Union Of India & Ors vs Muneesh Suneja on 30 January, 2001

Equivalent citations: AIR 2001 SUPREME COURT 854, 2001 (3) SCC 92, 2001 AIR SCW 463, 2001 (1) UJ (SC) 535, 2001 UJ(SC) 1 535, (2001) 2 JT 416 (SC), 2001 (2) JT 416, 2001 (3) SRJ 65, 2001 (1) SCALE 510, 2001 (1) LRI 149, 2001 SCC(CRI) 433, 2001 CRILR(SC MAH GUJ) 208, (2001) 1 ALLCRILR 509, (2001) 1 CURCRIR 178, 2001 CRILR(SC&MP) 208, (2001) 1 EFR 528, (2001) MAD LJ(CRI) 481, (2001) 2 RAJ LW 305, (2001) 1 RECCRIR 689, (2001) 1 SCJ 518, (2001) 1 SUPREME 674, (2001) 1 ALLCRIR 670, (2001) 1 SCALE 510, (2001) 42 ALLCRIC 508, (2001) 1 ALL WC 831, (2001) 2 BLJ 338, (2001) 1 CRIMES 255

Bench: S. Rajendra Babu, S.N. Variava

CASE NO.:
Appeal (crl.) 122-123 of 2001

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
MUNEESH SUNEJA

DATE OF JUDGMENT: 30/01/2001

BENCH:
S. Rajendra Babu & S.N. Variava.

JUDGMENT:

J U D G M E N T RAJENDRA BABU, J. :

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T..J A writ petition was filed in the High Court of Punjab and Haryana challenging the validity of the order of detention passed against the respondent under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1973 (hereinafter referred to as the Act] directing the detention of the respondent by an order made on 9.6.1998. It appears that the respondent filed a writ petition before the High Court of Delhi challenging

> the validity of the said detention order which was, however, withdrawn on 15.7.1998 with liberty to file a fresh writ petition, if need be. Thereafter a petition was filed before the High Court of Punjab and Haryana and in the course of the petition filed before it the fact of having filed a writ petition before the High Court of Delhi was not disclosed. But, on the other hand, it is stated that no petition had been filed in any of the courts, including the Supreme Court for the identical relief that had been sought for in the petition filed before the High Court of Punjab and Haryana. The High Court took note of the fact that on 19.6.1997 the officials of the Enforcement Directorate, Jalandhar searched the residential premises of the respondent at Delhi and recovered Indian currency of Rs. 3 lakhs, 8 pieces of yellow metal appearing to be gold in the form of biscuits of 110 tolas and Deustche Marks 5300/-. It is alleged that business premises of the respondent at Karol Bagh was searched which proved futile. Even when the search of the business premises was going on a telephonic call was stated to have been received from one Jagdish who was bringing a sum of Rs. 6,50,000/-. Though the said Jagdish was not arrested, the respondent was arrested and produced before the Court of a Magistrate at Patiala on 21.6.1997.

He was released on bail on 19.8.1997 by the Court of Additional Chief Metropolitan Magistrate, New Delhi. He was granted bail inasmuch as even after 60 days from the date of his arrest no complaint had been filed, but on 9.6.1998 the detention order was passed.

The High Court, in the course of its order, took note of the two grounds, firstly, that there has been delay in making the order of detention inasmuch as the said order had been passed on 9.6.1998 but the incident in respect of which the said detention order had been passed is stated to have taken place on 19.6.1997, nearly after about a year, and secondly, that after making the order of detention no effective steps had been taken to execute the same except to make a vague allegation that the respondent was absconding.

This appeal is filed against the said order principally on the ground that the High Court could not interfere at pre-detention stage and no writ could have been issued in the light of the decision of this Court in Additional Secretary to the Government of India & Ors. v. Smt. Alka Subhash Gadia & Anr., 1992 Supp. (1) SCC 496, which made it clear that the courts should not interfere at the pre-detention stage except in exceptional circumstances such as :

> (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.

This principle has been reiterated by this Court in Sayed Thaer Bawamiya v. Joint Secretary to the Government of India & Ors., 2000 (8) SCC 630.

The learned Additional Solicitor General pointed out that neither of the two grounds set out in the course of the order of the High Court are such of those which fall within the ratio of the decision in Additional Secretary to the Government of India & Ors. v. Smt. Alka Subhash Gadia & Anr. (supra) so as to interfere at the pre-execution stage with the detention order. Further, he contented that no part of cause of action having arisen in the jurisdiction of the High Court inasmuch as recoveries had been effected in Delhi after search made on the residential and business premises of the respondent and detention order had been passed in Delhi, though upon the information furnished by the Enforcement Directorate officials at Jalandhar.

Shri K.T.S. Tulsi, the learned senior Advocate appearing for the respondent, submitted that considered in the background that the amount recovered either in the shape of Indian currency and foreign currency or the quantum of gold and the enactments such as the Foreign Exchange Regulation Act (FERA) having been repealed, the Foreign Exchange Maintenance Act (FEMA) and Gold Control Act not contemplating prosecution in a criminal court the acts imported to the respondent do not merit detention. He further pointed out that there is inordinate delay in making the order of detention and no effective steps were taken for executing the same, as noticed by the High Court and, therefore, in those circumstances, the High Court was justified in interfering with the order made by the Joint Secretary to the Government of India under Section 3 of the Act. He relied upon the decisions of this Court in Golam Hussain alias Gama v. The Commissioner of Police, Calcutta & Ors., 1994 (4) SCC 530, T.A. Abdul Rahman v. State of Kerala & Ors. 1989 (4) SCC 741, and Ahamed Mohaideen Zabbar v. State of T.N. & Ors., 1999 (4) SCC 417.

The present case is not for issue of any writ of habeas corpus but for certain other types of reliefs. The matter must be examined as any other ordinary writ petition would be examined. When the respondent had filed a writ petition before the High Court of Delhi and that writ petition was subsequently withdrawn, this fact should have been clearly stated in the course of the petition filed before the High Court of Punjab and Haryana. Not disclosing this factor is indeed fatal to the petition. Shri Tulsi submitted that this lapse on the part of the respondent should not be viewed seriously because ultimately any order that could be made by the court would affect the liberty of a citizen which is protected under Articles 21 and 22 of the Constitution. He, therefore, very passionately pleaded that we should not proceed to dispose of the matter on that short ground. Even assuming that this non-mentioning of the proceedings before the court was ill-advised, though not deliberate, we do find great force in the other submissions made by the learned Additional Solicitor General. This Court has been categorical that in matters of pre-detention cases interference of court is not called for except in the circumstances set forth by us earlier. If this aspect is borne in mind, the High Court of Punjab and Haryana could not have quashed the order of detention either on the ground of delay in passing the impugned order or delay in executing the said order. For mere delay either in passing the order or execution thereof is not fatal except where the same stands un-explained. In the given circumstances of the case and if there are good reasons for delay in passing the order or in not giving effect to it, the same could be explained and those are not such grounds which could be made the basis for quashing the order of detention at a pre-detention stage.

Therefore, following the decisions of this Court in Additional Secretary to the Government of India & Ors. v. Smt. Alka Subhash Gadia & Anr., (supra) and Sayed Thaer Bawamiya v. Joint Secretary to the Government of India & Ors. (supra), we hold that the order made by the High Court is bad in law and deserves to be set aside.

At the same time, it must also be noticed that the order of detention having been made as early as on 9.6.1998 and the same not having been effected till today, it is certainly necessary for the authorities concerned in the Government to apply mind as to whether detention of the respondent is still necessary or not and take appropriate steps either in giving effect to the order of detention or to revoke the same. In addition, we may also notice that the order made by us will not prejudice the interest of the respondent that in the event the said order of detention is given effect to, it is open to the respondent to raise all grounds as are permissible in law notwithstanding what we may have observed in the course of this order.

The appeals are accordingly allowed by setting aside the order made High Court.