Union Of India vs Amrit Lal Manchanda And Anr on 16 February, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1625, 2004 AIR SCW 944, 2004 (2) SCALE 480, 2004 (2) ACE 439, 2004 (3) SCC 75, 2004 SCC(CRI) 662, 2004 (2) SLT 1059, 2004 (3) SRJ 525, 2004 ALL MR(CRI) 879, (2004) 113 ECR 835, (2004) 2 EFR 428, (2004) 2 RECCRIR 203, 2004 CHANDLR(CIV&CRI) 155, (2004) 1 CHANDCRIC 235, (2004) 1 EFR 464, (2004) MAD LJ(CRI) 485, (2004) 2 CURCRIR 155, (2004) 2 SUPREME 150, (2004) 3 ALLCRIR 2606, (2004) 16 INDLD 394, (2004) 49 ALLCRIC 869, (2004) 2 CAL LJ 19, (2004) 2 CRIMES 159, (2004) 2 SCALE 480, (2004) 1 RECCRIR 996, (2004) 2 ALLCRILR 584, (2006) SC CR R 701, (2004) 2 KHCACJ 81 (SC), 2004 (1) ALD(CRL) 525, (2004) 2 JT 378 (SC)

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  223 of 2004

PETITIONER:
Union of India

RESPONDENT:
Amrit Lal Manchanda and Anr.

DATE OF JUDGMENT: 16/02/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
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JUDGMENT (Arising out of SLP(Crl.)No. 3901/2003) WITH CRIMINAL APPEAL NO.224/2004 (Arising out of SLP (Crl.)No.3902/2003) ARIJIT PASAYAT, J.

Leave granted.

In both these two appeals the Union of India questions legality of the judgment rendered by the Punjab and Haryana High Court quashing the order of detention passed by the concerned authority under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short the 'COFEPOSA').

A brief reference to the factual aspects which is almost undisputed would suffice.

Since the points for adjudication are common to both the appeals the factual position in SLP(Crl.)No.3901/2003 is noted for convenience as the only difference between this case and the other case relates to the dates. The order of detention was passed under Section 3(1) of COFEPOSA on 31.10.2001. The respondent filed a writ petition before the Punjab and Haryana High Court on 20.12.2001 and on 21.12.2001 an order staying operation of the detention order was passed. On 31.5.2002 the High Court decided that it had territorial jurisdiction to deal with the matter, but dismissed the writ petition. An application for review was filed on the ground that though it was noted that the writ petition was dismissed, in fact the various points urged in support of the writ application were not considered. The High Court issued notice on the review petition and pending consideration stayed the operation of detention order. When the matter was heard afresh before the High Court it appears that only one point was urged i.e. passage of time between the date of the detention order and the date on which the High Court had taken up the writ petition for consideration. Relying on a decision of this Court in Sunil Fulchand Shah v. Union of India and Ors. (2000 (3) SCC 409) the High Court held the order of detention dated 31.10.2001 to be unsustainable. However, it permitted the concerned authority to examine the matter and pass a fresh order if necessary and the circumstances so warrant.

Learned Additional Solicitor General submitted that the decision in Sunil Fulchand's case (supra) had no application to the present case. In that case the question adjudicated was whether the period during which the detenu is on parole can be adjusted from the period of detention indicated in the detention order. While dealing with that issue the Court observed that where there is considerable gap of time, the desirability of sending any detenu to custody has to be considered in the background of the issue as to whether a live link for preventive detention still existed. That had nothing to do with a challenge to the order of detention before its execution.

Mr. Gopal Subramaniam, learned senior counsel appearing for the respondent submitted that the writ petitioner was not in custody pursuant to the order of stay passed by the High Court. The stay order can be treated at par with an order of parole. In any event, a live link has to be established to detain a person in custody by way of preventive detention. The liberty of a person is sacrosanct and it should not be affected except on grounds legally available to the detaining authority.

With reference to a decision of this Court in Union of India and Ors. V. Muneesh Suneja (2001 (3) SCC 92) it is submitted that the detaining authority has to be satisfied afresh whether the detention was still necessary. It was submitted that liberty was given to the detaining authority and, therefore, it would not be proper to interfere. It is also pointed out that in the case of four similarly situated persons relating to the alleged offending acts, detention orders have been revoked in respect of two and in respect of two others, the High Court has quashed the orders of detention and no appeal has been filed.

So far as these four persons are concerned, learned ASG submitted that their cases were not considered at the pre- execution stage. All the four persons were in custody and their cases were considered by the Advisory Board or the High Court as the case may be. They do not stand at par

with the present respondents.

Before dealing with rival submissions, it would be appropriate to deal with the purpose and intent of preventive detention. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the Executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the concerned law. The action of Executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would loose all their meanings provide the justification for the laws of prevention detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment for individual liberty. "To, lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs". This, no doubt, is the theoretical jurisdictional justification for the law enabling prevention detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other.

The question whether the detenu or any one on his behalf is entitled to challenge the detention order without the detenu submitting or surrendering to it has been examined by this Court on various occasions. One of the leading judgments on the subject is Additional Secretary to the Govt. of India and Ors. v. Smt. Alka Subhash Gadia and Anr. case ((1992 Supp (1) SCC 496). In para 12 of the said judgment, it was observed by this Court as under:

> "12. This is not to say that the jurisdiction of the High Court and the Supreme Court under Articles 226 and 32 respectively has no role to play once the detention punitive or preventive- is shown to have been made under the law so made for the purpose. This is to point out the limitations, which the High Court and the Supreme Court have to observe while exercising their respective jurisdiction in such cases. These limitations are normal and well known, and are self-imposed as a matter of

prudence, propriety, policy and practice and are observed while dealing with cases under all laws. Though the Constitution does not place any restriction on these powers, the judicial decision have evolved them over a period of years taking into consideration the nature of the legislation or of the order or decision complained of, the need to balance the rights and interests of the individual as against those of the society, the circumstances under which and the persons by whom the jurisdiction is invoked, the nature of relief sought, etc. To illustrate these limitations, (i) in the exercise of their discretionary jurisdiction the High Court and the Supreme Court do not, as Courts of appeal or revision, correct mere errors of law or of facts, (ii) the resort to the said jurisdiction is not permitted as an alternative remedy for relief which may be obtained by suit or other mode prescribed by statute. Where it is open to the aggrieved person to move another Tribunal or even itself in another jurisdiction for obtaining redress in the manner provided in the statute, the Court does not, by exercising the writ jurisdiction, permit the machinery created by the statute to be by-passed; (iii) it does not generally enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed; (iv) it does not interfere on the merits with the determination of the issues made by the authority invested with statutory power, particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such as, where the determination is mala fide or is prompted by the extraneous considerations or is made in contravention of the principles of natural justice of any constitutional provision, (v) the Court may also intervene where (a) the authority acting under the concerned law does not have the requisite authority or the order which is purported to have been passed under the law is not warranted or is in breach of the provisions of the concerned law or the person against whom the action is taken is not the person against whom the order is directed, or (b) when the authority has exceeded its power or jurisdiction or has failed or refused to exercise jurisdiction vested in it; or (c) where the authority has not applied its mind at all or has exercised its power dishonestly or for an improper purpose; (vi) where the Court cannot grant a final relief, the Court does not entertain petition only for giving interim relief. If the Court is of opinion, that there is no other convenient or efficacious remedy open to the petitioner, it will proceed to investigate the case on its merit and if the Court finds that there is an infringement of the petitioner's legal rights, it will grant final relief but will not dispose of the petition only by granting interim relief

(vii) where the satisfaction of the authority is subjective, the Court intervenes when the authority has acted under the dictates of another body or when the conclusion is arrived at by the application of a wrong test or misconstruction of a statute or it is not based on material which is of a rationally probative value and relevant to the subject matter in respect of which the authority is to satisfy itself. If again the satisfaction is arrived at by taking into consideration material, which the authority properly could not, or by omitting to consider matters, which it sought to have, the Court interferes with the resultant order. (viii) In proper cases the Court also intervenes when some

> legal or fundamental right of the individual is seriously threatened, though not actually invaded."

In Sayed Taher Bawamiya v. Joint Secretary to the Govt. of India and Ors. (2000 (8) SCC 630), it was observed by this Court as follows:

> "This Court in Alka Subhash's case (supra) was also concerned with a matter where the detention order had not been served, but the High Court had entertained the petition under Article 226 of the Constitution. This Court held that equitable jurisdiction under Article 226 and Article 32 which is discretionary in nature would not be exercised in a case where the proposed detenu successfully evades the service of the order. The Court, however, noted that the Courts have the necessary power in appropriate case to interfere with the detention order at the pre-execution stage but the scope for interference is very limited. It was held that the Courts will interfere at the pre-

execution stage with the detention orders only after they are prima facie satisfied:

> (i) that the impugned order is not passed under the Act 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.

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's case (supra) 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. The appellant had sought to contend that the order which was passed was vague, extraneous and on irrelevant grounds but there is no material for making such an averment for the simple reason that the order of detention and the grounds on which the said order is passed has not been placed on record inasmuch as the order has not yet been executed. The appellant does not have a copy on the same, and therefore, it is not open to the appellant to contend that the non-

existent order was passed on vague, extraneous or on irrelevant grounds".

This Court's decision in Union of India and Ors. v. Parasmal Rampuria (1998 (8) SCC 402) throws considerable light as to what would be the proper course for a person to adopt when he seeks to challenge an order of detention on the available grounds like delayed execution of detention order, delay in consideration of the representation and the like. These questions are really hypothetical in nature when the order of detention has not been executed at all and challenge is made at pre-execution stage. It was observed as under:

> "In our view, a very unusual order seems to have been passed in a pending appeal by the Division Bench of the High Court. It is challenged by the Union of India in these appeals. A detention order under Section 3(1) of the COFEPOSA Act was passed by the authorities on 13.9.1996 against the respondent. The respondent before surrendering filed a writ petition in the High Court on 23.10.1996 and obtained an interim stay of the proposed order, which had remained un- served. The learned Single Judge after hearing the parties vacated the ad interim relief. Thereafter, the respondent went in appeal before the Division Bench and again obtained ad interim relief on 10.1.1997 which was extended from time to time. The writ appeal has not been still disposed of.
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> When the writ petition was filed, the respondent had not surrendered. Under these circumstances, the proper order which was required to be passed was to call upon the respondent first to surrender pursuant to the detention order and then to have all his grievances examined on merits after he had an opportunity to study the grounds of detention and to make his representation against the said grounds as required by Article 22(5) of the Constitution."

In Sunil Fulchand Shah's case (supra) a Constitution Bench of this Court observed that a person may try to abscond and thereafter take a stand that period for which detention was directed is over and, therefore, order of detention is infructuous. It was clearly held that the same plea even if raised deserved to be rejected as without substance. It should all the more be so when the detenu stalled the service of the order and/or detention in custody by obtaining orders of Court. In fact, in Sayed Taher's case (supra) the fact position shows that 16 years had elapsed yet this Court rejected the plea that the order had become stale.

These aspects were highlighted recently in Hare Ram Pandey v. State of Bihar and Ors. (2003 (10) JT 114).

Cases involving challenges to orders of detention before and after execution of the order stand on different footings. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret

statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

> "The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office v. Dorset Yacht Co. (1970 (2) All ER

294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

> "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

*** *** *** "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

The High Court does not appear to have considered the case in the background of whether any relief was available to the writ petitioner even before the order of detention was executed. The decision relied upon by it was not strictly applicable. Merely because the High Court had granted stay of the order of detention, the respondent cannot take advantage of the order of stay passed by the High Court to contend that there is a passage of time. The petitioner cannot be allowed to have an unfair advantage and double benefit of his own action, which delayed the execution of the detention order. In fact in Sayed Taher Bawamiya's case (supra) the time gap was nearly 16 years. The inevitable

conclusion therefore is that the High Court was not justified in quashing the order of detention. The writ petition filed by the respondent is dismissed. It is open to the respondent to surrender to custody as was observed in Parasmal Rampuria's case (supra) and take such plea as is available in law. The reliance sought to be placed on the fate of proceedings taken against others is wholly inappropriate. The individual role, behavioral attitude and prognostic proposensthis have to be considered, person-wise, and no advantage can be allowed to be gained by the petitioners in these cases based on considerations said to have been made as to the role of the others and that too as a matter post detention exercise undertaken so far as they are concerned. The appeal is allowed. The order of the High Court is set aside and the writ petition filed before the High Court shall stand dismissed.

The conclusions in SLP(Crl.)No.3901/2003 shall be equally applicable to this case in view of the fact that the position in law is the same on the similar fact situation of this case as well, though the dates are different.

The appeal is allowed. The order of the High Court is set aside and the writ petition filed in the High Court shall stand dismissed.