

Pritam Nath Hoon

Vs

Union of India and Others

Writ Petition No. 2193 of 1980

(V. R. Krishna Iyer, A. D. Koshal JJ)

11.09.1980

JUDGMENT

KRISHNA IYER, J. –

1. I agree with the reasons, observations and holding of my learned Brother in his judgment on behalf of both of us. A brief supplement of my own, for reasons which will be apparent, may not be out of place and so I append my separate, concurring opinion.

2. The law of liberty is often the battle for principles of procedural protection; but 'great principles seldom escape working injustice in particular things'. And when an anti-social element gets away with it, society is the victim of injustice. This grim comment is inevitable in the case before us where the petitioner has been detained without trial and seeks to free himself on the score of breach of basic requirements. My learned Brother has explained how the violation, on the strength of the ruling of this Court, vitiates the detention. Under our legal system, precedents bind and so, here we obey them and direct release of the detenu. Even so, the facts of the case strongly savour of an economic offender intercepted in his subterranean silver operations and betrayed by his collaborator. Nevertheless, the law is equal and hard cases cannot make bad law. That is why the petitioner must succeed. And, maybe, he has some convincing case if given an effective opportunity to explain. Who Knows ?

3. What surprises me, however, is the executive's strange indifference to compliance with law's requirements despite this Court's pronouncements. This has resulted in the release of one who, the State alleges, is a master strategist of smuggling exploits at the expense of the national economy. If there be truth in that imputation, - it is not for me to express any view, especially since a prosecution may be launched - who but the concerned authorities are to blame ? Had the functionaries entrusted with the drastic detention power been careful enough to update their procedures in keeping with the strict directives laid down by this Court the prospect of criminal adventurists continuing their precious metal traffic could have been pre-empted constitutionally by successful preventive detention. Had the rulings of this Court, from time to time, in the precious area of personal liberty versus preventive detention, been converted into pragmatic 'instructions' by a special cell the law would have fulfilled itself and served the nation with social justice. It is an imperative of social justice through State action that white collar robbers, dubiously respectable and professionally ingenious, reap the wages of their sins, viz., preventive detention and prompt prosecution, both according to law. Here, by not supplying promptly copies of the incriminating materials by an indifferent authority a detention is being judicially demolished. And prosecution of a serious offence is enjoying an occult spell of gestation because of official slow motion. Whether this Court's insistence on the need to explain every day of delay in serving copies of every document on the

detenu, is too tall an order in an atmosphere of habitual institutional paper-logging and hibernating is too late to ask. The judicial process - if one may self-critically lament - is itself not model of perfection in promptitude of disposal and may well sympathise with laggards elsewhere. But personal liberty, constitutionally sanctified, is too dear a value to admit of relaxation. And preventive detention being no substitute for prosecution, the criminal law stands stultified by the State itself if a charge is not laid before court with utmost speed and the crime is not punished with deserving severity. The rule of law has many unsuspected enemies, and remember, limping legal process as well as slumbering executive echelons are contributory to social injustice.

4. I make these separate observations in the fond hope that an effective courier between the court and the Administration will function so that every ruling of the higher courts is promptly reflected in imperative instructions to concerned officers so that obviable errors do not fatally flaw otherwise justifiable executive actions. What impels me to write this brief note is the restless thought that law is no glittering abstraction in the books but translation of legislation into corrective action. Surely, judged by actualities, judicial and administrative justicing, have many 'promises to keep'.

Koshal, J. - The prayer made in this petition under Article 32 of the Constitution of India is that the petitioner who has been detained in pursuance of an order dated May 29, 1980 issued by the Government of Maharashtra in exercise of the powers conferred on it by clause (a) of Section 5 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act') shall be immediately released from custody which, according to him, is illegal.

6. The arrest of the petitioner in pursuance of the order above-mentioned was effected on June 4, 1980, when a communication addressed to him and signed by the Under-Secretary to the Government of Maharashtra, Home Department, was delivered to him. That communication contained the grounds on the basis of which the petitioner's detention had been ordered. A resume of those grounds appears below :

(a) On February 3, 1980 the petitioner went to the airport at Bombay and tried to have a bag cleared at the customs counter with the object of smuggling 19 silver bars having a total weight of 17.5 kgs out of the country through one U. C. Sajindran. The attempt was foiled by reason of the vigilance of the customs officer concerned.

(b) On February 4, 1980, 92 silver bars weighing 85 kgs in all and valued at Rs. 2,65,600.00 were recovered from the residence of the petitioner being flat No. 9, Nawroji Mansion, 31, Woodhouse Road, Colaba, Bombay by the customs authorities. These bars were also meant for being smuggled out of the country.

7. On June 6, 1980 the petitioner, while a custody, demanded from the Under-Secretary above-mentioned, through a letter of that date, all relevant "material/statements/documents" to enable him to make an effective representation against his detention. The letter evoked no response till July 3, 1980 before which he received a communication dated June 20, 1980 from the Secretary to the Advisory Board constituted under the Act informing him that if he wanted to make a representation against his detention he must do so "immediately". The petitioner waited for the documents he had asked for and ultimately on July 3, 1980 he sent his representation to the Secretary of the Advisory Board and simultaneously repeated his request for the supply of documents, etc. to the Under-Secretary above-mentioned. It was on July 11, 1980 that copies of the documents forming the evidence in support of the grounds of detention were furnished to the petitioner.

8. The sole contention urged in support of the petition is that the petitioner was not given any effective opportunity to make a representation against his detention inasmuch as the documents above-mentioned were not supplied to him in time. The contention is sought to be countered by an explanation for the delay be reason of which the documents could not be supplied to him till July 11, 1980. That explanation is contained in two affidavits, one sworn by C. R. Mulherkar, Deputy Secretary to the Government of Maharashtra, Home Department, and the other by Shri S. G. Rege, Assistant Collector of Customs, Rummaging and Intelligence and COFEPOSA Cell, Bombay. According to Shri Mulherkar, the explanation for the delay is as follows :

I say that the letter, dated June 6, 1980 asking for the copies of the statement and documents was received in the Home Department on June 10, 1980. As the original statements and documents, after they were considered by Smt. Malati Tambay-Vaidya, were taken back by the customs authority for further investigation, by letter, dated June 12, 1980, the letter dated June 6, 1980 was forwarded to the Assistant Collector of Customs for necessary remarks. By letter dated June 24, 1980, Assistant Collector of Customs forwarded the copies of statements and documents running into 31 pages. On June 24, and June 25, 1980, the Mantralaya was closed due to the sad demise of Shri Sanjay Gandhi and Shri V. V. Giri respectively. The said copies were, therefore, received in the Home Department on June 26, 1980. I say June 28 and 29, 1980 were holidays being 4th Saturday and Sunday respectively. The papers were forwarded to Smt. Malati Tambay-Vaidya through proper channel on July 2, 1980 and she passed the order on July 3, 1980. The copies of statements and documents were forwarded to the detenu on July 4, 1980, which were received in the Nasik Central Prison, Nasik, on July 7, 1980, and the same were handed over to the detenu on July 7, 1980 at the time of his transfer to the Bombay Central Prison for the court production purpose which was fixed on July 9, 1980. But the petitioner did not accept the same since he was in hurry to go to Bombay. However, the aforesaid documents were delivered to the petitioner on July 11, 1980 through Bombay Central Prison, Bombay. A copy of the report, dated July 23, 1980, received from the Superintendent, Nasik Road Central Prison, Nasik is annexed herewith. The reminder, dated July 3, 1980, sent by the petitioner was received in the Home Department on July 9, 1980. As the copies were already forwarded on July 4, 1980, no action was taken on the said reminder. I say the copies of statements and documents were supplied to the detenu with reasonable expedition.

9. The relevant portion of Shri Rege's affidavit may also be extracted :

I say the representation, dated June 6, 1980, which was forwarded by the Home Department on June 12 was received in my Department on June 13, 1980. The June 14, June 15 and June 22, 1980 were holidays being second Saturday, Sunday and Sunday respectively. I say the statements and documents were running into 31 pages. I further say during the same period my Department was busy in preparing remarks in respect of five other representation received from the COFEPOSA detenues :-

(1) Shri Mahendra Choraria (See (1980) 4 SCC 531)

(2) Shri Pravin Kapur

(3) Shri Bekal Moldddeen

(4) Shri Giridharlal Soni

(5) Shri A. S. Rana

I say in respect of the representation of Mr. Choraria my Department was required to prepare copies of the statements and documents running into 89 pages. In view of this heavy pressure of work, my Department sent the copies of statements and documents on June 24, 1980. As the Mantralaya was closed on June 24 and June 25 due to the sad demise of Shri Sanjay Gandhi and Shri V. V. Giri respectively, the same were forwarded to the Home Department on June 26, 1980.

10. The two affidavits, taken together show that in between the receipt by the Home Department of the letter dated June 6, 1980 containing a demand by the petitioner for the supply of copies of documents, and such supply, there was a gap of 32 days (June 10 to July 11, 1980). And it was during this gap that the petitioner submitted his representation unaided by those documents, which he did on July 3, 1980, in response to the letter issued to him by the Secretary of the Advisory Board and requiring him to submit his representation "immediately". The period of 32 days could very well have been cut short considerably if the authorities concerned had acted with promptitude. It would be seen that not even an attempt has been made to explain as to why no attention was paid to the demand for the supply of the copies on June 10, 11, 12, 26, 27 and 30 and July 1, 1980. On all these dates the file was lying unattended in the Home Department. We also cannot appreciate the procedure adopted by the Home Department in asking the Assistant Collector of Customs to send his "necessary remarks". For one thing, all the documents should have been taken away by the Assistant Collector of Customs, their copies should have been retained in the Home Department for being furnished to the detenu on demand. Secondly, there was no impediment in the way of the Home Department requiring, through its letter dated June 12, 1980, the Assistant Collector of Customs to furnish the copies direct to the detenu at the Nasik Central Prison, Nasik. Thirdly, the reason for the delay of 4 days from July 7 to July 11, 1980 cannot be accepted at its face value. The petitioner was in custody at the Nasik Prison and there was no question of his being "in a hurry to go to Bombay" and it appears that the documents were really withheld from the petitioner right up to July 11, 1980 for reasons best known to the authorities. As it is, the manner in which the demand for the copies was shuttled from officer to officer and a period of no less than 13 days was taken by the Assistant Collector of Customs to prepare and despatch the copies renders the explanation anything but satisfactory.

11. In the situation above detailed learned counsel for the respondents contended that the petitioner had been supplied with copies of the panchnamas prepared at the time of the seizure of the bag on February 3, 1980 and of the recovery of silver from his house on the next day and that the two panchnamas gave the petitioner full notice of the case against him and furnished all the material which he needed to make his representation. The contention is wholly without force inasmuch as numerous statements which were recorded on the two occasions when the goods were seized, including those of U. C. Sajindran, the customs officer at the airport counter and the petitioner himself, were admittedly recorded by the concerned authorities and formed an important part of the material on which the grounds of detention were based. It was, therefore, incumbent on the detaining authority to supply copies of those statements to the petitioner to enable him to make an effective representation and that is what was actually done on July 11, 1980 although it was too late then to be of any real use to the petitioner who had already submitted his representation.

12. It is now settled law that the detaining authority is bound to give opportunity to the detenu to make a representation against his detention and also to consider the same as early as possible and

that any unreasonable delay in furnishing to the detenu copies of documents which form the basis of the grounds of detention amounts to denial to him of such opportunity (vide Ramchandra A. Kamat v. Union of India ((1980) 2 SCC 270 : 1980 SCC (Cri) 415)). And it goes without saying that such denial of opportunity makes the detention itself illegal. That precisely is the situation which obtains in the present case and the petitioner is, therefore, entitled to be released forthwith.

13. Before parting with this judgment we might impress upon the respondents the necessity of chalking out for themselves a procedure which ensures speedy and effective disposal of demands for documents forming the basis of the grounds of detention orders passed in future. The best course would be for the detaining authority to retain copies of all such documents while passing the order of detention itself and to make them available to the detenu as soon as a demand therefor is made and without addressing others on the subject. If the adoption of such a course be not feasible the next best thing would be for the detaining authority to forward the requisition for copies of documents to the officer having their custody with a direction that the latter shall with all convenient speed despatch the copies direct to the detenu at the place of his detention. It may further be desirable for directions to be issued to all authorities to whom the custody of the detenus is entrusted that they shall make available to the detenu concerned all the documents received in that behalf as soon as such documents reach those authorities.

14. For the reasons stated we accept the petition, declare the detention of the petitioner to be illegal and direct his immediate release from custody.

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