P.U. Iqbal vs Union Of India (Uoi) And Ors. on 20 December, 1991

Equivalent citations: AIR1992SC1900, 1992CRILJ2924, JT1991(6)SC496, 1991(2)SCALE1413, (1992)1SCC434, [1991]SUPP3SCR515, 1992(1)UJ259(SC), AIR 1992 SUPREME COURT 1900, 1992 (1) SCC 434, 1992 AIR SCW 2173, 1992 CRIAPPR(SC) 53, 1992 CRILR(SC MAH GUJ) 72, 1992 SCC(CRI) 184, (1991) 6 JT 496 (SC), 1992 (1) UJ (SC) 259, (1992) 1 CRILC 305, (1992) 1 EFR 190, (1992) 1 GUJ LH 457, (1992) MAD LJ(CRI) 510, (1992) 1 MAHLR 738, (1992) 1 SCJ 136, (1992) 1 CURCRIR 661, (1992) 1 ALLCRILR 42, (1992) 1 CRIMES 166

Author: S. Ratnavel Pandian

Bench: S.R. Pandian, M. Fathima Beevi

JUDGMENT

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S. Ratnavel Pandian, J.

1. This writ petition is filed by the detenu, P.U. Iqbal under Article 32 of the Constitution of India seeking issuance of a writ of habeas corpus quashing the order of detention dated 21.8.1989 passed by the second respondent in exercise of powers conferred by Section 3(i)(ii), (iii) and (iv) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act') with a view to preventing the detenu from abetting the smuggling of goods and directing him to be interned in the Central Prison, Trivandrum in pursuance of the said mittimus. Following the above order, the first respondent (Union of India) by its order dated 7.9.90 made a declaration under Section 9(i) of the Act and thereafter passed an order under Section 10 of the Act that "the detention shall continue for a period of 2 years from 9.8.90". The circumstances under which the impugned order was issued and the materials on the basis of which the detaining authority drew his subjective satisfaction are well set out in the grounds of detention. We feel that the entire facts of the case are not required to be proliferated as we arc now inclined to dispose of this matter on a short ground, namely whether there was an unreasonable delay in executing the

order of detention from the date of passing of the detention order throwing considerable doubt on the genuineness of the subjective satisfaction of the detaining authority as regards the necessity to detain the petitioner. The facts of the case disclose that the impugned order was passed on 21.8.1989 and it was executed only on 10.8.1990 that is nearly a delay of one year from the date of the passing of the detention order.

2. Learned Counsel appearing for the petitioner submits that this inordinate and unreasonable delay between the date of the order of detention and the date of arrest of the detenu negatives the real and genuineness of the subjective satisfaction of the detaining authority as regards the necessity for detaining the petitioner and therefore, the order impugned here is liable to be set aside on this ground.

3. As the second respondent has not offered any satisfactory and proper explanation for the delay in execution of the detention order by giving necessary materials, on the directions of this Court an additional counter affidavit was filed by the second respondent in October, 1991 giving the following particulars.

4. According to the second respondent, this order of detention dated 21.8.1989 was received by the Superintendent of Police, Thrissur on 1.9.1989 who in turn directed the Circle Inspector of Police, Guruvayur to apprehend the warrantee and that the circle Inspector of Police reported the Superintendent of Police, Thrissur on 16th September, 2nd October, 13th November, 1989 and 5th January 1990 that the warrantee namely the detenu was reportedly working at Bombay and the chances of his visit to his native place were awaited. Not being satisfied with the reports of the Circle Inspector of Police, the S.P. by his letter dated 24.11.1989 directed the Circle Inspector of Police to arrange to secure the detenu and execute the detention order at Bombay with the assistance of the local police. Despite the repeated orders of the S.P. dated 31st January, 12th and 19th February, 14th and 22nd March, 1990 directing the Circle Inspector to send reports about the compliance of his direction in executing the warrant, the Inspector sent a reply on 30.3.1990 to the S.P. informing that the police officers were being sent to Bombay to arrest the warrantee (i.e. the detenu). On 2.4.1990, the S.P, reported to the Government that the action was underway to execute the detention order by deputing officers to Bombay. On 23.4.1990, the S.P. asked a report about the stage of the matter from the Inspector of Police who thereupon on 20.5.90 reported to the S.P. that the police party could not arrest the petitioner and execute the warrant Then on 14.5.1990, the Government issued an order under Section 7(1)(b) of the Act and requested the Chief Judicial Magistrate, Thrissur to take action under Section 7(1)(a) of the Act. while it was so, on 9.8.1990, the Inspector of Police arrested the petitioner from Kandanisseri (to which postal village the petitioner belongs as is evident from the order of detention itself) and reported the fact to the Superintendent of Police who in turn informed the Government and the Chief Judicial Magistrate about the execution of the warrant on 10.8.1990.

5. Even assuming the entire facts as set out in the counter affidavit are true, it is very clear on the face of this subsequent affidavit that from 24.11.1989 to 23.4.1990, no prompt and continuous effort or serious attempt was made to secure the detenu and serve the impugned order. It is apparent that the concerned officers particularly, the Circle Inspector of Police to whom the warrant had been sent

for execution of the order of detention, had shown absolute callousness and they did not seem to have taken any sincere effort with assiduity in executing the warrant. The Government has made a request to the Chief Judicial Magistrate to take action under Section 7(1)(a) only on 14.5.1990 that is after a period of 9 months from the date of the passing of the detention order.

6. We are at a loss to understand the statement made by the second respondent in paragraph 11 of its additional counter affidavit that "that there was no delay on the part of the Superintendent of Police, Thrissur in taking action under Section 7(1)(b) of the COFEPOSA Act, 1974" which is contrary to the statement made in paragraph 8 that "on 14.5.1990 Government issued order under Section 7(1)(b) of the COFEPOSA Act and requested the Chief Judicial Magistrate, Thrissur to take action under Section 7(1)(a) of the Act". Be it noted in this connection that only Government is empowered to make a notification under Section 7(1)(b) and not the police officer as stated in paragraph 11 of the counter affidavit which statement is inconceivable and incomprehensible. Leave apart, no copy of the notification published in the official gazette as required under Section 7(1)(b) of the Act is produced before this Court.

7. Needless to emphasize that an order of detention is not a curative or reformative or punitive action but a preventive action, the avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. As it is borne out from the preamble of the COFEPOSA Act under the provisions of which the present detention order has been passed, the detention order under this Act is made with an object of preventing "the violations of foreign exchange regulations and smuggling activities which are having an increasingly deleterious effect on the national economy" and thereby posing "a serious effect on the security of the country".

8. There is indeed a plethora of authorities explaining the purpose and avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would be suffice to refer to the decision of this Court in Ashok Kumar v. Delhi Administration and Ors. wherein the following observation is made:

> Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing.

9. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detenu and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority will defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

10. Reverting to the case on hand, as we have pointed out ibid, there has been nearly 7 months' delay at the hands of the Circle Inspector in executing the warrant and a total period of one year delay in

securing the detenu and serving the order from the date of the passing of the detention order by the detaining authority which delay is unreasonable and stands unexplained. In our opinion, the lucid apathetic attitude and the oblivious and contumacious conduct of the Inspector in not acting with greater promptitude in securing the detenu but conspicuously sleeping over the matter wellnigh nearly 7 months have rendered the order of detention invalid. The explanation offered by the second respondent and the police officers that the detenu was a fugitive, eluding the dragnet of the detention order is too incredulous to be swallowed. Further, no Court will implicity accept this kind of incredible explanation.

11. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order.

12. In S.K. Nizamuddin v. State of West Bengal , this Court while examining the necessity of securing the arrest of the detenu immediately after the order of detention has held thus:

> It would be reasonable to assume that if the District Magistrate was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude in securing the arrest of the petitioner immediately after the making of the order of detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine.

13. Having held as above, Bhagwati, J. (as the learned Chief Justice then was) pointed out that if there is any delay in arresting the detenu pursuant to the order of detention which is prima-facie unreasonable, the State must give reasons explaining the delay.

14. A similar contention was raised in Suresh Mahato v. The District Magistrate, Burdwan, and Ors. , on the basis of the dictum laid down in two decisions of this Court-namely, Serajul v. State of West Bengal [1975] 3 SCC 78 and S.K. Nizamuddin v. State of West Bengal (supra) contending that the delay of the arrest of the detenu in that case showed that the detaining authority was not really and genuinely satisfied as regards the necessity for detention of the detenu for otherwise he would have tried to secure the arrest of the detenu promptly and not left him free to carry on his nefarious activities. Bhagwati, J. (as he then was) while dealing with this submission, made the following observation:

> Now, there can be no doubt--and the law on this point must be regarded as well settled by these two decisions--that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner.

15. Chinnappa Reddy, J. speaking for the Bench in Bhawarlal Ganeshmalji v. State of Tamil Nadu has explained as follow:

> It is further true that there must be a 'live and proximate link' between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is 'snapped' if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the 'link' not snapped but strengthened.

16. Sabyasachi Mukharji, J. (as the learned Chief Justice then was) in Shafiq Ahmed v. District Magistrate, Meerut and Ors. having regard to the fact that there was a delay of two and a half months in detaining the petitioner (detenu) therein, pursuant to the order of detention has concluded that "there was undue delay, delay not commensurate with the facts situation in that case and the conduct of the respondent authorities betrayed that there was no real and genuine apprehension that the detenu was likely to act in any manner prejudicial to public order. The order, therefore is bad and must go". However, the learned Judge observed that "whether the delay was unreasonable depends on the facts and circumstances of each case.

17. See also Harnek Singh v. State of Punjab and Ors. and Syed Farooq Mohammad v. Union of India and Anr. .

18. It is manifestly clear from a conspectus of the above decisions of this Court, that the law promulgated on this aspect is that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the 'live and proximate link' between the grounds of the detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

19. In the present case, the circumstances indicate that the detaining authority after passing the detention order was indifferent in securing the detenu by not taking proper action with greater promptitude. The police officials have treated the warrant of arrest in a very casual manner and unduly delayed its execution. In particular, the Inspector of Police to whom the warrant was forwarded for execution, as pointed out ibid, was indolent inspite of the repeated reminders and was giving evasive answers till the detenu was secured in his native place itself. This recalcitrant and refractory conduct of the Inspector has allowed the detenu to remain at large for such a long period and has consequently defeated the very purpose of the impugned order.

20. For all the aforementioned reasons, we set aside the impugned order of detention and direct the detenu to be set at liberty forthwith.

21. Writ petition is disposed of accordingly.