

Manju Ramesh Nahar

Vs

Union of India

Criminal Appeal No. 368 of 1999

(S. Saghir Ahmad, R. P. Sethi JJ)

31.03.1999

JUDGMENT

S. Saghir Ahmad, J

1. Leave granted.

2. The order of detention dated 3.2.1997 passed under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act'), under which Ramesh Nahar, husband of the appellant was detained, was challenged before the Bombay High Court in a writ petition filed under Article 226 of the Constitution but the petition was dismissed on 23.12.1998. It is this judgment which is challenged in this appeal. We have heard learned counsel for the parties.

3. Mr. R.K. Jain, learned senior counsel appearing on behalf of the appellant has contended that though the order of detention was passed on 3.2.1997, it was executed after more than a year on 23.4.1998 without there being any explanation for the delay in executing the order. This delay, it is submitted, should be treated to have vitiated the order.

4. Before dealing with the point raised by Mr. R.K. Jain, we may point out that individual liberty is one of the most valuable fundamental rights guaranteed by the Constitution to the citizens of this country. Nearly three decades ago, this Court had pointed out in *Motilal Jain v. State of Bihar & Ors.*, AIR 1968 SC 1509 : 1968(3) SCR 587 that the interest of the society is no less important than that of the individual. It was also observed that the provisions of the Constitution for safeguarding the interests of the society harmonise the liberty of the individual with social interests.

5. In another case, namely *SK Abdul Karim & Ors. v. State of West Bengal*, 1969(2) SCJ 381 : AIR 1969 SC 1028 : 1969(3) SCR 479 : 1969(1) SCC 433, it was indicated that while the Constitution has recognised the necessity of laws as to preventive detention, it has also provided certain safeguards to mitigate their harshness by placing fetters on the legislative powers conferred on this topic. Article 22 lays down the permissible limits of legislation empowering preventive detention and further prescribes the minimum procedure that must be included in any law permitting preventive detention.

6. The Act provides for preventive detention. Section 3 gives power to the Central Govt. or the State Govt. or any officer of the Central or the State Govt. of the specified status, to pass, with respect to any person with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from smuggling activities

specified therein or harbouring persons engaged in smuggling activities, an order directing that such person be detained. The action under this Section can be taken only on 'satisfaction'. The further requirement is that the order should have been passed for preventing that person from carrying on the prejudicial activities. This implies that as soon as the Govt. or its officer feels satisfied that an order under this Section is necessary, it has to be passed and implemented forthwith so that the prejudicial activities carried on by the person against whom the order has been passed, may be stopped immediately or at the earliest.

7. This object can be achieved if the order is immediately executed. If, however, the authorities or those who are responsible for the execution of the order, sleep over the order and do not execute the order against the person against whom it has been issued, it would reflect upon the "satisfaction" of the detaining authority and would also be exhibiting of the fact that the immediate necessity of passing that order was wholly artificial or non-existent.

8. In *T.A. Abdul Rahman v. State of Kerala & Ors.*, 1989(2) RCR (Crl.) 459 : AIR 1990 SC 225 : 1989(3) SCR 945 : 1989(4) SCC 741, it was held as under:

"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."

9. In *P.M. Hrikumar v. Union of India & Ors.*, 1995(5) SCC 691 : AIR 1996 SC 70, the view was reiterated and it was held that unexplained delay in the execution of the order of detention would vitiate the order.

10. In another decision in *SMF Sultan Abdul Kader v. Jt. Secy. to Govt. of India & Ors.*, 1998(8) SCC 343 : JT 1998(4) SC 457, to which one of us (Saghir Ahmad, J. was a member, the unexplained delay in the execution of the order of detention was held 'fatal.'

11. If the instant case is examined in the light of the above principles, it would be noticed that in the counter affidavit filed by the respondents in this case, the delay in execution of the order has been explained as under :

".... Further in spite of efforts made by the Sponsoring Authority and the Police Officials of the P.C.B., Mumbai, the detenu could not be apprehended as he was absconding. Finally the detenu was apprehended and the Detention Order was served on 23.4.1998....."

12. Except making a vague allegation that the appellant was absconding and was apprehended on 23.4.1998 when the order was executed against him, the respondents have not given details of any steps that might have been taken in the meantime to execute the order against Ramesh Nahar. They could have taken appropriate steps under Section 7 of the Act or even under the provisions of Criminal Procedure Code for securing the arrest of the husband of the appellant.

13. The detention order was passed on 3.2.1997 but it was executed on 23.4.1998. Obviously, the effect of non-execution of the order was that the authorities themselves gave liberty to the detenu to carry on his earlier activities giving rise, in that process, to a question whether the activities

complained of were really prejudicial activities within the meaning of Section 3 of the Act. As pointed out above, the execution of the order of detention long after it was passed would have the effect of vitiating the order as also the "satisfaction" of the authorities who passed that order.

14. For the reasons set out above, the appeal is allowed and the order of detention passed under Section 3 of the Act is quashed with the direction that Ramesh Nahar, husband of the appellant, shall be set at liberty forthwith, unless his detention is required in connection with some other case.

15. The Writ Petition is dismissed as having become infructuous.

Petition dismissed.