Ram Niwas Gupta vs Union Of India And Ors. on 1 April, 1995

Equivalent citations: 1995IIAD(DELHI)330, 1995(32)DRJ282

JUDGMENT

Mohd. Shamim, J.

(1) The petitioner through the present writ petition seeks quashment of the detention order dated June 23,1994 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,1974 (hereinafter referred to as the Act for the sake of convenience) by the Administrator, National Capital Territory of Delhi.

(2) Brief facts which led to the present petition are as under: that while the petitioner was leaving for Dubai he was intercepted at the Indira Gandhi International Airport. His person and baggage were searched which resulted in the recovery of foreign currency (Rs. 5,45,718.90 in terms of Indian Rupee). The petitioner was forced and coerced to make voluntary statement under Sections 106/108 of the Customs Act. The petitioner was arrested on the aforesaid date. He moved two bail applications and the same were rejected on June 8,1994 and June 15,1994. Subsequently, the petitioner was detained under Section 3 of the Act though he was in judicial custody. The said detention order is illegal and invalid and is as such liable to be set aside, inter alia, on the following grounds.

(3) A friend of the petitioner made a representation on July 19,1994 on his behalf to the President of India where through he prayed for supply of certain documents and also prayed for revocation of the impugned detention order. The said representation was rejected on August 10,1994. Thus, the impugned detention order is liable to be quashed on the ground of inordinate delay in the disposal of the said representation.

(4) The petitioner then again submitted a representation dated August 19,1994 on August 20,1994 through his counsel to the Hon'ble Chairman, Advisory Board, Cofeposa, High Court of Delhi. The petitioner reiterated in the said representation the aforementioned prayer. The said representation was never considered by the detaining authority as the petitioner has not received any reply to the said representation so far. Thus, there is a clear violation of Article 22(5) of the Constitution of India.

(5) The instant case is a case of double detention inasmuch as the petitioner was already in judicial custody when the detention order in question was clamped on him. There was no prospect of his imminent release on bail since his bail application had already been rejected. Thus, the instant case is a case of non application of the mind on the part of the detaining authority.

(6) The petitioner submitted two representations dated June 30,1994 addressed to the detaining authority and the respondent No.1 through Jail Superintendent. The said representations were

rejected by the Central Government on July 12,1994 and by the detaining authority on July 13,1994 which shows long and undue delay in the disposal of the said representations. It thus rendered the detention order illegal and invalid.

(7) The petitioner yet made another representation to the President of India dated August 27,1994 which was dispatched under registered cover. It was received at the President Secretariat as is manifest from the acknowledgement received from the President House. It was received in the concerned Ministry on October 4,1994. The said representation was rejected on October 17,1994. There is no explanation from the side of the respondent for the undue delay in the disposal of the said representation. The said representation was not considered with promptitude it deserved since it was the question of a liberty of a citizen of this country. The impugned detention order is thus not sustainable in the eye of law and is liable to be quashed.

(8) The respondents through their counter affidavits sworn by Mr. M.U.Siddiqui, Deputy Secretary, Government of National Capital Territory of Delhi, and Mr.J.L.Sawhney, Under Secretary, Government of India, have controverted all the averments made by the petitioner in his petition. According to them, all the representations were duly considered expeditiously and at the earliest opportunity with due promptitude. The petition is false and frivolous. It is thus liable to be dismissed.

(9) Learned counsel for the petitioner Ms.Sangeeta has contended that there was an inordinate delay in the disposal of the representations submitted by the petitioner to various authorities at different times.She has in this connection laid much stress on the representation which was made to the President of India by one of the friends of the petitioner dated August 27,1994, dispatched on September17,1994 and rejected on October 17,1994.

(10) The next limb of the argument advanced by the learned counsel is that the instant case is a case of double detention. Admittedly, the petitioner was in judicial custody at the time when the impugned detention order was passed on June 23,1994 in connection with a case under the Customs Act. Thus, according to the learned counsel there was no compelling necessity for the passing of the impugned order as the petitioner was already behind the bar. Hence, he could have not indulged in the alleged smuggling activities prejudicial to the interest of the State. It thus goes a long way to show and prove that the detaining authority did not apply its mind to the facts of the present case and the impugned detention order was passed in a routine mechanical manner. It thus vitiates the subjective satisfaction of the detaining authority.

(11) Learned counsel for the respondents Ms.Meera Bhatia and Mr. H.J.S.Ahluwalia have urged to the contrary.

(12) I have heard the learned counsel for both the parties at sufficient length and have very carefully examined their rival contentions and have given my anxious thought thereto.

(13) It is a well established principle of law that whenever a representation is made by a detenu it has got to be considered by the detaining authority at the earliest opportunity expeditiously, with a

sense of urgency and promptitude. There should not be any delay on the part of the authorities in deciding a representation as it involves the question of liberty of an individual which is so dear and important to the framers of our Constitution. There is a mandate to that effect under Article 22(5) of the Constitution of India. I am tempted to reproduce the same to substantiate the above point."When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

(14) It is manifest from above, that the intention of the framers of the Constitution was not to brook any delay as and when there was a question with regard to the liberty of a citizen. The underlying idea behind the said mandate was that no person be deprived of his life or personal liberty except according to the procedure established by law. The Courts which are the custodian of the rights, life, liberty of a citizen have to keep a constant vigil whenever and wherever there is an attempt to encroach upon the rights of a citizen. The Hon'ble Supreme Court has in this connection echoed its concern time and again. I am tempted her to cite oft repeated observations of their Lordships of the Supreme Court as reported in ÿJayanarayan Sukul v.State of West Bengal,(1979(1) S.C.C.219), cited with approval later on by their Lordships of the Supreme Court in Mahesh Kumar Chauhan alias Bunty v. Union of India and others,(Crimes 1990(2)S.C. 472)....." The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities". Their Lordships further opined vide para 16 of the said judgment (supra)..." Inspite of the weighty pronoucements, of this Court making the legal position clear, it is still disquieting to note that on many occasions the appropriate authorities cause considerable delay in considering and disposing of representations and also exhibit culpable indifference in explaining such delay. We feel that in case the appropriate authority is unable to explain personally the delay at various stages, then it will be desirable - indeed appropriate - for the concerned authority or authorities at whose hands the delay has occurred to individually explain such delay".

(15) The same view was again given vent to in Aslam Ahmed Zahire Ahmed Shaik v.Union of India and Ors, (Jt 1989 (2) S.C.34) ..."Thus when it is emphasised and re-emphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution".

(16) With the above exordium let us now look into the facts of the present case and try to find out as to how far the petitioner has succeeded in substantiating his contention that there was an inordinate

delay, in the disposal of representation and the authorities concerned observed the requirements of Article 22(5) of the Constitution of India only in breach.

(17) The petitioner herein sent a representation dated August 27,1994 to the President of India on September 17,1994 as is crystal clear from the postal receipt. It was duly delivered at the President Secretariat, Rashtrapati Bhawan, as is manifest from the acknowledgement, (photocopy placed on record). Surprisingly enough there is no date underneath the signature of the officer which received the same. However, since it was dispatched from Delhi to the President of India, Rashtrapati Bhawan, New Delhi, it can safely be presumed with reasonable amount of certainty that it was received in the President Secretariat on the same day. Curiously enough it is alleged to have been received in the concerned Ministry on October 4,1994. Thus it took 17 days to travel from one department to the other department situated and located in the same city. There is no explanation whatsoever placed on record by way of counter affidavit by the Union of India why it took so much of time to reach the concerned Ministry. The counter affidavit filed by Union of India through Mr. J.L.Sawhney, Under Secretary, is conspicuously silent on this point.(Vide para 3 of the said affidavit).Shri Sawhney has further stated that the comments of the sponsoring authority were called on the same day i.e. October 4,1994 but the same were received on October 12,1994. Thus no explanation is forthcoming even on this point as to why and how the sponsoring authority took 8 days to furnish the comments. The representation as per para 3 of the counter affidavit aforementioned is alleged to have been placed before the Joint Secretary on October 13,1994 who is reported to have rejected the same on October 17,1994. No reason, whatsoever, has been mentioned as to under what circumstances the authorities took so much of time in disposing of the said representation.

(18) A matter very much akin to the case in hand came up before their Lordships of the Supreme Court as reported in Aslam Ahmed (supra) wherein it was observed ..."In our view, the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the Government which received the representation 11 days after it was handed over to the Jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible".

(19) In the above circumstances I conclude that the authorities concerned in the instant case did not deal with the representation with a sense of urgency and with due diligence and promptitude which it deserved. It has thus rendered nugatory the impugned detention order and it is liable to be set aside on this ground alone.

(20) There is yet another side of the picture. The impugned detention order was passed on June 23,1994 for a period of one year. The said detention order thus will automatically expire on June 23,1995. Thus, the petitioner has been in custody for more than nine months. Hence keeping in view this factor also the order of detention is liable to be quashed.

(21) I am fortified in my above view by the observations of their Lordships of the Supreme Court as reported in K.Satyanarayan Subudhi v. Union of India and others,.."We have also considered another aspect of the matter i.e. the detenu is under detention for over eight months and the order of detention is for a period of one year. Considering this aspect also along with the other aspect mentioned hereinbefore we think it just and proper to quash the order of detention and direct for the release of the detenu appellant forthwith provided he is not wanted by any other order....".

(22) It has next been contended by the learned counsel for the petitioner that the petitioner was in judicial custody on June 23,1994 in connection with a case under the Customs Act. He twice moved for release on bail, yet his bail applications were rejected on June 8,1994 and June 15,1994 by the Additional Chief Metropolitan Magistrate and the Additional Sessions Judge respectively, one after the other. Thus, there was no possibility of the release of the petitioner on bail. Hence it is inconceivable how the petitioner could have indulged in the smuggling activities prejudicial to the interest of the State. Thus there was no compelling necessity for the detaining authority to pass the impugned order of detention.The learned counsel has thus urged that the impugned order is liable to be quashed on this ground as well.

(23) The learned Public Prosecutor, Mr. H.J.S.Ahluwalia, on the other hand, has contended that it is a well settled principle of law that a valid detention order can be passed even when a person is in custody if the detaining authority is aware of the fact that the detenu is likely to be released on bail. Furthermore, if he is so released then there is every possibility that he would again indulge in smuggling activities prejudicial to the interest of the State.

(24) The above question came up for consideration before the Hon'ble Supreme Court as reported in ÿVeeramani v.State of Tamil Nadu, From the catena of decisions of this Court it is clear that even in the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of the reliable material that there is a possibility of his being released on bail and that on being so released, the detenu would in all probabilities indulge in prejudicial activities and if the authority passes an order after recording his satisfaction the same cannot be struck down".

(25) It is thus manifest from above, that there is no such law that a person who is in custody cannot be detained and a detention order cannot be passed against him. However, a duty has been cast on the shoulders of the detaining authority to satisfy itself before passing the impugned order : (a) that the man is in custody; (b) he is likely to be released on bail in case he moves the bail application; and (c) there is every apprehension that in case he is so released on bail he is likely to indulge over again in the smuggling activities prejudicial to the interest of the State.

(26) A perusal of the grounds of detention dated June 23,1994 reveals that the detaining authority was fully aware of the fact that the petitioner was in judicial custody (vide para 4 of the petition). It was also aware of the fat that the petitioner moved bail applications and the same were rejected (vide para 6). However, keeping in view of the past record detailed in para 7 of the grounds of detention which reveals that the petitioner during the period from October 20,1992 to May 28,1994 has visited the foreign countries i.e. Hong Kong and Dubai as many as 21 times. So there was every

apprehension in the mind of the detaining authority that in case the petitioner was released on bail he would indulgee in the smuggling activities. The petitioner was detained under an offence of the Customs Act which is punishable with imprisonment for a period of three years only, as argued and conceded by the learned counsel for the petitioner, Ms. Sangeeta. Thus, There is nothing wrong if the detaining authority thought that there was every possibility of the petitioner being released on bail in case he approached the court over again despite the fact that his bail application was rejected twice. I am tempted here to cite in extenso from para 8 of the grounds of detention in order to substantiate ny point. It is in the following words:"The Lt.Governor of the National Capital Territory of Delhi is aware that you are in judicial custody. You are likely to file bail application and hence there is imminent possibility that you will come out on bail. If you come out on bail, you are likely to indulge in smuggling activities in future. Keeping in view your modus operandi to smuggle goods coupled with your frequent visits abroad, the Lt.Governor of National Capital Territory of Delhi is satisfied that unless prevented you will continue to indulge yourself in prejudicial activities once you are released ..... You are in judicial custody,still the Lt. Governor of the National Capital Territory of Delhi is satisfied that it is necessary to detain you under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,1974 with a view to preventing you from smuggling goods and also preventing you from engaging in transporting, concealing and keeping smuggled goods, in future".

(27) Thus it is a well settled principle of law that a detention order can be passed even against a person who is already in custody if the detaining authority arrives at subjective satisfaction considering the facts and circumstances of a particular case that the detenu is likely to be released on bail and on being so released he is likely to indulge in the smuggling activities over again.

(28) To the same effect is the view given vent to by their Lordships of the Supreme Court as reported in Sanjeev Kumar Aggarwal v.Union of India & Others,(JT 1990(2) S.C. 62)..." as already held in the instant case the detaining authority was not only aware that the detenu was in jail but also noted the circumstances on the basis of which he was satisfied that the detenu was likely to come out on bail and continue to engage himself in the smuggling of goods. Therfore, the detention was not ordered on the mere ground that he is likely to be released on bail but on the ground that the detaining authority was satisfied that the detenu was likely to indulge in the same activities if released on bail.....".

(29) In the circumstances stated above the petitioner is entitled to succeed. The petition is allowed. The detention order dated June 23,1994 is hereby quashed. The petitioner be set at liberty at once in case he is not required to be detained in any other case.