be treated as disposed of in terms of our order dated 01.04.2013. The amended writ petitions are taken on record. W.P.(CRL) 288/2013 & W.P.(CRL) 289/2013 Rule DB.

2. The learned counsel for the respondents waives his right to file an additional/fresh counter affidavit and submits that the counter affidavit which is on record may be read as counter affidavit to the amended writ petition.

3. We have heard counsel for the parties and proceed to dispose of these writ petitions.

4. As common issues arise for consideration in two writ petitions, we are disposing them by this common judgement. The writ petitions challenge the preventive detention orders in the case of Rohit Sakhuja and Ajit Singh Chadha @ Romy.

5. Rohit Sakhuja and Ajit Singh Chadha have been subjected to detention vide order dated 04.01.2013 under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the COFEPOSA Act). They were served with the detention order on 07.01.2013 in Tihar Jail, while in judicial custody in criminal case/cases. Thereafter, they made representations which were forwarded to the Central Government. Representation was also made to the Advisory Board. The Central Government vide order dated 26.03.2013 has informed the detenues that in exercise of the powers under Section 8(f) of the COFEPOSA Act, the Central Government has confirmed the detention order. The Central Government has further directed that under Section 10 of the COFEPOSA Act, Rohit Sakhuja and Ajit Singh Chadha will be detained for a period of one year from date of their detention i.e. 07.01.2013.

6. In the writ petition several contentions have been raised. During the course of the arguments learned counsel for the petitioners pressed one contention; that the detaining authority has not examined and gone into the facet whether there was

an imminent possibility that Rohit Sakhuja and Ajit Singh Chadha would be released on bail, though they were in judicial custody in the criminal case(s) pending against them. We may record that we found force in the said contention and, therefore, learned counsel for the petitioners has not addressed arguments on the other contentions.

7. The grounds of detention in paragraph 40 states that certain issues against the detenues were pending before the courts. Sub paras (A) to (C) are not relevant. Sub-para (D) of paragraph 40 pertains to FIRs under the Indian Penal Code, 1860. Customs authorities of ICD, Tughlakabad, New Delhi have filed FIR No.254/2012 in respect of clandestine removal of eight containers on the basis of forged Customs Gate Passes in Pul Prahladpur, Police Station, New Delhi. It is stated that Rohit Sakhuja and Ajit Singh Chadha are the main accused in the said FIR. Ajit Singh Chadha was arrested on 04.11.2012 in the said FIR. Rohit Sakhuja had preferred an application for anticipatory bail which was rejected by the Additional Sessions Judge, Saket as well as the Delhi High Court. The SLP filed was withdrawn. Rohit Sakhuja surrendered before the Metropolitan Magistrate, Saket on 22.12.2012 and was arrested by the Police on the same day. The second FIR No.143/2012 has been filed by Anil Sakhuja, Proprietor of M/s Rajan Super Stores, Karol Bagh, New Delhi in Deshbandhu Gupta Marg, Police Station, New Delhi. The said FIR pertains to large number of SIM cards obtained by Suraj Kumar, an employee of Ajit Singh Chadha by using the photograph and ID proof of one Pritam Singh. The third FIR No.225 dated 16.10.2012 has been registered in Police Station Nihal Vihar, pursuant to the complaint lodged by the Custom Officers. The Custom Officers had detained Air Conditioners at A-59, Adhyapak Nagar, Nangloi, New Delhi. There were handed over to the detenues for safe custody under supurdarinama dated 16.03.2012. On physical examination of the seized goods, discrepancies in the stock of air conditions were detected and goods mentioned in the supardarinama were found to be missing. Rohit Sakhuja and Ajit Singh Chadha it is alleged have failed to provide any plausible reason/explanation for the discrepancy as detailed in the panchnama dated 19.09.2012. The last FIR i.e. FIR No.266/2012 dated 16.11.2012 has been registered in police station Ranhola, Nangloi, on complaint by DRI officers. It is alleged that seal and locks of Godown at 76, Meera Enclave, Village Ranhola,

Nangloi was found broken and the seized goods mentioned in the panchnama dated 07.06.2012 were removed and loaded on a truck which was intercepted with the help of local police. The goods were subsequently shifted to CWC warehouse, Sahibabad under panchnama dated 19.11.2012.

8. Rohit Sakhuja was/is arrested and in judicial custody in FIR No.254/2012 PS Pul Prahladpur and he has not been released on bail. Ajit Singh Chadha has been arrested and is in the judicial custody in FIR No.254/2012 PS Pul Prahladpur, FIR No.225/2012 PS Nihal Vihar and FIR No.143/2012 PS Deshbandhu Gupta Marg.

9. In paragraph 47 of the grounds of detention in the case of Ajit Singh Chadha, the detaining authority has recorded:47. I am aware that you are liable to punitive action under the Customs Act, 1962 and connected prosecution proceedings and adjudication proceedings are likely to be initiated against Shri Ajit Singh Chadha alias Romy i.e. you. I am also aware that at-present you are under judicial custody for the matter being investigated by Police authorities and your bail application had been rejected at the first instance. However, taking into consideration your conducts all throughout the period since the investigation was initiated by DRI and your tendency to abscond, I am satisfied that you have high potentiality and propensity to indulge in aforesaid prejudicial activities, therefore, I am further satisfied that in the meantime you should be immobilized by detention under the COFEPOSA Act, 1974 with a view to prevent you from engaging in smuggling goods in future.

10. Paragraph 47 of the grounds of detention against Rohit Sakhuja read:47. I am aware that you are liable to punitive action under the Customs Act, 1962 and connected prosecution proceedings and adjudication proceedings are likely to be initiated against Shri Rohit Sakhuja i.e. you. I am also aware that at-present you are under judicial custody for the matter being investigated by Police authorities. However, taking into consideration your conducts all throughout the period since the investigation was initiated by DRI and your tendency to abscond, I am satisfied that you have high potentiality and propensity to indulge in aforesaid prejudicial activities, therefore, I am further satisfied that in the meantime you should be immobilized by detention under the COFEPOSA Act, 1974 with a view to prevent

you from engaging in smuggling goods in future.

11. The short question and issue is whether the aforesaid paragraphs 47 and the grounds given therein meet the requirement and satisfaction of law.

12. In *Binod Singh v. District Magistrate, Dhanbad, Bihar & Ors.*, (1986) 4 SCC 416, contention raised on behalf of the detenu was that the detention order could be justified against a person already in detention if the Detaining Authority was satisfied that his release from detention was imminent and the order of detention was necessary for putting him back in jail. It was also contended that service of order of detention on the detenu while he was in jail was futile and useless exercise. Considering the said contentions, the Supreme Court opined:<sup>7</sup> It is well settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised.. (emphasis supplied) 13. From a reading of the said paragraph it is clear that if a detenu is in police or judicial custody and there is no imminent possibility of his release, the rule is that the power of preventive detention should not be exercised. However, when there is imminent possibility that the person in custody may be released, power of preventive detention can be exercised.

14. Recently, the Supreme Court in *Rekha v. State of Tamil Nadu Through Secretary to Government and Anr.*, (2011) 5 SCC 244, examined the said question in depth and detail. The matter was listed before three Judges of the Supreme Court pursuant to the reference made by two Judges. The Supreme Court in paragraph 8 of the said judgement referred to earlier judgements in *T.V. Sravanan alias S.A.R. Prasana Venkatachaariar Chaturvedi v. State through Secretary and Anr.*, (2006) 2 SCC 664, *A. Shanthi (Smt.) v. Govt. of T.N. and Ors.*, (2006) 9 SCC 711, *Rajesh Gulati v. Govt. of NCT of Delhi and Anr.*, (2002) 7 SCC 12, and it was observed that in the said cases it has been held that if no bail application was

pending and the detenu was already, in fact, in jail in a criminal case, the detention order under the preventive detention law is illegal. Reference was also made to the observations of the Constitution Bench decision in *Haradhan Saha v. State of West Bengal*, (1975) 3 SCC 198, wherein it was observed:<sup>34</sup> Where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or public order.

15. Thereafter, the Supreme Court referred to decisions in *A. Geetha v. State of Tamil Nadu and Anr.*, (2006) 7 SCC 60, and *Ibrahim Nazeer v. State of Tamil Nadu and Anr.*, (2006) 6 SCC 64, which were relied by the State. In these decisions, it has been held that even if no bail application of the detenu is pending but if in similar cases bail had been granted, then this may be a good ground, in the subjective satisfaction of the detaining authority to pass a detention order.

16. After noticing the aforesaid views expressed by the Supreme Court in different decisions, in *Rekha* (supra) it has been observed and held:<sup>10</sup> In our opinion, if details are given by the Respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the Petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the Petitioner, then the Petitioner is ordinarily granted bail. However, the Respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the ground of detention cannot sustain the detention order and has to be ignored.

11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was

no reliable material to this effect. Hence, the detention order in question cannot be sustained.

17. We would also like to reproduce paragraphs 26 and 27 of the said judgement which are as under:- 26. It was held in *Union of India v. Paul Manickam and Anr.*, (2003) 8 SCC 342.that if the detaining authority is aware of the fact that the detenu is in custody and the detaining authority is reasonably satisfied with cogent material that there is likelihood of his release and in view of his antecedent activities he must be detained to prevent him from indulging in such prejudicial activities, the detention order can validly be made.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.

18. The said decision in *Rekha* (supra) in paragraph 6 thereof records the ground of detention which weighed with the Detaining Authority while passing the detention order. The said paragraph reads:- 6. In Para 4 of the grounds of detention, it is stated:

4. I am aware that Thiru. Ramakrishnan is in remand in P-6, Kodungaiyur Police Station, Crime No. 132 of 2010 and he has not moved any bail application so far. The sponsoring authority has stated that the relatives of Thiru. Ramakrishnan are taking action to take him on bail in the above case by filing bail applications before the higher courts since in similar cases bails were granted by the courts after a lapse of time. Hence, there is real possibility of his coming out on bail in the above case by filing a bail application before the higher courts. If he comes out on bail he

will indulge in further activities, which will be prejudicial to the maintenance of public health and order. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public health and order. On the materials placed before me, I am fully satisfied that the said Thiru. Ramakrishnan is also a drug offender and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of Tamil Nadu Act 14 of 1982.

19. In this background, the Supreme Court was posed with the question that whether the said grounds meet and satisfy the requirements of law or these were not sufficient to justify the detention order which therefore, for non compliance of the law, stands vitiated. The Supreme Court in para 7 of the said judgment quashing the detention order observed:7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the coaccused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that in similar cases bails were granted by the courts. In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

20. We shall now examine paragraph 47 of the grounds of detention in the case at hand on the touchstone of the ratio laid down by the Supreme Court in the case of Rekha (supra).

21. We, at this stage record that other than paragraph 47 quoted above and paragraph 40 which we have noticed, no other paragraphs in the grounds of detention deal with bail applications and orders passed by the courts on the bail applications preferred by the detenues. It is clear from paragraph 47 that in the

case of Ajit Singh Chadha, on the date when the impugned detention order was passed, he was in judicial custody and it is recorded that his bail application in the first instance had been dismissed and rejected. The detention order does not mention or state that whether any fresh bail application filed by Ajit Singh Chadha was pending consideration. It is also not stated or averred that Ajit Singh Chadha was likely to be released on bail or in similar cases accused secure and get released on bail. The words that Ajit Singh Chadha was imminently likely to be granted bail in the criminal cases in which he has been arrested are conspicuously missing and do not form part of the grounds of detention. There is complete silence on the said aspect.

22. In the case of detention order against Rohit Sakhuja, the situation is no better. It is stated that he had been arrested and was in judicial custody since arrest as the matter was being investigated by the police authorities. There is no averment that Rohit Sakhuja had filed any bail application or was likely to file a bail application and consequent thereto there was imminent possibility that he would be released on bail. It was not recorded that in similar cases other accused have been granted or released on bail. In fact, it is averred in the writ petition and accepted that Rohit Sakhuja has not preferred any regular bail application till today. Prior to his arrest he had filed anticipatory bail applications which were rejected by the Sessions Court and High Court.

23. In view of the aforesaid position, we do not think that the detention orders can be sustained as there is a clear lapse and failure on part of the Detaining Authority to examine and consider the aforesaid pertinent question relating to imminently possibility of the detenu being granted bail in the criminal cases in which they were detained while passing the detention orders. The learned counsel for the respondents has highlighted the allegations against Ajit Singh Chadha and Rohit Sakhuja which it is pointed out are grave and very serious. This may be true and correct but this does not justify non-compliance with the mandate and requirements of law. As observed in *Rekha* (supra), when an order under preventive detention law is under challenge before a court, there are limited grounds or reasons on which it can be invalidated or struck down. The procedural requirements are only safeguards available to the detenu since the court is not expected to go into the

subjective satisfaction of the detaining authority. Procedural requirements, as per judicial pronouncements, have to be strictly complied with. Preventive Detention is permissible under Article 22(3)(b) of the Constitution of India but the same has to be ordered/directed keeping in view that right to life and liberty are enshrined in Article 21 of the Constitution of India. Preventive detention is an extreme step which is required and may be justified, but when a detention order does not meet the prescribed parameters and fails to comply with the procedural requirements, the order stands vitiated and has to be struck down. Preventive detention is preventive in nature and not penal or punitive and thus the requirement and stipulation that preventive detention order should show and record that there is imminent possibility that the detenu already in custody is likely to be released. In *Rekhas* case (supra) the Supreme Court in clear and categorical terms has held that the detaining authority can reasonably conclude and must state that there is likelihood of the detenu being released on bail even though no bail application is pending, since most courts normally grant bail in such cases. Further, details of such cases must be given otherwise a bald statement of the authority cannot be believed.

24. In view of the reasons and law discussed above and the examination of the grounds of detention we have no option but to hold that paragraph 47 (and other paragraphs) of the impugned detention orders dated 04.01.2013 do not meet the criteria or ratio in the decision of *Rekha* (supra) and accordingly the detention orders dated 04.01.2013 are quashed and set aside. We, however, make it clear that this order will not affect the criminal cases and various FIRs which are pending against Rohit Sakhuja and Ajit Singh Chadha. We are not required to and have not examined whether they should or should not be granted regular bail in cases where the detenues have been arrested. We direct that the concerned detenues shall be released forthwith, if not required to be detained in any case in accordance with law. Writ petitions are allowed to the extent stated above. No costs. SANJIV KHANNA, J SIDDHARTH MRIDUL, J APRIL 04 2013 mk