

T.A. Abdul Rahman vs State Of Kerala And Ors on 23 August, 1989

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Bench: S.R. Pandian, B.C. Ray

PETITIONER:

T.A. ABDUL RAHMAN

Vs.

RESPONDENT:

STATE OF KERALA AND ORS.

DATE OF JUDGMENT 23/08/1989

BENCH:

PANDIAN, S.R. (J)

BENCH:

PANDIAN, S.R. (J)

RAY, B.C. (J)

CITATION:

1990 AIR 225 1989 SCR (3) 945

1989 SCC (4) 741 JT 1989 (3) 444

1989 SCALE (2) 388

CITATOR INFO :

R 1990 SC 231 (18)

D 1990 SC 1446 (15)

R 1990 SC 1597 (16)

ACT:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974--Section 3(1)(iii) & 3(1)(iv)--Detention order--Time lag between the passing of the detention order and the actual arrest--Whether affects the subjective satisfaction of the detaining authority--Legality of such detention order--Challenged.

HEADNOTE:

This appeal has been filed by the brother of the detenu T.A. Sirajudeen who was detained pursuant to an order of detention passed by the first respondent under Section 3(1)(iii) and 3(1)(iv) of the Conservation of Foreign Exchange and Smuggling Activities Act, 1974 with a view to preventing the said detenu to take part in the smuggling activities of Gold. The circumstances under which the detention order in question was passed may now be stated.

On 30.11.1986, Superintendent of Central Excise, Manjeri Range searched the residential premises of the detenu but did not discover any contraband goods. However on questioning the detenu confessed that he had buried eleven gold biscuits in the back yard, which were recovered after digging the ground and the statement of the detenu was recorded under Section 108 of the Customs Act, that very day.

On 9.12.1986 again the Authorities concerned searched the residence of the detenu in the belief that there was concealment of more gold. During the search the detenu pointed out to the Superintendent one packet which had been placed in the thatched roofing of the house.

The detaining authority taking into consideration the fact of seizure effected on two occasions and the statement of the detenu admitting his involvement in the prejudicial activities mentioned in the grounds of detention reached subjective satisfaction and passed the impugned order of detention on 7.10.87. The detenu was arrested on 18.1.1988 and detained in Central Prison, Trivandrum from 19.1.1988 onwards. Grounds of detention and other relevant material were furnished to the detenu on 21.1.1988. The detenu made representation for revocation of the detention order on 25.1.1988 which was rejected

946

on 11.4.1988. The first respondent made a reference under Section 8 of the Act on 5.5.88 to the Advisory Board which reported that in its opinion sufficient cause existed for the detention of the detenu.

The appellant challenged the detention of his brother in the High Court by means of Writ Petition but, having failed, he filed this appeal by special leave.

The appellant primarily urged two contentions before this Court. It was urged that there was no proximity in time to provide a rational nexus between the alleged prejudicial activity and the passing of the impugned order of detention after 11 months i.e. on 7.10.87 and as there was no reasonable and satisfactory explanation for the said long delay, the detention order is liable to be quashed on the ground that the credible chain between the grounds of the alleged criminal activities and the purpose of detention stood snapped. The delay throws doubt on the genuineness of the subjective satisfaction arrived at by the detaining authori-

ty. Secondly it was contended that the representation submitted by the detenu on 25.1.88 challenging the impugned order clamped on him had been disposed of by a delay of 72 days i.e. on 11.4.88 and this long and avoidable delay vitiates the detention order being violative of Art. 22(5) of the Constitution.

The first respondent in the counter affidavit explained the delay and attributed the same to the extensive search of various premises in different places and examination of persons apart from departmental delays. It is only after completing the necessary investigation customs authorities sponsored the case for detention of the detenu.

Allowing the appeal, this Court,

HELD: There is no denying the fact that the impugned order has been passed after lapse of 11 months from the date of seizure of the eleven gold biscuits from the back courtyard of the house of the detenu. The test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activity and the passing of the detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned and further the court has to investigate whether the causal connection has been broken in the circumstances of each case. No hard and fast rule

947

can precisely be formulated and guidelines can be laid down in that behalf. [951G-952A]

When there is unsatisfactory and unexplained delay between the date of the order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority. [954C]

See *Gora v. State of West Bengal*, [1975] 2 SCR 996; *Hemlata Kantilal Shah v. State of Maharashtra*, [1981] 4 SCC 647; *Golam Hussain @ Gamal v. Commr. of Police of Calcutta & Ors.*, [1974] 4 SCC 530; *sk Serajul v. State of West Bengal*, [1975] 2 SCC 78; *Rekhaben Virendra Karadia v. State of Gujarat & Ors.*, [1979] 2 SCR 257; *Harnek Singh v. State of Punjab*, [1982] 1 SCC 116; *Shiv Ratan Makin v. Union of India and Others*, [1986] 1 SCC 401; *Smt. K. Aruna Kumari v. Government of Andhra Pradesh & Ors.*, [1988] 1 SCC 296 and *Rajendra Kumar Natvarlal Shah v. State of Gujarat & Ors.*, [1988] 3 SCC 153.

The Court in the instant case, noticed from the Counter affidavit filed on behalf of the first Respondent, that the detaining authority has attempted to explain the laxity that has occasioned in passing the impugned order but miserably failed in explaining the delay of three months in securing the arrest of the detenu from the date of passing of the order and keeps stunned silence on that score. Counsel when

queried by the Court whether he could give any reason for this undue delay in arresting the detenu on 18.1.1988 in pursuance of the impugned order made on 7.10.1987, frankly admitted that he could not do so. Under the circumstances, the Court held that leaving apart the question of delay in passing the order of detention, the fact remains that the detaining authority has failed to explain the long delay in securing the arrest of the detenu after three months of the passing of the detention order and this non-explanation throws a considerable doubt on the genuineness of the subjective satisfaction of the detaining authority vitiating the validity of the order of detention. [954E-955A]

The long interval in receipt of the representation and the comments of the Collector of Customs, Cochin, indicate the casual and indifferent attitude, displayed by the authorities concerned dealing with the representation. The manner in which the representation has been dealt with reveals a sorry state of affairs in the consideration of the representation made by the detenu. [955G-956A]

948

The Court took firm view that the representation of the detenu has not been given prompt and expeditious consideration and was allowed to lie without being properly attended to. The delay of 72 days in the absence of satisfactory explanation is too long a period for ignoring the indolence on the part of the concerned authority. The unexplained delay in disposal of the representation of the detenu is violative of Article 22(5) of the Constitution of India rendering the order of detention invalid. [956H-957B]

The Court set aside the judgment of the High Court, quashed the order of detention and directed that the detenu be set at liberty forthwith. [957C]

Rama Dhondu Borade v. Shri V.K. Saraf, Commissioner of Police & Ors., [1989] 1 Scale 22.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3 18 of 1989.

From the Judgment and Order dated 15.6.88 of the Kerala High Court in Original Petition No. 3299 of 1988. R. Sasiprabhu and P.K. Manohar for the Appellant. B. Dutta, Additional Solicitor General, P. Parmeshwaran, Pramod Swarup and T.T. Kunhikannan for the Respondents. The Judgment of the Court was delivered by S. RATNAVEL PANDIAN, J. This appeal under Article 136 of the Constitution of India is preferred by the appellant, Abdul Rahman questioning the validity and correctness of the order of detention passed by the first Respondent on 7.10.1987, in exercise of the powers conferred by section 3(1)(iii) and 3(1)(iv) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974) (hereinafter referred to as the 'Act') whereby detaining the appellant's brother Sri T.A. Sirajudeen @ Siraj (the detenu herein) with a view to preventing the detenu from engaging in transporting or concealing or keeping smuggled

gold or dealing in smuggled gold otherwise than by engaging in transporting or concealing or keeping smuggled gold.

Though the impugned order was passed on 7.10.1987, the detenu was arrested on 18.1.1988 and detained in the Central pris- on, Trivandrum from 19.1.1988 onwards. The detenu was fur- nished with copies of the grounds of detention and other connected material documents on 21.1.1988. The detenu made a representation to the third Respondent praying for revoca- tion of the detention order on 25.1.1988 which was rejected on 11.4.1988. Meanwhile on 11.2.1988 a declaration by the third Respondent under Section 9(1) of the Act was made, whereby the detenu was ordered to be detained for a contin- ued detention for a further period of 6 months over one year. The first Respondent made a reference under section 8 of the Act on 5.5. 1988 to the Advisory Board which has reported that there is in its opinion sufficient cause for the detention of the detenu. The material facts which neces- sitated the passing of the detention order can be briefly stated thus:

On 30.11.1986, Superintendent of Central Excise, Manjeri Range and party searched the permanent residence of the detenu in his presence which did not result in the seizure of any contraband goods or the recovery of any incriminating documents. But on questioning by the officer, the detenu confessed that he had buried eleven gold biscuits in the backyard of his house. He dug up the spot and produced the relavent gold biscuits which were kept concealed under the ground. Each of the gold biscuits was found wrapped in black carbon paper bearing foreign markings and weighing 10 tolas each with the purity of 24 carats. The total weight of the eleven gold biscuits was 1282.600 gms., the market value of which as on that date was Rs.3,14,237. The contraband goods were seized under a Mahazar. On 30.11.1986 a statement was recorded from the detenu by the Superintendent of the Cen- tral Excise under section 108 of the Customs Act in which the detenu had given a detailed note of his involvement in the smuggling activities. On 9.12.1986 also the Superintend- ent of Central Excise searched the residence of the detenu in the reasonable belief that there was concealment of more smuggled gold in the said house. During this search, the detenu pointed out to the Superintendent one packet which had been placed in the thatched roofing of his house. The Superintendent took out the packet and it was found contain- ing four gold ingots bearing foreign markings weighing 466.400 gms. with 24 carat purity, all to the value of Rs.

1,14,268. The detaining authority taking into consideration of the seizure effected on two occasions and the statement of the detenu admitting his involvement in the prejudicial activities mentioned in the grounds of detention reached its subjective satisfaction of the necessity of passing the impugned order and passed the same on 7.10.1987. The appel- lant filed a Writ Petition under Article 226 of the Constitution of India for quashing the impugned order of detention, but was not successful. Hence this appeal.

Of the several grounds urged in the Special Leave Peti- tion, the learned counsel appearing on behalf of the appel- lant stressed only the following two contentions seeking to set aside the order of detention.

(1) As there is no proximity in time to provide a rational nexus between the alleged prejudicial activity, that is the seizure of the gold biscuits on 30.11.1986 and the pass-

ing of the impugned order of detention after 11 months i.e. on 7.10.1987 and as there is no reasonable and satisfactory explanation given by the first Respondent for this undue and unreasonable delay, the order is liable to be quashed on the ground that the credible chain between the grounds of the alleged criminal activities and the purpose of detention is snapped. Further the unreasonable and unexplained delay between the date of the order of detention on 7.10.87 and the date of arrest of the detenu after a lapse of 3 months on 18.1.1988 throws considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to an inference that there was no real and genuine subjective satisfaction as regards the necessity to detain the detenu with a view to preventing him from acting in prejudicial manner.

(2) The representation submitted by the detenu to the third Respondent on 25.1.1988 challenging the impugned order clamped upon him had been disposed of by a delay of 72 days i.e. on 11.4.1988 and this long and avoid-

able delay vitiates the order of detention as being violative of Article 22(5) of the Constitution of India.

We shall now deal with the first contention which is referred under ground Nos. II & III of the Grounds in the Special Leave Petition which read thus:

"For that the High Court ought to have seen that the petitioner was detained on the basis of a alleged solitary incident occurred on 30.11.1986 and the detention order was passed after lapse of 11 months, i.e. on 7.10.1987, and the petitioner was arrested and detained on 19.1.1988."

"For that the High Court ought to have seen that there was no proximity between the alleged incident and subsequent detention. The time factor has not been considered by the detaining authority and he has mechanically passed the detention order without paying any attention to the loose grounds and quick sands in the reports of the sponsoring officer."

The above two contentions are sought to be answered by the first Respondent in his counter stating that the investigating officer had to question a number of persons and to conduct extensive search of various premises in different places in connection with the information gathered during interrogation and the Superintendent issued summons to the brothers of the detenu, namely, Haneefa and Abdul Rahman for appearance on 10.3.87 and 3.3.87 respectively, but Abdul Rahman was absconding and that on 10.2.87, the statement of C.K. Madhavan referred to in the statement of the detenu was recorded and that on 18.5.1987 show cause notices were issued to persons connected with this case and immediately after completion of the investigation the Customs authorities sponsored the proposal for detention of the detenu by their letter dated 26.8.1987 and that the proposal was screened by the Screening Committee on 11.9.1987 and thereafter the detention order

was passed on 7.10.1987. Coming to the delay in securing the detenu by arrest the explanation is given as follows:

"The detention order was forwarded to the Malappuram Superintendent of Police for its execution by letter dated 9.10. 1987. The Police executed the order on 18.1. 1988. From the above facts it is clear that there is no delay in passing or executing the order of detention as alleged in the petition for Special Leave to Appeal."

There is no denying the fact that the impugned order has been passed after lapse of 11 months from the date of seizure of the eleven gold biscuits from the back courtyard of the house of the detenu. As repeatedly pointed out by this court that there is no hard and fast rule that merely because there is a time lag between the offending acts and the date of order of detention, the causal link must be taken to be snapped and the satisfaction reached by the detaining authority should be regarded as unreal, but it all depends upon the facts and circumstances of each case and the nature of the explanation offered by the detaining authority for the delay that had occurred in passing the order. There is a catena of decisions on this point, but we feel that it is not necessary to recapitulate all those decisions except a salient few. This court in *Gulam Hussain alias Garna v. Commr. of Police of Calcutta & Ors.*, [1974] 4 SCC 530 wherein there was a time lag of 6 months between the incident and the date of order of detention while answering a similar contention, laid down the ratio of proximity as follows:

"No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case. *Gora v. State of West Bengal*, [1975] 2 SCR 996 has held thus: There is, therefore, no hard and fast rule that merely because there is a time lag of about six months between the 'offending acts' and the date of the order of detention, the causal link must be taken to be broken and the satisfaction claimed to have been arrived at by the District Magistrate must be regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction must depend on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the 'offending acts' and the order of detention. It is a subsidiary test evolved by the court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu and its utility, therefore, lies only in so far as it subserves that purpose and it cannot be allowed to dominate or draw it. The prejudicial act of the detenu may in a given case

be of such a character as to suggest that it is a part of an organised operation of a complex of agencies collaborating to clandestinely and secretly carry on such activities and in such a case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely or secretly carried on by the detenu and it is, therefore, necessary to detain him with a view to preventing him from indulging in such activities in the future."

In *Hemlata Kantilal Shah v. State of Maharashtra* 1981 4 SCC 647, this Court held:

"Delay ipso facto in passing an order of detention is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily examined by the detaining authority."

See also *SK Serajul v. State of West Bengal*, [1975] 2 SCC 78; *Rekhaben Virendra Karadia v. State of Gujarat & Ors.*, [1979] 2 SCR 257; *Harnek Singh v. State of Punjab*, [1982] 1 SCC 116; *Shiv Ratan Makin v. Union of India and Others*, [1986] 1 SCC 401; *Smt. K. Aruna Kumari v. Government of Andhra Pradesh and Ors.*, [1988] 1 SCC 296 and *Rajendra Kumar Natvarlal Shah v. State of Gujarat and Others*, [1988] 3 SCC 153.

In a recent decision in *Yogendra Murari v. State of U.P. and Others* 1988 (4) SCC 559, this Court has reiterated the earlier view consistently taken by this Court observing:

"..... it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay It is necessary to consider the circumstances in each individual case to find out whether the delay has been satisfactorily explained or not."

The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.

Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.

In the light of the above proposition of law, we shall now examine the first contention which has been raised for the first time before this Court. From the reading of the counter affidavit filed on behalf of the first Respondent, it is seen that the detaining authority has attempted to explain the laxity that has occasioned in passing the impugned order, but miserably failed in explaining the delay of three months in securing the arrest of the detenu from the date of the passing of the order, and keeps stunned silence on that score. The learned counsel appearing for the first respondent when queried by this Court whether he could give any reason for this undue delay in arresting the detenu on 18.1.1988 in pursuance of the impugned order of detention made on 7.10.1987, he has frankly admitted that he could not do so--rightly so in our view--in the absence of any explanation in the counter affidavit. The Superintendent of Police, Malapurram to whom the detention order was forwarded for execution has not filed any supporting affidavit explaining the delay in securing the arrest of the detenu. Under these circumstances, we hold that leaving apart the question of delay in passing the order of detention from the date of the seizure of the gold, the fact remains that the detaining authority has failed to explain the long delay in securing the arrest of the detenu after three months from the date of the passing of the detention order and this non-explanation in our view throws a considerable doubt on the genuineness of the subjective satisfaction of the detaining authority vitiating the validity of the order of detention. The next contention stressed by the learned counsel for the appellant is with regard to the delay of 72 days in the disposal of the representation made by the appellant to the third respondent on 25.1.1988. This contention is raised in ground Nos. VIII and IX of the Grounds in the Special Leave Petition. This is resisted by the third respondent in paragraph 8 of his counter stating that a representation dated 2.2.1988 was received in the COFEPOSA Section of Ministry of Finance on 16.2.1988 with a letter dated 5.2.1988 from the Government of Kerala; that as certain information was not available with the Central Government, the Collector of Customs, was asked to get a copy of the representation from the State Government and to send his comments; that Collector of Customs, informed the Central Government by a telex message dated 1.3.1988 which was received in the COFEPOSA Section on 8.3.1988 informing that the representation was not available with the Home Department; that thereafter a copy of the representation was forwarded to the Collector of Customs by post on 8.3.1988; that the comments of the Collector were received back on 28.3.1988; that then the representation along with the comments were placed before the Joint Secretary, COFEPOSA Section on 30.3.88, who forwarded the same to the Minister of State for Revenue on the same day and on 4.4.88 the Minister of State forwarded his comments to the Finance Minister who considered and rejected the representation on 8.4.88. According to the third Respondent, the representation was considered expeditiously and as such there is no violation of Article 22(5) of the Constitution of India.

The learned counsel for the appellant has explained that the representation was submitted originally on 25.1.1988, but was got back and resubmitted on 2.2.1988. According to him, it is surprising that the said representation was received by the third respondent only on 16.2.1988 after a considerable

delay of two weeks and thenceforth there was a considerable delay from 16.2.88 to 28.3.88 in receiving the comments of the Collector of Customs, and again there was a delay of 7 days in forwarding the representation to the Minister of State for Revenue with the comments of the Joint Secretary, COFEPOSA Section. The long interval in receipt of the representation and the comments of the Collector of Customs, Cochin indicate the casual and indifferent attitude displayed by the authorities concerned dealing with the representation.

In our opinion, the manner in which the representation has been dealt with reveals a sorry state of affair in the matter of consideration of the representation made by the detenu. Further we fail to understand why such a long delay from 16.2.88 to 28.3.88 had occasioned in getting the comments from the Collector of Customs. The only futile explanation now offered by the third respondent is that this delay had occasioned because the Collector of Customs was not able to get a copy of the representation from the Home Department, Kerala and thereafter the Collector got a copy of the representation on being forwarded by the third respondent on 8.3. 1988. Even then there is a delay of 20 days in getting the comments of the Collector and that delay is not at all explained.

This Court in *Rama Dhondur Borade v. Shri V.K. Saraf Commissioner of Police & Ors.*, [1989] I Scale Vol. 4 22 after referring to various decisions, has observed thus:

"The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation with reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty--the highly cherished right--which is enshrined in Article 21 of the Constitution."

" What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

Bearing in mind the above principle when we approach the facts of the present case, we are of the firm view that the representation of the detenu has not been given prompt and expeditious consideration, and was allowed to lie without being properly attended to. The explanation now offered by the third respondent that the delay has occurred in seeking the comments of the Collector of Customs etc. is not a convincing and acceptable explanation. In our view the delay in 72 days in the absence of satisfactory explanation is too long a period for ignoring the indolence on the part of the

concerned authority. Hence we hold that the unexplained delay in disposal of the representation of the detenu is violative of Article 22(5) of the Constitution of India, rendering the order of detention invalid.

For all the above mentioned reasons, we allow this criminal appeal by setting aside the judgment of the High Court, quash the impugned order of detention and direct the detenu to set at liberty forthwith.

Y. Lal

Appeal allowed.