

T. A. Abdul Rahman

Vs

State of Kerala and Others

Criminal Appeal No. 318 of 1989

(S. R. Pandian, B. C. Ray JJ)

23.08.1989

JUDGMENT

PANDIAN, J. –

1. This appeal under Article 136 of the Constitution of India is preferred by the appellant, Abdul Rahman questioning the validity and correctness of the order of detention passed by the first respondent on October 7, 1987, in exercise of the powers conferred by Sections 3(1)(iii) and 3(1)(iv) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974) (hereinafter referred to as the 'Act') whereby detaining the appellant's brother Sri T. A. Sirajudeen @ Siraj (the detenu herein) with a view to preventing the detenu from engaging in transporting or concealing or keeping smuggled gold or dealing in smuggled gold otherwise than by engaging in transporting or concealing or keeping smuggled gold.

2. Though the impugned order was passed on October, 7, 1987, the detenu was arrested on January 18, 1988 and detained in the Central Prison, Trivandrum from January 19, 1988 onwards. The detenu was furnished with copies of the grounds of detention and other connected material documents on January 21, 1988. The detenu made a representation to the third respondent praying for revocation of the detention order on January 25, 1988 which was rejected on April 11, 1988. Meanwhile on February 11, 1988 a declaration by the third respondent under Section 9(1) of the Act was made, whereby the detenu was ordered to be detained for a continued detention for a further period of 6 months over one year. The first respondent made a reference under Section 8 of the Act on May 5, 1988 to the Advisory Board which was reported that there is in its opinion sufficient cause for the detention of the detenu. The material facts which necessitated the passing of the detention order can be briefly stated thus :

On November 30, 1986, Superintendent of Central Excise, Manjer Range and party searched the permanent residence of the detenu in his presence which did not result in the seizure of any contraband goods or the recovery of any incriminating documents. But on questioning by the officer, the detenu confessed that he had buried eleven gold biscuits in the backyard of his house. He dug up the spot and produced the eleven gold biscuits which were kept concealed under the ground. Each of the gold biscuits was found wrapped in black carbon paper bearing foreign marking and weighting 10 tolas each with the purity of 24 carats. The total weight of the eleven gold biscuits was 1282.600 gms., the market value of which as on that date was Rs. 3,14,237. The contraband goods were seized under a mahazar. On November 30, 1986 a statement was recorded from the detenu by the Superintendent of the Central Excise under Section 108 of the Customs Act in which the detenu had

given a detailed note of his involvement in the smuggling activities. On December 9, 1986 also the Superintendent of Central Excise searched the residence of the detenu in the reasonable belief that there was concealment of more smuggled gold in the said house. During this search, the detenu pointed out to the Superintendent one packet which had been placed in the thatched roofing of his house. The Superintendent took out the packet and it was found containing four gold ingots bearing foreign markings weighing 466.400 gms, with 24 carat purity, all to the value of Rs. 1,14,268. The detaining authority taking into consideration of the seizure effected on two occasions and the statement of the detenu admitting his involvement in the prejudicial activities mentioned in the grounds of detention reached its subjective satisfaction of the necessity of passing the impugned order and passed the same on October 7, 1987. The appellant filed a writ petition under Article 226 of the Constitution of India for quashing the impugned order of detention, but was not successful. Hence this appeal.

3. Of the several grounds urged in the special leave petition, the learned counsel appearing on behalf of the appellant stressed only the following two contentions seeking to set aside the order of detention.

(1) As there is no proximity in time to provide a rational nexus between the alleged prejudicial activity, that is the seizure of the gold biscuits on November 30, 1986 and the passing of the impugned order of detention after 11 months i.e., on October 7, 1987 and as there is no reasonable and satisfactory explanation given by the first respondent for this undue and unreasonable delay, the order is liable to be quashed on the ground that the credible chain between the grounds of the alleged criminal activities and the purpose of detention is snapped. Further the unreasonable and unexplained delay between the date of the order of detention on October, 7, 1987 and the date of arrest of the detenu after a lapse of 3 months on January 18, 1988 throws considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a an inference that there was no real and genuine subjective satisfaction as regards the necessity to detain the detenu with a view to preventing him from acting in prejudicial manner.

(2) The representation submitted by the detenu to the third respondent on January 25, 1988 challenging the impugned order clamped upon him had been disposed of by a delay of 72 days i.e., on April 11, 1988 and this long and avoidable delay vitiates the order of detention as being violative of Article 22(5) of the Constitution of India.

4. We shall now deal with the first contention which is referred under ground Nos. 2 and 3 of the grounds in the special leave petition which read thus :

"For that the High Court ought to have seen that the petitioner was detained on the basis of an alleged solitary incident occurred on November 30, 1986 and the detention order was passed after lapse of 11 months i.e. on October 7, 1987, and the petitioner was arrested and detained on January 19, 1988."

"For that the High Court ought to have seen that there was no proximity between the alleged incident and subsequent detention. The time factor has not been considered by the detaining authority and he has mechanically passed the detention order

without paying any attention to the loose grounds and quicksands in the reports of the sponsoring officer."

5. The above two contentions are sought to be answered by the first respondent in his counter stating that the investigating officer had to question a number of person and to conduct extensive search of various premises in different places in connection with the information gathered during interrogation and the Superintendent issued summons to the brothers of the detenu, namely, Haneefa and Abdul Rahman for appearance on March 10, 1987 and March 3, 1987 respectively, but Abdul Rahman was absconding and that on February 10, 1987, statement of C. K. Madhavan referred to in the statement of the detenu was recorded and on May 18, 1987 show cause notices were issued to persons connected with this case and immediately after completion of the investigation the customs authorities sponsored the proposal for detention of the detenu by their letter dated August 26, 1987 and that the proposal was screened by the Screening Committee on September 11, 1987 and thereafter the detention order was passed on October 7, 1987.

6. Coming to the delay in securing the detenu by arrest the explanation is given as follows :

"The detention order was forwarded to the Malappuram Superintendent of Police for its execution by letter dated October 9, 1987. The police executed the order on January 18, 1988. From the above facts it is clear that there is no delay in passing or executing the order of detention as alleged in the petition for special leave to appeal."

There is no denying the fact that the impugned order has been passed after lapse of 11 months from the date of seizure of the eleven gold biscuits from the back courtyard of the house of the detenu. As repeatedly pointed out by this Court that there is no hard and fast rule that merely because there is a time lag between the offending acts and the date of order of detention, the causal link must be taken to be snapped and the satisfaction reached by the detaining authority should be regarded as unreal, but it all depends upon the facts and circumstances of each case and the nature of the explanation offered by the detaining authority for the delay that had occurred in passing the order. There is a catena of decisions on this point, but we feel that it is not necessary to recapitulate all those decisions except a salient few. This Court in *Gora v. State of West Bengal* ((1975) 2 SCC 14 : 1975 SCC (Cri) 391 : (1975) 2 SCR 996) wherein there was a time lag of six months between the incident and the date of order of detention while answering a similar contention relied on the following passage from *Golam Hussain v. Commissioner of Police, Calcutta* ((1974) 4 SCC 530, 534 (para 5) : 1974 SCC (Cri) 566) :

"No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case."

and laid down the ratio of proximity as follows : (SSC p. 17, para 2)

"There is, therefore, no hard and fast rule that merely because there is a time lag of

about six months between the 'offending acts' and the date of the order of detention, the causal link must be taken to be broken and the satisfaction claimed to have been arrived at by the District Magistrate must be regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction must depend on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the 'offending acts' and the order of detention. It is a subsidiary test evolved by the court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu and its utility, therefore, lies only insofar as it subserves that purpose and it cannot be allowed to dominate or drown it. The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a part of an organised operation of a complex of agencies collaborating to clandestinely and secretly carry on such activities and in such case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely or secretly carried on by detenu and it is, therefore, necessary to detain him with a view to preventing him from indulging in such activities in the future."

7. In *Hemalata Kantilal Shah v. State of Maharashtra* ((1981) 4 SCC 647 : 1982 SCC (Cri) 16) this Court held : (SCC p. 655, para 16)

"Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily examined by the detaining authority."

8. See also *Sk. Serajul v. State of West Bengal* ((1975) 2 SCC 78 : 1975 SCC (Cri) 425), *Rekhaben Virendra Kapadia v. State of Gujarat* ((1979) 2 SCC 566 : 1979 SCC (Cri) 543 : (1979) 2 SCR 257), *Harneek Singh v. State of Punjab* ((1982) 1 SCC 116 : 1982 SCC (Cri) 121), *Shiv Ratan Makim v. Union of India* ((1986) 1 SCC 404 : 1986 SCC (Cri) 74), *Smt. K. Aruna Kumari v. Government of Andhra Pradesh* ((1988) 1 SCC 296 : 1988 SCC (Cri) 116) and *Rajendrakumar Natvarlal Shah v. State of Gujarat* ((1988) 3 SCC 153 : 1988 SCC (Cri) 575).

9. In a recent decision in *Yogendra Murari v. State of U. P.* ((1988) 4 SCC 559 : 1988 SCC (Cri) 992), this Court has reiterated the earlier view consistently taken by this Court observing : (SCC p. 563, para 6)

"... it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay.... It is necessary to consider the circumstances in each individual case to find out whether the delay has been satisfactorily explained or not."

10. The conspectus of the above decisions can be summarised thus : The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can

be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.

12. In the light of the above proposition of law, we shall now examine the first contention which has been raised for the first time before this Court. From the reading of the counter-affidavit filed on behalf of the first respondent, it is seen that the detaining authority has attempted to explain the laxity that has occasioned in passing the impugned order, but miserably failed in explaining the delay of three months in securing the arrest of the detenu from the date of the passing of the order, and keeps stunned silence on that score. The learned counsel appearing for the first respondent when queried by this Court whether he could give any reason for this undue delay in arresting the detenu on January 18, 1988 in pursuance of the impugned order of detention made on October 7, 1987, has frankly admitted that he could not do so - rightly so in our view - in the absence of any explanation in the counter-affidavit. The Superintendent of Police, Malapurram to whom the detention order was forwarded for execution has not filed any supporting affidavit explaining the delay in securing the arrest of the detenu. Under these circumstances, we hold that leaving apart the question of delay in passing the order of detention from the date of the seizure of the gold, the fact remains that the detaining authority has failed to explain the long delay in securing the arrest of the detenu after three months from the date of the passing of the detention order and this non-explanation in our view throws a considerable doubt on the genuineness of the subjective satisfaction of the detaining authority vitiating the validity of the order of detention.

13. The next contention stressed by the learned counsel for the appellant is with regard to the delay of 72 days in the disposal of the representation made by the appellant to the third respondent on January 25, 1988. This contention is raised in ground Nos. 8 and 9 of the grounds in the special leave petition. This is resisted by the third respondent in paragraph 8 of his counter stating that a representation dated February 2, 1988 was received in the COFEPOSA section of Ministry of Finance on February 16, 1988 with a letter dated February 5, 1988 from the Government of Kerala; that as certain information was not available with the Central Government, the Collector of Customs, was asked to get a copy of the representation from the State Government and to send his comments; that Collector of Customs, informed the Central Government by a telex message dated March 1, 1988 which was received in the COFEPOSA section of March 8, 1988 informing that the representation was not available with the Home Department; that thereafter a copy of the representation was forwarded to the Collector of Customs by post on March 8, 1988; that the comments of Collector were received back on March 28, 1988; that then the representation along with the comments were placed before the Joint Secretary, COFEPOSA section on March 30, 1988, who forwarded the same to the Minister of State for Revenue on the same day and on April 4, 1988

the Minister of State forwarded his comments to the Finance Minister who considered and rejected the representation on April 8, 1988. According to the third respondent, the representation was considered expeditiously and as such there is no violation of Article 22(5) of the Constitution of India.

14. The learned counsel for the appellant has explained that the representation was submitted originally on January 25, 1988, but was got back and resubmitted on February 2, 1988. According to him, it is surprising that the said representation was received by the third respondent only February 16, 1988 after a considerable delay of two weeks and thenceforth there was a considerable delay from February 16, 1988 to March 28, 1988 in receiving the comments of the Collector of Customs, and again there was a delay of seven days in forwarding the representation to the Minister of State for Revenue with the comments of the Joint Secretary, COFEPOSA section. The long interval in receipt of the representation and the comments of the Collector of Customs, Cochin indicate the causal and indifferent attitude displayed by the authorities concerned dealing with the representation.

15. In our opinion, the manner in which the representation has been dealt with reveals a sorry of affairs in the matter of consideration of the representation made by the detenu. Further we fail to understand why such a long delay from February 16, 1988 to March 28, 1988 had occasioned in getting the comments from the Collector of Customs. The only futile explanation now offered by the third respondent is that this delay had occasioned because the Collector of Customs was not able to get a copy of the representation from the Home Department, Kerala and thereafter the Collector got a copy of the representation on being forwarded by the third respondent on March 8, 1988. Even then there is a delay of 20 days in getting the comments of the Collector and that delay is not at all explained.

16 This Court in *Rama Dhondu Borade v. V. K. Saraf, Commissioner of Police* ((1989) 3 SCC 173 : 1989 SCC (Cri) 520 : (1989) 1 Scale 22) after referring to various decisions, has observed thus : (SCC pp. 179-80, paras 19 and 20)

"The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation with reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty - the highly cherished right - which is enshrined in Article 21 of the Constitution.

... What is reasonable dispatch depends on the facts and circumstances of each case and no hard fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

17. Bearing in mind the above principle when we approach the facts of the present case, we are of

the firm view that the representation of the detenu has not been given prompt and expeditious consideration, and was allowed to lie without being properly attended to. The explanation now offered by the third respondent that the delay has occurred in seeking the comments of the Collector of Customs etc. is not a convincing and acceptable explanation. In our view the delay of 72 days in the absence of satisfactory explanation is too long a period for ignoring the indolence on the part of the concerned authority. Hence we hold that the unexplained delay in disposal of the representation of the detenu is violative of Article 22(5) of the Constitution of India, rendering the order of detention invalid.

18. For all the above mentioned reasons, we allow this criminal appeal by setting aside the judgment of the High Court, quash the impugned order of detention and direct the detenu to be set at liberty forthwith.

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