

Sh. Rajesh Gulati vs Lt. Governor Of Nct Of Delhi on 8 May, 2002

Equivalent citations: 99(2002)DLT124

JUDGMENT

Khan, J.

1. Petitioner was arrested on 5.7.2001 by custom officials at IGI Airport for allegedly having smuggled 42 mobile phones worth Rs. 4.50 lacs or so. He moved several bail applications before ACMM and ASJ which were rejected till he was eventually granted bail by this court by order dated 29.10.2001. But before he could come out on bail, he was detained by order dated 28.9.2001. He was supplied grounds of detention and the list of relied upon documents. He made a representation dated 17.10.2001 against his detention and requested for revocation of his detention order or alternatively for supply of some documents/material. His representation was rejected. He made a representation again on 29.10.2001 which also met the same fate by order dated 18.11.2001. His detention was eventually confirmed for 12 months by order dated 8.11.2001.

2. Petitioner has filed this petition to challenge his detention on a variety of grounds. His first plea is that his detention was unjustified as there was no prospect of his being bailed out as was evident from rejection of his bail applications on various dates. Support for this is drawn from the judgment in *Amritlal v. Union Government* (2001) 4 LRI 727.

3. Petitioner also alleges that relevant material was withheld from the detaining authority and was not placed before him. He refers to statements of employees of M/s. B.D. Denim in this regard with whom he was linked by customs authority and which according to him were exculpatory in nature and his retraction statement dated 10.7.2001 and pre-charge evidence before ACMM and which, if placed before the detaining authority, would have influenced his mind and decision one way or the other. He also claims that he had dispatched his retraction statement to the sponsoring authority from jail but that authority had failed to place it before the detaining authority which would vitiate the detention. Reliance in this regard is placed by the his counsel on *Ayya alias Ayub v. State of U.P.* AIR 1989 SC 365, *Shri Ram Goyal v. Union of India* 1984 CrL.L.J.1048 and *Smt. Manjulaben Mulchand Shah v. The Union of India* 1985 (1) Crimes 897 to show that withholding of the relevant material by the sponsoring authority resulted in non-application of mind by the detaining authority and would vitiate the detention.

4. Petitioner also claims that detaining authority had failed to supply him some documents like statements of three employees of M/s. B.D. Denim, valuation report and guidelines for passing of order under COFEPOSA and that his representation in this regard was not duly considered and unjustifiably rejected which would vitiate the detention. Reference in this regard is made to *Mohd. Zakir v. Delhi Administration* *Vinod Kumar Arora v. The Administrator, Union Territory of Delhi*

1984 CrL.J. 1344.

5. Petitioner's last grievance is that he was supplied some illegible documents which had handicapped him in making his representation against his detention infringing his right under Article 226.

6. Respondent has refuted all this in the counter affidavit filed by Deputy Secretary (Home) G.L. Meena. It is submitted in this that detaining authority had considered all bail applications of petitioner which were rejected by ACMM and ASJ and had also taken in regard likelihood of bail being granted in such cases and then deemed it necessary to pass the detention order. It is denied that any relevant material was suppressed or withheld from the detaining authority. The statements of three employees of M/s. B.D. Denim were neither relied upon nor referred to by the detaining authority in passing the detention order and as such the question of withholding these documents or supplying copies of these to petitioner did not arise. The retraction allegedly dated 10.7.2001 was also not received by the Government or by the sponsoring authority but the retraction made by the petitioner before ACMM was placed before the detaining authority and considered. It is refuted that petitioner was prevented from making an effective representation against his detention or that relevant documents were not supplied to him.

7. State counsel Ms. Mukta Gupta has justified the detention order and claimed that it was passed on due consideration and application of mind on the basis of the material linking petitioner to smuggling activities. She submitted that since statements of three employees of M/s. B.D. Denim or any pre-charge evidence before ACMM was not relied upon by the Detaining Authority, copies thereof were not required to be supplied to petitioner.

Taking the first plea first, we find no substance in it any way. Whether or not a detention was warranted in the circumstances of a case falls in the domain of Detaining Authority and is to be decided by him. The detenu has no role in the matter and can't assert his own view in the matter. He may question it alright but to show that detention order was passed on wholly irrelevant considerations or had no nexus with the object of detention in which case it was for the court to feel satisfied whether the necessity for such detention existed or prevailed. It does not appeal to us to contend that there was no justification for detention order because petitioner's bail applications were rejected from time to time. Because rejection of bail applications does not hold good for all times to come. Nor can any provision of law be cited to show that there was a bar to grant of bail obviating the necessity for detention. Therefore, the bail may be refused at one time and granted on consideration of new circumstances subsequently. The grant or refusal of bail in either case can't operate as a bar against the passing of a detention order, nor could it constitute a circumstance to show non-existence of any necessity to pass such order.

8. We have gone through the Supreme Court judgment in Amritlal's case but we have not found any such proposition laid down in that. The court in that case had found likelihood of the detenu being released on bail missing from the grounds of detention and had faulted the detention for that. But that was not the position in the present case wherein detaining authority had specifically taken a stand that there was a likelihood of petitioner being released on bail which, in fact, was granted to

him on 29.10.2001 by this court. Therefore, Supreme Court judgment in Amritlal's case was of no help to the petitioner.

9. We are also not impressed by Mr. Bagai's submission that there was any suppression or withholding of material documents by the sponsoring authority. He has referred to alleged exculpatory statements of three employees of M/s. B.D. Denim and pre-charge evidence before ACMM in this regard. Respondent had replied to this explaining that detaining authority had neither referred nor relied upon these and, therefore, the question of withholding or suppressing these had no consequence whatever for the detention.

10. It goes without saying that suppression or withholding of relevant material would vitiate a detention where it is shown that this would have affected the decision of the detaining authority in passing the detention order either way. In other words, withholding or suppressed material should be such which could have some impact on passing of the detention order. It must constitute at least one of the pillars on which detention order could be passed. But if the detention order could be passed and could survive despite such withheld or suppressed material and where the detaining authority had drawn satisfaction from some other material, it would not vitiate the detention. The position on this stands capsuled by the Supreme Court in A. Sowkath Ali v. Union of India (2002) 7 SCC 148 holding thus:-

"The sponsoring authority should place all the relevant documents before the detaining authority. It should not withhold any such document based on its own opinion. All documents, which are relevant, which have bearing on the issue, which are likely to affect the mind of the detaining authority should be placed before it. Of course a document which has no link with the issue cannot be construed as relevant."

11. Mr. Bagai's reliance in this regard on Ayub v. State of U.P. or for that matter Mrs. Manjula Mulchand Shah's cases is wide off the mark. In all the cases the emphasis was on relevant and basic material which was not placed before the detaining authority exposing the order to charge of non-application of mind. In Ayub's case, Supreme Court said: -

"There would be vitiation of the detention on grounds of non-application of mind if a piece of evidence, which was relevant though not binding, had not been considered at all. If a piece of evidence which might reasonably have affected the decision whether or not to pass an order of detention is excluded from consideration, there would be a failure of application of mind which, in turn, vitiates the detention. The detaining authority might very well have come to the same conclusion after considering this material, but in the facts of the case the omission to consider the material assumes materiality."

12. All this makes clear that it is not that any or every material withheld or suppressed be that irrelevant or immaterial also which would have the consequence of invalidating a detention or would reflect the non-application of mind by the detaining authority. The alleged withheld/suppressed material must be such as was likely to affect the decision of the authority one

way or the other.

13. This apart, in the present case, R-1 denies that petitioner's retraction was received by the Government or the sponsoring authority at all. The question of placing it before the detaining authority would not arise. Even if it was so placed, it would have still remained to be seen whether this and even the alleged exculpatory statements of three employees would have any likely impact on the satisfaction and decision of the detaining authority, whose detention order was otherwise based on the available material and when petitioner's retraction statement before ACMM was already considered by the Authority.

14. Mr. Bagai has relied upon judgment of this court in Ram Goyal's case 1984 CrL.J. 1048 to suggest that precharge evidence was necessarily to be laid before the Detaining Authority and that its omission would vitiate the detention. But we have not come across any such proposition being laid down in this judgment which though invalidates the detention for withholding of some material in the facts and circumstances of that case. It does not lay down any general proposition that sponsoring authority in such a case was bound to place pre-charge evidence recorded in the trial court before the detaining authority or that such Authority could not pass any order without such evidence. Nor was any other judgment holding so brought to our notice.

15. There is no dispute that non-supply of relied upon documents vitiates the detention. This is not, however, in the case of referred to documents which are to be supplied on demand and for which a detenu had to show prejudice caused to him by non-supply to get the order invalidated. It is also well-settled that non-consideration of representation was fatal for detention and so was the unreasonable and unexplained delay in its disposal. But even so, petitioner's allegation in this regard fall short of requirement.

16. We have checked up the official record only to find out that petitioner's representation was duly considered though its communication order does not record reasons for this. His complaint about supply of illegible documents is also believed by official record as he had endorsed under his own signatures that he had received all legible documents including the disputed ones. Apart from that, it is not difficult to gather the substance of the photocopies of alleged illegible documents placed before us. Therefore, it can't be said that these few documents, even if treated illegible, would have come in the way of petitioner in making an effective representation and infringed his right of making such representation.

For all this, we find no merit in this petition which is dismissed.