

Kusum Chandrakant Khaushe

Vs

L. Hmlingliana and Others

Criminal Appeal No. 546 of 1992

(S. R. Pandian, R. M. Sahai JJ)

25.08.1992

JUDGMENT

1. Leave granted.

1A. Both the above appeal and writ petition are directed by Smt. Kusum Chandrakant Khaushe who is the wife of the detenu, namely, Chandrakant Mahadev Khaushe.

2. The detenu, Chandrakant Mahadev Khaushe is detained under the strength of the order of detention passed by the Secretary (Preventive Detection) to the Government of Maharashtra, Home Department who is the respondent No. 1 in both the matters in exercise of the powers conferred under sub-sec. (i) of S. 3 of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act') with a view to preventing the detenu from engaging in transporting smuggled goods.

3. In the wee hours of 22nd July 1990, the custom officers posted at the Sahar International Airport, Bombay found two special equipment boxes bearing Nos. 20 and 21 being abnormally heavy which boxes were kept in the special compartment in the bulk cargo hold on the rear side of the aircraft which had earlier arrived from Tokyo as Flight No. AI 309. On suspicion, the seals of the boxes were broken. On opening the special equipment box No. 20 in the presence of witnesses, two jackets of navy blue colour cloth having 16 compartments each were found. From the abovesaid two jackets, 128 gold bars weighing 14920.80 grams were recovered. From box No. 21, the customs officers removed 9 gold spanners collectively weighing 10,000 grams. From the two other metallic boxes, the custom officers further found 24 gold bars weighing 24000 grams. The total weight of the gold was found to be of 48,924.80 grams, the local market of which was estimated as on that date at Rupees 1,61,45,184/-. The statement of the detenu who was working as Storekeeper at the material time in the Stores and Purchase Department of Air India was recorded under S. 108 of the Customs Act on two occasions, namely on the 22nd and 23rd of July 1990 wherein the detenu has stated that he knew one Vinod Michael who was working with Air India since last 8 years and that the said Vinod Michael offered him job of taking gold spanner from the special equipment boxes two months prior to the incident for a suitable remuneration and that he did so on three occasions and delivered the contraband to the said Vinod Michael. Regarding the seized gold, the detenu has stated that the said Vinod Michael telephoned him on 19-7-90 informing him that 'mal' would be coming on 21st July 1990 on Tokyo Flight No. AI 309. The detenu brought the gold with the help of one Pol, a cleaner in the Department. The officials. of the Customs Department took statements from various persons inclusive of the abovesaid Pol under S. 108 of the Customs Act on 22-7-90.

The entire contraband was seized and a panchnama in the presence of witnesses was prepared.

4. The detenu and the said Pol were arrested and produced before the Magistrate on 23rd July 1990 and were remanded to the judicial custody. However, they came out on bail on 3-9-90 and 12-9-90 respectively. The impugned order of detention as against the detenu was passed on 11th January 1991 which order was served on the detenu on 12th January 1991 along with the grounds of detention and list of documents annexed thereto.

5. On being aggrieved by the order of detention, the present petitioner (the wife of the detenu) filed a writ petition which was numbered as Writ Petition (Crl.) No. 147/91 before the High Court of Bombay challenging the validity of the detention order on many grounds but the High Court rejected all those grounds and dismissed the writ petition as devoid of any merit. Hence the present appeal. Along with this appeal, the petitioner has also filed Writ Petition No. 1234/91 challenging the very same order of detention. Hence we are rendering a common judgment in both the matters.

6. According to Shri R. K. Jain, learned senior counsel appearing on behalf of the appellant, the omission or failure on the part of the sponsoring authority to place the order of suspension dated 14-8-90 which has expressly cut the movement of the detenu in the alleged area of his operation is a very vital and material document which if had been. placed before the detaining authority that material document would have weighed with the detaining authority to take a decision one way or other. Of course, the same contention has been raised before the High Court but the High Court has not accepted that contention. The relevant portion of the suspension order reads as under :

"You are hereby informed that NIPT Complex and Old Airport areas have been declared as prohibited areas and hence you are prohibited from entering these areas without express permission of the undersigned or any competent authority."

7. This contention is answered by the respondent in para 7 of his affidavit stating that the detenu has already confessed that he had on three earlier occasions indulged in such activities and that it is inferred from those statements that the detenu had established links at the Airport and that but for the suspension order, it would not have been possible from preventing the detenu to enter into the prohibited area and that the non placing of this suspension order has not caused any prejudice to the detenu. According to him, the order of detention was not based on such a document. After carefully going through the counter-affidavit, we do not see any force in the submission made by the learned counsel. Hence this submission is rejected.

8. The second submission made by the learned counsel is that the High Court has failed to consider the statement of retraction of the detenu made in the application dated 27-8-90 praying for reduction of the bail amount in the proper perspective. Admittedly, in the earlier bail application no such retraction has been made. The only alleged retraction statement as found in the bail application for reduction of the bail amount reads as follows :

"Nothing incriminating has been found from their person or from their residence. The only evidence is their forced statements, which have been retracted on the 1st day of their production in the Court."

9. As rightly pointed out by the High Court, there is no supporting document showing that the detenu has retracted even at the earliest point of time when he was produced before the Court on the first occasion. The High Court before which the same contention has been raised has been carefully

examined and rejected for the reasons given in para 4 of its judgment. On carefully examining this contention, we see no force in this submission also.

10. Incidentally, it was submitted that there was a considerable delay in passing the detention order from the date of the seizure of the contraband. But having regard to the facts and circumstances of the case and also the explanation given by the respondent we do not find any merit In this contention also. After going through the records, we are in full agreement with the view taken by the High Court that the said detention order does not suffer from any legal infirmity warranting our interference in the impugned judgment of the High Court.

11. In the result, both the appeal as well as the Writ Petition are dismissed.

Appeal dismissed.

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