

Tusher Govindji Shah

Vs

Union of India and Others

Writ Petition (Criminal) No. 1639 of 1984

(Syed M. Fazal Ali, A. Varadarajan JJ)

25.01.1985

JUDGMENT

VARADARAJAN, J. -

1. We dismissed this writ petition on January 18, 1985, after hearing the learned counsel for the petition, for reasons to follow. We now give our reasons.
2. This habeas corpus petition under Article 32 of the Constitution had been filed by the petitioner Tusher Govindji Shah on behalf of Bakshih Sigh who is under detention from March 23, 1984 under an order dated January 11, 1984 made by the Government of Maharashtra under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The detenu is now lodged in the Central Jail, Nasik. The grounds of detention were supplied to the detenu at the time of his arrest on March 23, 1984. In the note, directed by the Detaining Authority to be treated as part of the order of detention, it is stated that the detenu is one of the principal conspirators in the conspiracy to smuggle hashish into India from Pakistan and to smuggle it out of India. Pursuant to the conspiracy he had arranged to acquire hashish of Pakistani origin through his associates and received \$ 25,000 from one James Martin O'Dea during August 1983 for renting a godown, purchasing black-boards and cutting them, making tin tanks and stacks of black-boards etc. for concealing the hashish therein in order to export it out of India as black-board under a shipping bill in the names of M/s Universal Traders, a firm controlled by him. Accordingly, he got the godown of M/s Mulji Wood Products (P) Ltd. and purchased wood blocks from that firm and some other firm and got four tin tanks made, obtained delivery thereof through one Om Prakash Rana and for them fixed in the cut black-board stacks. Hashish weighing 946 kgs, was recovered from two such stacks which had been packed and strapped and kept in the godown. The detenu received a draft for \$ 10,000 from James Martin O'Dea on or about October 12, 1983 and deposited it in the account of M/s Universal Traders and withdrew Rs. 90,000 from that account through one Indrapal Singh for the expenses of the smuggling operation. On October 15, 1983 he instructed Nand Lal and Joginder Singh alias Tiger to receive truck No. RSK 8632 in which 20 packets of hashish, weighing 800 kgs. were concealed and to take the truck to the godown for unloading the hashish. But when he finally came to the godown with the watchman of that godown on that day at about 3 p.m. he saw the hashish in the godown and the truck being seized by officers and made good his escape and is absconding since then. For these reasons, it is stated that the Government considered it necessary to detain him under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to prevent him from smuggling hashish and engaging in transport, selling and keeping smuggled hashish.
3. Miss Rani Jethmalani appearing for the petitioner placed four points before us in the course of her

arguments. They are :

(1) The Detaining Authority was completely unaware of the fact that the detenu had obtained anticipatory bail from the Punjab and Haryana High Court from October 1983 and the anticipatory bail had been extended up to January 13, 1984 and that the Detaining Authority had inaccurately stated in the order of detention that the detenu was absconding.

(2) Principles of natural justice had not been complied with when the matter was heard by the Advisory Board, in that the detenu was prevented from making his representation in his own language Punjabi and his request for the assistance of a friend was refused.

(3) The Detaining Authority has not considered that the statements of the co-accused Gerald Shea and James Martin O'Dea had been retracted by them, and

(4) The activity alleged against the detenu has no nexus with the object sought to be achieved by the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

4. Miss Rani Jethmalani contended that for the above reasons the detention of the detenu is invalid in law.

5. In regard to the first point it has to be noted that criminal cases had been registered in the court in the State of Maharashtra, whereas the anticipatory bail orders had been obtained by the detenu from the Punjab and Haryana High Court at Chandigarh from October 1983 and they had been extended upto January 13, 1984. The Superintendent, Directorate of Revenue Intelligence, Zonal Unit, Bombay has stated in his affidavit dated October 17, 1984 produced in this case that after the incident of October 15, 1983 in which the hashish from the godown and the truck were recovered by the officers of the Department, the detenu disappeared from Bombay and could not be traced inspite of efforts at his known addresses and that no copy of any anticipatory bail application was reserved on the Department and, therefore, the Department was not in a position to know the averments made by the detenu in those applications. It is the petitioner's case that the officers of the Department were present in the court when the bail applications were moved. There is no satisfactory material to hold that the Detaining Authority was aware of the detenu having been grant anticipatory bail by the Punjab and Haryana High Court at Chandigarh. The learned counsel for the petitioner invited our attention in this connection to a decision of the Assam High Court in Dilip Kumar Rajkhowa v. District Magistrate, Nowgong (AIR 1981 Gau 81). That was the case in which it had been found that the grounds of detention were illusory which is not the case in regard to the present grounds. The decision does not, therefore, help the petitioner. We do not see how the fact that the Detaining Authority was not aware of the fact that the detenu had obtained anticipatory bail from the Punjab and Haryana High Court would vitiate the order of detention. The detenu was as much at large after he had obtained anticipatory bail from that High Court as he was before the incident in which large quantity of hashish of Pakistani origin was recovered on October 15, 1983 and he was admittedly absconding after October 15, 1983 through he had retracted from that statement at a very late stage. Therefore, there was need for the Detaining Authority to detain him under the provisions of the Act for preventing him from further indulging in smuggling activities. We are, therefore, of the opinion that there is no substance in this first point.

6. Regarding the second point it has to be noted that the Secretary of the Advisory Board has in his affidavit dated October 17, 1984 produced in this case, denied that the officers of the Department were present in the hall where the detenu was heard by the Advisory Board. He has also denied that the detenu made any request for his case being represented by his friend who was not a lawyer and that the detenu requested the Advisory Board to be heard in Punjabi. We accept this statement of the Secretary of the Advisory Board who is a responsible officer and hold that the detenu did not make these two requests before the Advisory Board and that there was no non-compliance with any principle of natural justice when the matter of his detention was examined by the Advisory Board. In this connection the learned counsel for the petitioner invited our attention to the decision in Nand Lal Bajaj v. State of Punjab ((1982) 1 SCR 718 : (1981) 4 SCC 327 : 1981 SCC (Cri) 841 : 1981 Cri LJ 1501) which arose out of a detention under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. In that case Advisory board was assisted by a Public Prosecutor, two Attorneys, a District Legal Advisor and a Legal Assistant but the prayer of the detenu for assistance of a lawyer made in writing was refused by the Advisory Board and it has been held that confirmation of the detention under Section 12 of that Act when the entire report of the Advisory Board was not the State Government vitiated the detention and the refusal by the Board of the detenu's request for assistance for a lawyer amounts to arbitrariness and unreasonableness offending Articles 14 and 21 of the Constitution and the detention was bad even for that reason. That decision would not apply to the facts of the present case where it is not the contention of the petitioner that the Advisory Board had the assistance of any lawyer or attorney when the matter of the detention of the detenu was examined and any request of the detenu for assistance by a lawyer was refused. As stated earlier there was no request at all by the detenu for assistance by any friend who is not a lawyer when the matter of his detention came to be considered by the Advisory Board. This decision does not, therefore, help the detenu in this case. There is no merit in the second point.

7. There is no merit in the third point either for it is seen from Paragraphs 59 and 60 of the grounds of detention that the Detaining Authority was aware of James Martin O'Dea and Gerald Shea retracting their statements.

8. We do not agree with the petitioner's learned counsel that prevention of smuggling of hashish for which the detenu had been detained under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 has no nexus with the object sought to be achieved by that Act. The questions of smuggling and foreign exchange are very much involved in the act of smuggling of hashish pursuant to the conspiracy of which the detenu is alleged to be the principal conspirator and they have direct nexus with the object sought to be achieved by the provisions of that Act. The hashish has been smuggled from Pakistan and was intended to be smuggled out of India evidently in exchange for foreign currency or foreign goods. Therefore, we find that the object with which the detenu has been detained has direct nexus with the object sought to be achieved by the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

9. No other point was revised by the learned counsel for the petitioner. The writ petition is, therefore, dismissed.

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