Naresh Kumar Goyal vs Union Of India And Others on 5 October, 2005

Equivalent citations: AIR 2005 SUPREME COURT 4421, 2005 (8) SCC 276, 2005 AIR SCW 5394, 2006 CRILR(SC&MP) 226, 2006 (1) CALCRILR 169, 2006 (1) SCC(CRI) 34, 2006 ALL MR(CRI) 212, 2005 (9) SRJ 583, 2005 (7) SLT 646, 2006 CRILR(SC MAH GUJ) 226, (2005) 35 ALLINDCAS 38 (SC), 2005 (8) SCALE 332, 2005 (35) ALLINDCAS 38, (2006) SC CR R 520, (2005) 7 SUPREME 70, (2005) 4 CRIMES 147, (2006) 1 EFR 1, (2005) 4 RECCRIR 615, (2005) 7 SCJ 523, (2005) 4 CURCRIR 125, (2005) 3 ALLCRIR 3149, (2005) 8 SCALE 332, (2005) 53 ALLCRIC 730, (2006) 1 CHANDCRIC 253, (2005) 4 ALLCRILR 740, 2006 (1) ANDHLT(CRI) 47 SC, 2006 (1) AIR JHAR R 102

Author: B.P. Singh

Bench: B.P. Singh, Tarun Chatterjee, P.K. Balasubramanyan

```
           CASE NO.:
Appeal (crl.)  1302 of 2005

PETITIONER:
Naresh Kumar Goyal

RESPONDENT:
Union of India and others

DATE OF JUDGMENT: 05/10/2005

BENCH:
B.P. Singh,Tarun Chatterjee & P.K. Balasubramanyan

JUDGMENT:
```

J U D G M E N T (Arising out of SLP (Crl.) No.4928 Of 2003) B.P. SINGH, J.

Special leave granted.

In this appeal the appellant impugns the order of detention passed against him by the State of Bihar on September 4, 2002 in exercise of powers conferred by Section 3(i), (ii) and (iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'the Act'). The High Court by its impugned judgment and order dated September 17, 2003 dismissed the writ petition and held that this was not an appropriate case in which the High Court could exercise its jurisdiction under Article 226 of the Constitution of India to quash an order of detention even before its execution. The correctness of the aforesaid view of the High Court is

challenged before us.

The facts of the case are few and not disputed.

The appellant claims to be one of the partners of M/s. Prakash Transport, a partnership firm having its principal place of business at Kolkatta with branch offices all over India including one at Raxaul in the State of Bihar. The firm is engaged in the business of transportation of goods by road by hiring public carrier trucks. According to the appellant, on August 28, 2001 a Nepalese firm M/s. Prakash International Carriers Pvt. Ltd., Kathmandu, Nepal, hired a vehicle owned by one Shri Vishwanath Prasad Kanu, a Nepalese citizen, for transportation of goods from the godown of the appellant's firm at Raxaul to Nepal. The appellant has no concern with the Nepalese firm M/s. Prakash International Carriers Pvt. Ltd. The truck hired by the aforesaid Nepalese firm was detained at the Indian Land Custom Station at Raxaul and an idol kept in a wooden box was recovered. This led to the search of the premises of the appellant's firm at Raxaul and the search resulted in the recovery of another idol kept in a wooden box. The statement of the driver of the truck was recorded on August 29, 2001 and on the basis of his statement the complicity of the appellant was discovered. Accordingly his house at Kolkatta was searched on September 11, 2001 and his statement recorded. On February 22, 2002 a notice was issued to the appellant to show cause as to why penalty be not imposed, and a criminal case was also registered against him on April 16, 2002. Subsequently the appellant was released on bail in the criminal case on August 16, 2002. The impugned order of detention was passed on September 4, 2001, but till the appellant filed the writ petition on June 25, 2003, the order of detention had not been executed by serving it upon the appellant.

The case of the appellant is that in the criminal case, he appeared in person uptil December 20, 2002, even after the order of detention had been passed, and yet no effort was made to arrest him. No process under Section 7 of the Act was issued against him even though it is the case of the respondents that the appellant had been absconding. It is the case of the appellant that the detaining authority, the State of Bihar, took no effective steps whatsoever to arrest the appellant which showed that the order of detention had been passed for a purpose other than for which his detention under the Act could be justified. The fact that the State Government did not exercise its power under Section 7 of the Act is not disputed before us. All that has been shown to us by the learned counsel appearing on behalf of the State is that some correspondence was exchanged between the Criminal Investigation Department of the Government of Bihar with the Commissioner of Police, Kolkatta, West Bengal. It was stated in the counter-affidavit filed on behalf of respondent No.5 before the High Court that though a request had been made for immediate compliance of the preventive detention order under the Act to the Commissioner of Police, Kolkatta, no action was taken. Several such letters addressed to the police authorities of the State of West Bengal, however, yielded no result.

Having regard to the facts and circumstances of the case it appears to us prima facie, that there has been delay in the execution of the detention order and the State of Bihar has not taken effective steps to arrest the appellant and serve the order of detention upon him. This, however, should not be considered to be our concluded opinion in the matter, since it is always open to the detenue to challenge the order of detention after arrest, and the question of delay in issuance or

implementation of the order can be raised in such proceeding.

The real issue which arises in the instant appeal is whether the High Court was justified in law in not exercising its discretion under Article 226 of the Constitution of India to quash the order of detention at the pre-arrest stage.

Learned counsel for the appellant submitted that once it is shown that the State has taken no steps to execute an order of detention and the explanation furnished by the State is unsatisfactory, it must be held that the order of detention was not issued for the purpose for which it could be issued under the Act, and necessarily implied that the real purpose was something else, not authorized by law. In such a case it made no difference whether the appellant moved the High Court at the pre-arrest stage or after his arrest pursuant to the order of detention. He emphasized that expeditious steps must be taken by the State both in the matter of passing the order of detention and in executing the same. Both are lacking in the instant case. The order of detention was passed on September 4, 2002 while the complicity of the appellant is alleged to have been discovered on August 29, 2001 on the basis of the statement of the driver of the vehicle. In the matter of implementation of the order as well, there was considerable apathy and lethargy, since the order was not even executed till the date the writ petition was filed on June 25, 2003.

It is trite law that an order of detention is not a curative or reformative or punitive action, but a preventive action, 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. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that 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 so. It, therefore, becomes imperative on the part of the detaining authority as well as the executing authority to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detenue 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 preventive action and turn the detention order as a dead letter and frustrate the entire proceedings. Inordinate delay, for which no adequate explanation is furnished, led to the assumption that the live and proximate link between the grounds of detention and the purpose of detention is snapped. (See : P.U. Iqbal vs. Union of India and others : (1992) 1 SCC 434 ; Ashok Kumar vs. Delhi Administration : (1982) 2 SCC 403 and Bhawarlal Ganeshmalji vs. State of Tamilnadu : (1979) 1 SCC 465.

It is not necessary for us to multiply authorities because no exception can be taken to the above proposition enunciated by this Court in a series of decisions.

Mr. B.B. Singh, learned counsel appearing on behalf of the State of Bihar, submitted before us that the question involved in the instant appeal is not whether the order of detention should be struck down on the ground that the State of Bihar has not taken necessary steps to implement the order of detention, but whether at the pre-arrest stage the High Court should have exercised its jurisdiction

under Article 226 of the Constitution of India to quash the order of detention on such grounds. He submitted that the decisions of this Court have taken the view that exercise of discretion under Article 226 of the Constitution of India can be justified only in appropriate cases and the scope for interference is very limited. Normally the Court would not interfere with the order of detention at a pre-arrest stage under Article 226 of the Constitution of India. He submitted that there are only 5 exceptions to this rule which would justify interference by the Court at the pre-execution stage with the order of detention. Those five situations have been enumerated in the case of Additional Secretary to the Government of India and others Vs. Smt. Alka Subhash Gadia and another : 1992 Supp (1) SCC 496;

> "As regards his last contention, viz., that to deny a right to the proposed detenue to challenge the order of detention and the grounds on which it is made before he is taken in custody is to deny him the remedy of judicial review of the impugned order which right is a part of the basic structure of the Constitution, we find that this argument is also not well merited based as it is on absolute assumptions. Firstly, as pointed out by the authorities discussed above, there is a difference between the existence of power and its exercise. Neither the Constitution including the provisions of Article 22 thereof nor the Act in question places any restriction on the powers of the High Court and this Court to review judicially the order of detention. The powers under Articles 226 and 32 are wide, and are untrammeled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time-honoured and well- tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are concerned if in every case a detenue 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 ground does not amount to the abandonment of the said power or to their denial to the proposed detenue, but prevents their abuse and the perversion of the law in question".

In Union of India and others vs. Parasmal Rampuria : (1998) 8 SCC 402, when the order of detention passed under the Act was sought to be challenged at the pre-arrest stage, this Court called upon the respondent first to surrender pursuant to the detention order and then to have all his grounds examined on merit.

In Sayed Taher Bawamiya Vs. Joint Secretary to the Government of India and Others : (2000) 8 SCC 630, an argument was advanced before this Court that the exceptions enumerated in Alka Subhash Gadia (supra) were not exhaustive. The submission was repelled and this Court observed :-

> "As we see it, the present case does not fall under any of the aforesaid five exceptions for the court to interfere. It was contended that these exceptions are not exhaustive. We are unable to agree with this submission. Alka Subhash Gadia case shows that it is only in these five types of instances that the court may exercise its discretionary jurisdiction under Article 226 or Article 32 at the pre- execution stage".

In Union of India and others Vs. Muneesh Suneja : (2001) 3 SCC 92, the challenge was to the order of the High Court quashing the order of detention at the pre-arrest stage on two grounds, first that there had been delay in making the order of detention and second 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 Court noticed the exceptional circumstances justifying interference by the High Court at pre-arrest stage enumerated in Alka Subhash Gadia (supra). This Court, thereafter, set aside the order made by the High Court observing :-

> "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 unexplained. 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 Addl. Secy. to the Govt. of India Vs. Alka Subhash Gadia and Sayed Taher Bawamiya Vs. Jt. Secy. to the Govt. of India, we hold that the order made by the High Court is bad in law and deserves to be set aside".

Coming to the facts of this case, at the highest the case of the appellant is that the order of detention was belatedly passed and the State of Bihar thereafter took no steps whatsoever to implement the order of detention. Counsel for the appellant sought to bring this case under the third exception enumerated in Alka Subhash Gadia (supra), namely, that the order was passed for a wrong purpose. In the facts and circumstances of this case, it is not possible to accept the submission that the order was passed for a wrong purpose. Apparently the order has been passed with a view to prevent the appellant from smuggling goods or abetting the smuggling thereof etc. The facts of the present case are no different from the facts in Muneesh Suneja (supra). We do not find that the case falls within any of the exceptions enumerated in Alka Subhash Gadia (supra). The High Court was, therefore, justified in refusing to exercise jurisdiction under Article 226 of the Constitution of India to quash the order of detention at the pre-arrest stage. This appeal is, therefore, devoid of merit and is dismissed.