

M. Mohamed Sulthan

Vs

Joint Secretary to Government of India, Finance Department and Others

Writ Petition (Criminal) No. 245 of 1990

(S. C. Agarwal, P. B. Sawant JJ)

21.09.1990

JUDGMENT

S. C. AGRAWAL, J. -

1. In this writ petition the petitioner is seeking to challenge the validity of his detention on the basis of order dated December 12, 1989 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'the Act'), by the Joint Secretary to the Government of India.
2. The petitioner arrived at Madras International Airport on September 30, 1989 as a passenger from Singapore by Singapore Airlines Flight No. SQ 410. He was travelling under passport No. G 035015 in the name of Mohamed Ali. While he was waiting for customs clearance he was intercepted by an Air Intelligence Officer on suspicion that he might carry gold or any other contraband goods. He was questioned and he admitted having kept concealed gold bars in his body and volunteered to eject the same through his rectum. He was taken to the gents' toilet situated in the arrival hall of the airport where he ejected two black colour adhesive tape bundles. On examination one bundle was found to contain 4 gold bars of 10 tolas each and the other bundle was found to contain 3 gold bars of 10 tolas each. All the gold bars were with foreign markings. The petitioner was not having any licence/permit issued by the Reserve Bank of India authorities for the import of gold and the seven gold bars were seized for action under Customs Act, 1962 read with Foreign Exchange Act, 1973.
3. The petitioner made a statement before the Customs Office on September 30, 1989 wherein he stated that he was a labourer earning Rs 25 as daily wages and his monthly income was about Rs 350 and since that income was not sufficient for maintenance, he intended to go to Singapore with a view to earn more money and obtained a loan of Rs 10,000 from one Shri Pitchamuthu of Nagapattinam and with that money he purchased a ticket and left for Singapore on September 23, 1989 by Singapore Airlines Flight and stayed in the Pallivasal and in Singapore he developed friendship with one Majeed who promised that he would bear the cost of the air ticket amounting to Rs 5200 and would also pay a sum of Rs 2000 to the petitioner provided he carried the gold bars and other goods to India and handed over the same to his son Abumawthootha, and that the petitioner agreed for the same and accordingly on September 30, 1989 Majeed gave him two black colour bundles containing gold bars and asked him to insert the same in his rectum and with the help of Majeed, the petitioner kept concealed the said two bundles in his rectum and landed at Madras Airport on September 30, 1989 with the gold bars kept secreted in his body and was intercepted by the Customs Officer and on questioning he admitted having kept concealed two bundles containing gold bars inside his body and volunteered to eject the same through his rectum

and that he was taken to a gents' toilet where he ejected two bundles from his rectum. The petitioner made further statement before the Customs Officer on October 1, 1989 wherein he stated that his real name is Mohamed Sulthan and that he had wrongly mentioned his name as Mohamed Ali in his earlier statement on September 30, 1989.

4. The petitioner was arrested on October 1, 1989 and was produced before the Additional Chief Metropolitan Magistrate, E.O.I. Egmore, Madras who remanded the petitioner to custody till October 12, 1989. The petitioner moved a bail application on October 1, 1989 and Additional Chief Metropolitan Magistrate released the petitioner on conditional bail on October 6, 1989 directing him to appear before the Assistant Collector of Customs Revenue Intelligence at 10 a.m. every day. On October 8, 1989 the petitioner sent a retraction letter stating that he had been falsely implicated and that he was being harassed by the Customs Officer and that his statements were not voluntary. The Assistant Collector, by his letter dated October 19/20, 1989 informed the petitioner that the allegations made in the retraction letter were baseless. In pursuance of the bail order the petitioner was released on October 16, 1989. On October 23, 1989 the petitioner made a further statement before the Customs Officer wherein he stated that he had taken a passport in his real name about 10 years ago and that the same was lost about 5 years ago and that he had taken another passport in the name of Mohamed Ali for travel to Singapore. On October 30, 1989 the counsel for the petitioner filed an application for relaxation of the conditions for his release on bail before the Additional Chief Metropolitan Magistrate and by order dated October 31, 1989 the Additional Chief Metropolitan Magistrate ordered relaxation of the said conditions.

5. On December 12, 1989 the order for the detention of the petitioner was passed wherein it is stated that the detaining authority was satisfied that it was necessary to make the said order for detention of the petitioner with a view to preventing him from smuggling goods. On January 8, 1990 the petitioner appeared before the Additional Chief Metropolitan Magistrate and filed an application praying for cancellation of the bail and Additional Chief Metropolitan Magistrate passed the order dated January 8, 1990 cancelling the order of bail and the petitioner was taken into custody. The order for detention was served on the petitioner in jail on January 12, 1990. The petitioner was also served with the grounds of detention dated December 12, 1989. The petitioner submitted a representation which was rejected by the Central Government vide Memorandum dated February 21, 1990. In the meanwhile the petitioner was informed on February 7, 1990 that a declaration under Section 9(1) of the Act dated January 31, 1990 has been made whereby the term of the detention of the petitioner had been extended from one year to two years. The matter of detention of the petitioner was placed before the Advisory Board constituted under the Act and on the basis of the recommendations of the Advisory Board order dated March 7, 1990 was passed by the Central Government confirming the detention order of the petitioner and ordering that he be detained for a period of one year from the date of his detention, i.e. July 12, 1990.

6. The first contention that has been urged by Shri Karthikeyan, the learned counsel for the petitioner, is that the detaining authority, while passing the order of detention, has failed to consider material documents, namely the application submitted by the petitioner before the Additional Chief Metropolitan Magistrate for relaxation of the conditions for his release on bail and the order dated October 31, 1989 passed by the Additional Chief Metropolitan Magistrate relaxing the conditions for the release of the petitioner on bail. As a corollary to the said submission it has been urged by the learned counsel that the petitioner was not supplied with the copies to these documents and that this has resulted in denial of the right of the petitioner to make a representation under Article 22(5) of the Constitution. In support of the aforesaid submission reliance has been placed on the decision of this Court in *M. Ahamedkutty v. Union of India* ((1990) 2 SCC 1 : 1990 SCC (Cri) 258). We find

no substance in this contention. The application submitted by the petitioner before the Additional Chief Metropolitan Magistrate for relaxing the conditions for his release on bail and the order dated October 31, 1989 passed by the Additional Chief Metropolitan Magistrate on the said application whereby the conditions on which the petitioner was released on bail were relaxed, cannot be regarded as material documents and the failure to produce the same before the detaining authority before it passed the order of detention would not vitiate the order of detention. In this connection reference may be made to the decision of this Court in *Haridas Amarchand Shah v. K.L. Verma* ((1989) 1 SCC 250 : 1989 SCC (Cri) 111). In that case also an application had been made for variation of the conditions of bail and the Chief Metropolitan Magistrate had passed an order varying the conditions of bail. That order passed by the Chief Metropolitan Magistrate varying the conditions of bail was not placed before the detaining authority and it was contended that as a result the subjective satisfaction of the detaining authority was vitiated and consequently the order of detention was bad. The said contention was rejected by the court on the view that the order varying the conditions of bail was not a relevant document and the failure to produce the same before the detaining authority did not vitiate the order of detention. In *M. Ahamedkutty v. Union of India* ((1990) 2 SCC 1 : 1990 SCC (Cri) 258) this Court has held that the bail application and the bail order passed by the Magistrate granting conditional bail were vital documents and if the same were not considered the satisfaction of the detaining authority itself would be impaired and if the same had been considered they would be documents relied on by the detaining authority which ought to have been supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. The decision in *Haridas Amarchand Shah v. K.L. Verma* ((1989) 1 SCC 250 : 1989 SCC (Cri) 111) was noticed by this Court and it was distinguished on the ground that in that case the application for bail and the order passed by the Metropolitan Magistrate varying the condition of bail were not vital and material documents inasmuch as the granting of bail by the Magistrate enabled the detenu to come out and carry on his business as before the variation of the conditions were not considered vital for the satisfaction as to need for detention. In the instance case the petitioner cannot derive any assistance from *M. Ahamedkutty* case ((1990) 2 SCC 1 : 1990 SCC (Cri) 258) because the order dated October 6, 1989 with regard to grant of bail subject to conditions has been duly considered by the detaining authority, as would be evident from the grounds of detention. The application for relaxation of the conditions of bail submitted by the petitioner and the order dated October 31, 1989 relaxing the conditions of bail passed by the Additional Chief Metropolitan Magistrate on the said application were not material documents and were not required to be considered by the detaining authority. The non-consideration of the same by the detaining authority would not therefore, impair the satisfaction arrived at by the detaining authority and would not vitiate the order of detention. For the same reason the non-supply of the copies of the same to the petitioner would not result in denial of the right of the petitioner to make a representation under Article 22(5) of the Constitution.

7. *Shri Karthikeyan* has next contended that there was no necessity to pass an order for the detention of the petitioner because except the solitary incident mentioned in the grounds of detention involving the recovery of seven gold bars from the person of the petitioner there is no reference in the grounds of detention to any antecedent activity involving smuggling of goods by the petitioner. It is urged that a single incident could not afford the basis for arriving at the satisfaction that the petitioner might repeat such acts in the future and it was necessary to detain him in order to prevent him from doing so. We are unable to agree with this contention. An order for preventive detention is founded on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. It must be of such a nature that an inference can reasonably be drawn from

it that the person concerned would be likely to repeat such acts as to warrant his detention. (Debu Mahto v. State of West Bengal ((1974) 4 SCC 135 : 1974 SCC (Cri) 274)). The question which, therefore, needs to be considered is whether from the past conduct of the petitioner as set out in the grounds of detention it could reasonably be inferred that the petitioner would be likely to repeat such acts in the future. From the grounds of detention it appears that on September 30, 1989 the petitioner arrived at Madras International Airport from Singapore and he was found carrying seven gold bars weighing 70 tolas in two bundles concealed in his body which were ejected by the petitioner through the rectum and the petitioner had travelled from Singapore to Madras on the basis of a passport issued in the name of Mohamed Ali s/o Madharsa Rowther resident of Nagapattinam though the real name of the petitioner is Mohamed Sulthan s/o Mohamed Sherif resident of Punganur. In the grounds of detention reference has been made to the statements dated September 30, 1989 and October 1, 1989, made by the petitioner before the Customs Officer wherein the petitioner had stated that his income was not adequate for his maintenance and in order to earn money he had gone to Singapore after obtaining a passport in a false name and at Singapore the petitioner developed friendship with one Majeed and on assurance given by Majeed that he would bear the cost of the air ticket of the petitioner amounting to Rs 5200 and would also pay to the petitioner a sum of Rs 2000 the petitioner agreed to carry gold bars and other goods and to hand over the same to the son of Majeed in India and accordingly the petitioner brought seven gold bars concealed in his body for the purpose of handing over the same to the son of Majeed. This would show that the petitioner was indulging in the activity of smuggling of gold as a carrier for monetary consideration. This was a deliberate act on the part of the petitioner and he had prepared himself for it by obtaining a passport in a false name and acquiring requisite skill to conceal such a large quantity of gold in his body. Taking into consideration the circumstances referred to above an inference could reasonably be drawn that unless detained the petitioner would be likely to indulge in smuggling of goods in future and, therefore, there was a reasonable basis for the detaining authority to arrive at the requisite satisfaction.

8. The next contention urged by the learned counsel for the petitioner is that the detention of the petitioner is bad in law on account of delay in the service of the order of detention inasmuch as although the order of detention was passed on December 12, 1989, it was served on the petitioner after one month on January 12, 1990. It has been submitted that during this period the petitioner was available for the service of the order and that since January 8, 1990, he was lodged in Central Prison, Madras where the order could have been served. From the counter-affidavit of Mahendra Prasad filed on behalf of respondents it appears that the detention order dated December 12, 1989 was handed over to the Government of Tamil Nadu for execution through the police authorities and that the detention order was sent to Thanjavur East District Police authorities through Deputy Inspector General (Intelligence) Madras. The order could not be executed on the petitioner by the police as he was not available at the known address. In the said counter-affidavit it is stated that when the petitioner surrendered himself in the court on January 8, 1990 the counsel concerned informed the Customs House Madras about the same vide his letter dated January 9, 1990 and the Customs House vide their letter dated January 9, 1990 informed Additional Secretary to the Government of Tamil Nadu, Public (SC) Department, Madras and also the Deputy Inspector General of Police (CID) Intelligence, Madras, requesting them to effect the service of detention order immediately on the petitioner at Central Prison Masers and thereupon the Deputy Inspector (CID) Intelligence, Madras by their crash message dated January 10, 1990 informed the Superintendent of Police, Thanjavur (East) to arrange to execute the detention order on the petitioner and on the receipt of the said intimation the District Police Superintendent reached Madras with the detention order and served the same on the petitioner on January 12, 1990 in the

presence of the jail authorities. This said explanation which has been offered by the respondents indicates that ever since the passing of the order of detention efforts were being made to execute the order on the petitioner but it could not be executed till November 8, 1989 because the petitioner was not available at his know address and the order was executed on November 12, 1989 soon after he surrendered on November 8, 1989. It cannot, therefore, be said that there was delay on the part of the authorities in the service of the detention order on the petitioner.

9. It has been further submitted by the learned counsel for the petitioner that there has been delay in consideration of the representation submitted by the petitioner. In this regard we find that in ground (j) of the writ petition the case set up by the petitioner is that he had made a representation to the Central Government against the order of detention on January 18, 1990 and till the filing of the writ petition on February 23, 1990 no orders had been passed on the same. In other words, the case set up by the petitioner in the writ petition was that the representation submitted by the petitioner on January 18, 1990, had not been considered till the filing of the writ petition on February 23, 1990. In the counter-affidavit of Mahendra Prasad filed on behalf of the respondents it has been stated that no representation dated January 18, 1990 was received from the petitioner, but a representation dated nil was forwarded by the Superintendent, Tamil Nadu Prison Department vide his letter dated January 23, 1990 and the same was received in the Ministry of Finance on January 30, 1990 and it was considered by the Central Government on February 20, 1990 and the memo rejecting the representation of the petitioner was issued on February 21, 1990. In view of the aforesaid reply filed on behalf of the respondents the learned counsel for the petitioner has argued that no explanation has been offered by the respondents for the period from January 30, 1990 to February 20, 1990 in the matter of consideration of the representation of the petitioner. Shri Datar has submitted that since the only allegation made by the petitioner in the writ petition was non-consideration of the representation submitted by the petitioner and no grievance was made with regard to delay in the consideration of the representation, this aspect has not been dealt with in the counter-affidavit and the facts with regard to consideration of the representation alone have been set out. Shri Datar has, however, pointed out that for the purpose of considering the representation the Central Government had to obtain the comments of the sponsoring authority on the said representation and that the sponsoring authority is at Madras and that the communication between the Central Government and the sponsoring authority is by post. It has been submitted by Shri Datar that after the receipt of the representation of the petitioner at Delhi on January 30, 1990 the Central Government forwarded the same by post to the sponsoring authority at Madras for its comments and the sponsoring authority sent its comments on the representation from Madras by post and on receipt of the said comments the representation was considered by the Central Government. Shri Datar has invited our attention to the counter-affidavit wherein in reply to the averments contained in para 1(viii) of the writ petition it is stated that parawise comments on the representation were furnished to the Ministry of February 12, 1990. According to Shri Datar the time taken by the Central Government to deal with the representation was from February 13 to February 20 only and during this period there were two holidays on February 17 and 18 (Saturday and Sunday). The submission of Shri Datar is that six days period for considering the representation cannot be said to be unduly long so as to invalidate the detention.

10. The grievance of the petitioner in the writ petition was that the representation dated January 18, 1990 of the petitioner had not been considered. In reply to the same in the counter-affidavit it is stated that the representation of the petitioner did not bear a date and that the same was considered on February 20, 1990 and vide Memo dated February 21, 1990 the petitioner was informed that the representation has been rejected. With regard to time taken in consideration of the said representation it is stated in the counter-affidavit that the representation was forwarded by the

Superintendent, Tamil Nadu Prison Department vide letter dated January 23, 1990 and it was received in the Ministry on January 30, 1990. From the counter-affidavit it appears that the comments of the sponsoring authority were obtained on the representation and the said comments were furnished to the Ministry on February 12, 1990. This would show that time up to January 30, 1990 was taken in communicating the representation from the jail at Madras to the Central Government at Delhi and the period from January 30, 1990 to February 12, 1990 was spent in obtaining the comments of the sponsoring authority on the representation. Keeping in view the fact that communication between the jail authorities and the sponsoring authority who are at Madras and the Central Government at Delhi is through post and delay in postal delivery is not uncommon the period up to January 30, 1990 covering the time taken in communication the representation to the Central Government and the period from January 30, 1990 to February 12, 1990 covering the time taken in obtaining the comments of the sponsoring authority has to be excluded and the time that was taken by the Central Government for considering the representation was from February 13, 1990 to February 20, 1990. During this period there were holidays (Saturday and Sunday) on February 17 and 18, 1990. Thus the time actually taken by the Central Government in considering the representation was six days. The said period of six days cannot, in our opinion, be regarded as unduly long. It is therefore, not possible to hold that there was inordinate delay in the consideration of the representation of the petitioner by the Central Government and the detention of the petitioner cannot be held to be invalid on that basis.

11. The learned counsel for the petitioner has lastly urged that the order dated February 21, 1990 rejecting the representation of the petitioner is in English language and it is not in the language which the petitioner understands. This ground has not been raised by the petitioner in the writ petition and the respondents had no opportunity to meet the same. The photostat copy of the order dated February 21, 1990 which was sent for service on the petitioner has, however, been placed before us. The said copy bears the following endorsement by the Jailor, Central Prison, Madras "Read over and explained in the language known to him and served by me." The said endorsement shows that at the time of service of the order dated February 21, 1990 the Jailor had explained the said order to the petitioner in the language known to him.

12. Since none of the grounds that have been urged by the learned counsel for the petitioner merits acceptance, the writ petition fails and it is accordingly dismissed.

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