Kubic Darusz

Vs

Union of India and Others

Writ Petition (Criminal) No. 359 of 1989

(B.C. Ray, K. N. Saikia JJ)

18.01.1990

JUDGMENT

K. N. SAIKIA, J. -

1. Mr. Kubic Darusz, a Polish national, holding a Polish passport arriving Calcutta by air from Singapore via Bangkok was arrested on April 29, 1989 under Section 104 of the Customs Act, by the officers of the Customs Department attached to Calcutta Airport, on the ground that he was carrying in his possession foreign gold weighing about 70 tolas. On April 30, 1989, he was produced before the Chief Judicial Magistrate, Barasat who remanded him to jail custody till May 15, 1989. He was interrogated by Intelligence Officer when he made, corrected and signed his statement in English. His application for bail was rejected by the Chief Judicial Magistrate. While still in custody, he was served with the impugned detention order dated May 16, 1989 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as 'the COFEPOSA', along with the grounds of detention. On May 24, 1989 he was granted bail by the Calcutta High Court but the same could not be availed of because of the detention order which is now being challenged in this petition.

2. The detention order was passed with a view to preventing the detenu from smuggling goods; and it stated that the detaining authority, namely, the Additional Secretary to the Government of India in the Department of Revenue. Ministry of Finance, was satisfied that the detenu was likely to smuggle goods into and through Calcutta Airport which was an area highly vulnerable to smuggling as defined in Explanation 1 to Section 9(1) of the COFEPOSA. In the grounds of detention it was stated, inter alia, that arriving at Calcutta by Thai Airways the detenu opted from the Green Channel mean for the passengers not having any dutiable and/or prohibited goods for customs clearance and proceeded towards the exit gate; that he declared that he did not have any gold with him, but on search 7 gold bars weighing 70 tolas valued approximately at Rs. 2,71,728 deftly concealed between the inner soles of the left and right sports shoes in specially made cavities were recovered; that in his voluntary statement before the customs officer he admitted the recovery; that he had been able to learn English as he was with some English people during the period of 2nd Kedardham Expedition or Kedarnath Dham Expedition in the year 1987 and he was also learning English when he was in France in the year 1985; that scrutiny of his passport revealed that he visited Delhi on February 6, 1989 and February 21, 1989, Trichi on April 22, 1989 and Calcutta on April 29, 1989; that he admitted to have been in India in 1986, 1987 and 1988; and that on chemical tests the sample was found to be containing 99.9 per cent of gold.

3. Mr. Shankar Ghosh, the learned counsel for the petitioner assails the detention order primarily on two grounds, namely, that the detenu knew only the Polish language and did not know English

wherefore he was unable to read and be informed of the grounds of detention given in English and he was not given the ground of detention in a language understood by him so as to enable him to defend himself; and that the representation submitted by him was not considered, acted upon or replied to at all by detaining authority wherefore the detention order was liable to be quashed as violative of Article 22(5) of the Constitution of India.

4. Mr. V. C. Mahajan, the learned counsel for the respondents emphatically refutes the first ground submitting that the detenu was conversant with the English language as would appear from the answer to the questions put to him in course of interrogation by the intelligence authorities and this was clearly stated in the grounds of detention, and consequently, there arose no question of his being furnished with the grounds of detention in Polish and not in English language. Refuting the second submission Mr. Mahajan submits that the so-called representation dated June 13, 1989 addressed to the Chairman, Central Advisory Board, COFEPOSA through the Superintendent, Central Jail, Dum Dum, Calcutta was duty sent to and received by the Chairman and the detenu appeared before the Advisory Board which, after hearing the detenu, found sufficient cause for his detention and there was, therefore, no question of the representation being separately dealt with by the Central Government. Besides, Mr. Mahajan submits, had the detaining authority accepted the statement that the detenu did not know English, they would have been in a trap. Counsel would also submit that the so-called representation dated June 13, 1989 was not a representation to the appropriate government against the detention and could not be treated as such.

5. Taking up the first submission, we find that Article 22(5) of the Constitution of India provides that 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. It is settled law that the communication of the grounds which is required by the earlier part of the clause is for the purpose of enabling the detenu to make a representation, the right to which is guaranteed by the latter of the clause. A communication in this context, must, therefore, mean imparting to the detenu sufficient and effective knowledge of the facts and circumstances on which the order of detention is passed, that is, of the prejudicial acts which the authorities attribute to him. Such a communication would be there when it is made in a language understood by the detenu, as was held in Harikisan v. State of Maharashtra (1962 Supp 2 SCR 918 : AIR 1962 SC 911 : (1962) 1 Cri LJ 797) In Razia Umar Bakshi v. Union of India (1980 Supp SCC 195 : 1980 SCC (Cri) 846 : (1980) 3 SCR 1398) Fazal Ali, J. held that the service of the grounds of detention on the detenu was a very precious constitutional right and where the grounds were couched in a language which was not known to the detenu, unless the contents of the grounds were fully explained and translated to the detenu, it would tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex facie. In Nainmal Partap Mal Shah v. Union of India ((1980) 4 SCC 427 : 1980 SCC (Cri) 987 : AIR 1980 SC 2129) the detenu stated that he did not know the English language and, therefore, could not understand the grounds of detention, nor he was given a copy of the grounds duly translated in vernacular language. In the counter-affidavit the detaining authority suggested that as the detenu had signed a number of documents in English, it must be presumed that the was fully conversant with English. Rejecting the contention it was held by this Court that merely because he may have signed some documents, it could not be presumed, in absence of cogent material, that he had working knowledge of English and under those circumstances there had been clear violation of the constitutional provisions of Article 22(5) so as to vitiate the order of detention. Thus what was considered necessary was a working knowledge of English or full explanation or translation. In Surjeet Singh v. Union of India ((1981) 2 SCC 359 : 1981 SCC (Cri) 535 : AIR 1981 SC 1153) the petitioner, being served the detention order and the

grounds in English, contended that English was not a language which he understood and that this factor rendered it necessary for the grounds of detention to be served on him in Hindi which was his mother tongue and that the same having not been done, there was in law no communication of such grounds to him; and it was held that under those facts and circumstances it had not been shown that the petitioner had the opportunity which the law contemplated in his favour of making an effective representation against his detention, which was, therefore, illegal and liable to be set aside.

6. Where it is stated that the detaining authority explained the grounds of detention to the detenu, court insists on adequate proof in the absence of any translation being furnished. Thus in Lallubhai Jogibhai Patel v. Union of India ((1981) 2 SCC 427 : 1981 SCC (Cri) 463) the detenu did not know English but the grounds of detention were drawn in English and the detaining authority in affidavit stated that the Police Inspector while serving the grounds of detention fully explained the grounds in Gujarati to the detenu. Admittedly, no translation of the grounds of detention into Gujarati was given to the detenu. It was held that there was no sufficient compliance with the mandate of Article 22(5) of the Constitution which required that the grounds of detention must be communicated to the detenu. "Communicate" is a strong word. It requires that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a purposeful and effective representation. If the grounds are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. This follows from the decisions in Harikisan v. State of Maharashtra (1962) Supp 2 SCR 918 : AIR 1962 SC 911 : (1962) 1 Cri LJ 797) and Hadibandhu Das v. District Magistratr ((1969) 1 SCR 227 : AIR 1969 SC 43 1969 Cri LJ 274).

7. Mr. Ghosh relies on the decision in Ibrahim Ahmad Batti v. State of Gujarat ((1982) 3 SCC 440 : 1983 SCC (Cri) 66 : (1983) 1 SCR 540), wherein the detenu the detenu under the COFEPOSA was a Pakistani national to whom the detention order and the grounds of detention were served in English and he contended that as did not know English and the grounds of detention and the documents relied on were not furnished in Urdu within the statutory period the detention was bad. Urdu translation of all the documents and statements referred to in the grounds for reaching the subjective satisfaction had not been supplied to the detenu in time and translations of quite a few of such documents and statements had not been supplied at all. The petitioner's mother tongue seemed to be Urdu and he had a little knowledge of English figures. It was evident that the petitioner knew English figures, understood English words written in capital letters and was also conversant with talking in Hindi and Gujarati and therefore it was argued for the detaining authority that the non-supply of Urdu translation of the documents could not be said to have caused prejudice to the petitioner in the matter of making representation against his detention. This Court held that the Explanation was hardly satisfactory and could not condone the non-supply of Urdu translation of those documents. In that case with the assistance of counsel of either side the court had gone through many of those documents and statements and for the court it was not possible to say that most of them were statements of accused containing figures in English with English words written in capital letters. A large number of documents were in Hindi and Gujarati and were material documents which had obviously influenced the mind of the detaining authority in arriving at the subjective satisfaction and those were all in a script or language not understood by the detenu and, therefore, it was held that the non-supply of Urdu translation of those documents had clearly prejudiced the petitioner's right against his detention and hence the safeguards contained in Article 22(5) was clearly violated.

8. In the instant case the basis of the statement that the detenu did not know English is his

representation dated June 13, 1989, that is, nearly one months after his detention. An English rendering of the representation is found at page 75 of the writ petition which is attested to have fully corresponded to its original in Polish language. It is signed by the detenu and is addressed to the Chairman, Central Advisory Board (COFEPOSA), High Court of Delhi, through the Superintendent, Central Jail, Dum Dum, Calcutta. It reads :

> "Ref. : Govt. of India, Finance Department and Revenue Department Order No. F. No. 673/322/89-CUS-VIII dated May 16, 1989
>
> Sub : Representation against my detention under COFEPOSA Respected Chairman,
>
> 1. I am a Polish national.
>
> 2. I do not know any other language except Polish language.
>
> 3. I cannot speak, write and read English language and do not know small English letters.
>
> 4. I know how to write my name in block letters.
>
> 5. I have received all the documents concerning the abovementioned case in English language and for the fact that I do not know that language the documents were so complicated for me to understand.
>
> 6. In view of the above facts, I kindly request your goodself to provide me with the order of detention together with the grounds of detention in my language (Polish language) so that I can effectively present my defence."

9. While it is the settled law that the detention order, the grounds of detention and the documents referred to and relied on are to be communicated to the detenu in a language understood by him so that he could make effective representation against his detention, the question arises as to whether the courts have necessarily to accept what is stated by the detenu or is it permissible for the court to consider the facts and circumstances of the case so as to have a reasonable view as to the detenu's knowledge of the language in which the ground of detention were served. Particularly in a case where the detenu is a foreign national. If the detenu's statement is to be accepted as correct under all circumstances it would be incumbent on the part of the detaining authority in each such case to furnish the grounds of detention in the mother tongue of the detenu which may involve some delay or difficulty under peculiar circumstances of a case. On the other hand if it is permissible to ascertain whether the statement of the detenu in this regard was correct or not it would involve a subjective determination. It would, of course, always be safer course in such cases to furnish translations in the detenu's own language. We are of the view that it would be open for the court to consider the facts and the circumstances of a case to reasonably ascertain whether the detenu is feigning ignorance of the language or he has such working knowledge as to understand the grounds of detention and the contents of the documents furnished.

10. In the instant case we find that when the detention order and the grounds of detention were served the detenu received them and acknowledged the receipt thereof, as it appears from the records, putting his signature in English. He did not complain that the grounds of detention were not understood by him. On the other hand in the very grounds of detention it was stated that in course of interrogation he answered the questions in English including the questions as to how he happened to

learn English. The gist of his answers in this regard was also given in the grounds of detention. We have perused the statements and find that those contained number of informations peculiar to the detenu himself which could not have been communicated by him to the interrogators unless he knew the English language. We also find that in several places he corrected the statements putting appropriate English words and signing the corrections. While the detention order was passed on May 16, 1989 his representation was admittedly dated only June 13, 1989. In the meantime bail petitions were moved on his behalf before the Chief Judicial Magistrate and the High Court. There is nothing to show that he did not give instructions to his counsel. After all, the detenu is not required to write an essay or pass any language test. A working knowledge of English enabling him to understand the grounds would be enough for making a representation. He could very well send his representation in the language known by him.

11. In Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala, Venilal D. Mehta, his daughter Miss Pragna Mehta and son Bharat Mehta were detained under the COFEPOSA by an order dated June 19, 1984 and the detention order was challenged in this Court under Article 32 of the Constitution of India. They were alleged to have been in possession of 60 gold biscuits of foreign origin. After their arrest the father and his daughter were taken to the Central Excise and Customs Department, Cochin where statements on their behalf were written in English by the daughter. The father Venilal D. Mehta put his signature in English as Balvant Shah but the daughter told the officers concerned that the correct name of her father was Venilal Mehta. In the writ petition it was the case of the father that he could not understand, read, speak or write English but could only sign his name in English. He was served with the grounds of detention in English language on June 20, 1984. A Hindi translation of the grounds of detention was served on June 30, 1984. On May 27, 1984 the father made a representation in Gujarati to the detaining authority praying that he was unable to read and write either in English or Hindi or Malayalam and the grounds of detention may be given to him duly translated in Gujarati. In court it was contended that the order and grounds should have been communicated to the detenu in the language or languages they understood and Venilal Mehta understood nothing except Gujarati. He did not understand English or Hindi or Malayalam. The Hindi translation was admittedly furnished beyond a period of 5 days and no exceptional circumstances were stated to exist. Following Harikisan v. State of Maharashtra (1962 Supp 2 SCR 918 : AIR 1962 SC 911 : (1962) 1 Cri LJ 797) and considering the definite case of Venilal Mehta this Court observed that the facts revealed that the detenu Venilal Mehta was constantly in the company of his daughter as well as son and both of them knew English very well. The father signed a document in Gujarati which was written in English and which was his mercy petition in which he completely accepted the guilt of the involvement in smuggling. The document contained a statement - "I myself am surprised to understand what prompted me to involve in such activity as dealing in imported gold." On those facts and circumstances this Court observed : (SCC p. 162, para 63)

> "There is no rule of law that common sense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly construed. Bearing this salutary principle in mind and having regard to the conduct of the detenu - Venilal Mehta specially in the mercy petition and other communications, the version of the detenu Venilal in feigning lack of any knowledge of English must be judged in the proper perspective. He was, however, in any event given by June 30, 1984 the Hindi translation of the grounds of which he claimed ignorance. The gist of the annexures which were give in Malayalam language had been stated in the grounds. That he does not know anything except Gujarati is merely the ipse dixit of

> Venilal Mehta and is not the last word and the court is not denuded of its powers to examine the truth. He goes to the extent that he signed the mercy petition not knowing the contents, nor understanding the same merely because his wife sent it through he was sixty years old and he was in business and he was writing at a time when he was under arrest, his room had been searched, gold biscuits had been recovered from him. Court is not the place where one can sell all tales. The detaining authority came to the conclusion that he knew both Hindi and English. It has been stated so in the affidavit filed on behalf of the respondent. We are of the opinion that the detenu Venilal Mehta was merely feigning ignorance of English."

12. After referring to the decisions in Hadibandhu Das v. District Magistrate, Cuttack ((1969) 1 SCR 227 : AIR 1969 SC 43 : 1969 Cri LJ 274), Nainmal Partap Mal Shah v. Union of India ((1980) 4 SCC 427 : 1980 SCC (Cri) 987 : AIR 1980 SC 2129), and Ibrahim v. State of Gujarat ((1982) 3 SCC 440 : 1983 SCC (Cri) 66 : (1983) 1 SCR 540) this Court in Prakash Chandra Mehta (1985 Supp SCC 144 : 1985 SCC (Cri) 332 : (1985) 3 SCR 697) rejected the contention that the grounds of detention were not communicated to Venilal Mehta in a language understood by him.

13. Considering facts and circumstances of the instant case and in view of the fact that no objection regarding non-communication of the grounds in a language understood by the detenu was made within the statutory period for furnishing the grounds and the fact that the representation was beyond the statutory period, almost a month after the grounds were served, along with the detenu's statements as to how he learnt English we have no hesitation in holding that the detenu understood the English language, had working knowledge of it and was feigning ignorance of it, and there was no violation of Article 22(5) of the Constitution on the ground of non-communication of the grounds of detention in a language understood by him. The first submission of the detenu has, therefore, to be rejected.

14. Coming to the second submission, in the representation dated June 13, 1989 the detenu clearly requested that he be provided with the order of detention together with grounds of detention in his language (Polish language) so that he could effectively present his defence. He called it a "representation" against his detention under COFEPOSA. Admittedly, this representation was not disposed of by the appropriate government and, indeed, has not been disposed of or acted upon till today. Mr. Mahajan submits that it having been addressed to the Chairman, Central Advisory Board it need not have been dealt with by the Central Government and it could not be regarded as representation at all and the government smarted out of the trap by not admitting that the detenu did not know English. We are not inclined to accept this submission. Admittedly the representation was sent though the Superintendent, Central Jail, Dum Dum, Calcutta. There was no scope to hold that what has been stated to be 'representation' was not representation at all inasmuch as it only requested for translated copies of the grounds of detention and the annexed documents in Polish language. Supply of translated copies would have surely not affected the detention order ipso facto. In Shalini Soni v. Union of India ((1980) 4 SCC 544 : 1981 SCC (Cri) 38 : AIR 1981 SC 431 : (1981) 1 SCR 962) it has been held that under Article 22(5) no pro forma for representation has been prescribed and a request for release of the detenu, therefore, has to be deemed a representation; so also a request to supply copies of documents etc. Opportunity to make a representation comprehends a request for supply of translated copies. Therefore, the detenu's 'representation' asking for copies of documents must be held to have amounted to a representation and it was mandatory on the part of the appropriate government to consider and act upon it at the earliest opportunity and failure to do so would be fatal to the detention order. There has been a catena of decisions of this Court that the representation of the detenu must be considered by the appropriate government and Article 22(5)

does not say which is the authority to whom representation shall be made or which authority shall consider it. But it is indisputable that the representation may be made by the detenu to the appropriate government and it is the appropriate government that has to consider the representation as was reiterated in John Martin v. State of West Bengal ((1975) 3 SCC 836 : 1975 SCC (Cri) 255 : AIR 1975 SC 775 : (1975) 3 SCR 211).

15. It is settled law that delay in disposing the representation when inordinate and unexplained the detention would be bad and the detenu must be ordered to be released forthwith. Chandroo Kundan Dass Pamnani v. Union of India (AIR 1980 SC 1123 : 1980 Cri LJ 804), Pabitra N. Rana v. Union of India ((1980) 2 SCC 338 : 1980 SCC (Cri) 450 : AIR 1980 SC 798), Saleh Mohammed v. Union of India ((1980) 4 scc 428 : 1980 SCC (Cri) 988 : AIR 1981 SC 111), Kamla Kanyalal Khushalani v. State of Maharashtra ((1980) 1 SCC 748 : 1981 SCC (Cri) 287) are some of the decisions setting this proposition of law.

16. In Rattan Singh v. State of Punjab ((1981) 4 SCC 481 : 1981 SCC (Cri) 853) it was held that Section 11(1) of the COFEPOSA confers upon the Central Government the power of revocation of an order of detention made by the State Government or its officer. That power, in order to be real and effective, must imply the right in a detenu to make a representation to the Central Government against the order of detention. The failure of the Jail Superintendent to either forward the representation to the government concerned or to have forwarded the same to the State Government with a request for their onward transmission to the Central Government in that case was held to have deprived the detenu of his valuable right to have his detention revoked by the government. The continued detention of the detenu was, therefore, held illegal and the detenu was set free. In the instant case though the representation was addressed to the Chairman, Central Advisory Board the same was forwarded by the Jail authorities and it must be taken to have been a representation to the appropriate government which was to consider it before placing it before the Advisory Board and the same having not been done Article 22(5) has to be held to have been violated.

17. In Kirit Kumar Chaman Lal Kundaliya v. Union of India ((1981) 2 SCC 436 : 1981 SCC (Cri) SCC (Cri) 471) a case under the COFEPOSA, where the order of detention was made by the Home Minister and the representation made by the detenu had been rejected not by the Home Minister but by the Secretary, this Court held that the representation had been rejected by an authority which had no jurisdiction at all to consider or pass any order on the representation of the detenu and that, therefore, rendered a continued detention of the petitioner void, following Santosh Anand case (Santosh Anand v. Union of India, (1981) SCC 420 : 1981 SCC (Cri) 456) where it was held that the representation was not rejected by the detaining authority and as such the constitutional safeguards under Article 22(5) could not be said to have been strictly observed or complied with. In B. Sundar Rao v. State of Orissa ((1972) 3 SCC 11 : 1972 SCC (Cri) 138) where the detention was under the Orissa Preventive Detention Act, 1970 and Sections 7 and 11 thereof conferred the right on the detenu to make representation and have it considered by appropriate authority it was held that such consideration was independent of any action of Advisory Board as there was necessity of government to form opinion and judgment before sending the case to the Advisory Board.

18. In Vimalchand Jawantraj Jain v. Pradhan ((1979) 4 SCC 401 : 1980 SCC (Cri) 4) it was held by this Court that under Article 22(5) independent of the reference to the Advisory Board, the detaining authority must consider the representation at the earliest and come to its own conclusion before confirming the detention order and consideration and rejection of the representation subsequent to report of the Advisory Board would not cure the defect. It was clearly held that it is no answer for the detaining authority to say that the representation of the detenu was sent by it to the Advisory

Board and the Advisory Board had considered the representation and then made a report in favour of detention. Even if the Advisory had made a report upholding the detention the appropriate government is not bound by such opinion and it may still, on considering the representation of the detenu and keeping in view all facts and circumstances relating to the case, come to its own decision whether to confirm the order of detention or to release the detenu; as in that case there was nothing to show that the government considered the representation before making the order confirming the detention. The constitutional obligation under Article 22(5) was not complied with. In the instant case there was no consideration before and even after the Advisory Board considered the case of the detenu. It cannot therefore, be said that the representation was disposed of in accordance with law.

19. Mr. Ghosh faintly submits on merits of the case that a single instance of possessing 70 tolas of gold bars was not enough to genuinely satisfy the detaining authorities to resort to preventive detention of the petitioner who is a Polish national and not resident in India. It is true that the detention order was passed with a view to preventing the detenu from repeating smuggling activities. That the detenu in the particular act indulged in smuggling could not of course be denied. It is stated in the counter that the detention of persons under the COFEPOSA serves two purposes : (1) to prevent the person concerned from engaging himself in an activity prejudicial to the conservation of foreign exchange and also preventing him from smuggling activities and thereby to render him immobile by the detaining authority so that during that period the society is protected from such prejudicial activities on the part of the detenu; and (2) to break the links between the persons so engaged and the source of such activity and from his associates engaged in that activity or to break the continuity of such prejudicial activities so that it would become difficult, if not impossible, for him to resume the activities. There is undoubtedly scope for interpreting that the above two purposes envisage continuous residence of the person engaged in smuggling and as such may be more readily applicable to a resident of the country. But such habitual smuggling activity may not have similarly been envisaged in respect of a foreign national who is not a resident of this country. The Customs Act itself makes appropriate provisions for adjudication, confiscation and punishment for smuggling and prevents possible repetition or recurrence.

20. Preventive detention of a foreign national who is not resident of the country involves an element of international law and human rights and the appropriate authorities ought not to be seen to have been oblivious of its international obligations in this regard. The Universal Declaration of Human Rights include the right to life, liberty and security of a person, freedom from arbitrary arrest and detention; the right to fair trial by an independent and impartial tribunal; and the right to presume to be an innocent man until proved guilty. When an act of preventive detention involves a foreign national, though from the national point of view the municipal law alone counts in its application and interpretation, it is generally a recognised principle in national legal system that in the event of doubt the national rule is to be interpreted in accordance with the State's international obligations as was pointed out by Krishna Iyer, J. in Jolly George Verghese v. Bank of Cochin ((1980) 2 SCC 360 : AIR 1980 SC 470). There is need for harmonisation whenever possible bearing in mind the spirit of the Covenants. In this context it may not be out of place to bear in mind that the fundamental rights guaranteed under our Constitution are in conforming line with those in the Declaration and the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights to which India has become a party by ratifying them. Crimen trahit personam. The crime carries the person. The commission of a crime gives the court of the place where it is committed jurisdiction over the person of the offender. Legal relations associated with the effecting of legal aid on criminal matters is governed in the international field either by the norms of multilateral international conventions relating to control of crime of an international character or by special treaties concerning legal cooperation. Smuggling may not be regarded as such a crime. The system of

extradition of criminals represents an act of legal assistance by one State (the requestee) to another State (the requestor) with the aim of carrying out a criminal prosecution, finding and arresting a suspected criminal in order to bring him to court or for executing the sentence. In concluding such convention the States base themselves on principles of humanitarianism in their efforts to contribute to the more effective achievement of the objectives of the correction and re-education of violators of the law. Where such conventions exist, the citizens of a State who were convicted to deprivation of freedom in another signatory State are in accordance with mutual agreement of the States, transferred to the country of which they are citizens to serve their sentences. The transfer of the convicted person may take place only after the verdict has entered into legal force and may be carried out on the initiative of either of the interested States. The punishment decided upon with regard to a convicted person is served on the basis of the verdict of the State in which he was convicted. On the strength of that verdict the competent court of the State of which the person is a citizen adopts a decision concerning its implementation and determines, in accordance with the law of its own State, the same period of deprivation of freedom as was assigned under the verdict. While such ameliorative practices may be available in case of a foreign national being criminally prosecuted, tried and punished, no such proceedings are perhaps possible when he is preventively detained. A preventive detention as was held in Rex v. Halliday 1917 AC 260 : 116 LT 417) "is not punitive but precautionary measure". The objective is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. No offence is proved, nor any charge is formulated; and the justification of such detention is suspicion or reasonable probability and there is no criminal conviction which can only be warranted by legal evidence. In this sense it is an anticipatory action. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. In case of punitive detention the person concerned is detained by way of punishment after being found guilty of wrongdoing where he has the fullest opportunity to defend himself, while preventive detention is not by way of punishment at all, but it is intended to prevent a person from indulging in any conduct injurious to the society. There may, therefore, be cases where while a citizen and resident of the country deserves preventive detention apart from criminal prosecution, in case of a foreign national not resident of the country he may not be justifiably subjected to preventive detention in the event of which no international legal assistance is possible unlike in case of criminal prosecution and punishment. Considering the facts and circumstances of the instant case, however, we find sufficient evidence of the detenu having visited this country though on earlier occasions he was not found to have been carrying on such smuggling activities. However, in view of out decision in the earlier submissions we do not express any opinion on this submission.

21. In the result we find force in the second submission and hold that continued detention of the detenu has been rendered illegal by nonconsideration of his representation by the appropriate government according to law resulting in violation of Article 22(5) of the Constitution; and he is to be set at liberty forthwith in this case.

22. Petition allowed.

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