

SUPREME COURT OF INDIA

Radhakrishnan Prabhakaran

Vs.

The State of Tamil Nadu

(K.T. Thomas and Y.K. Sabharwal JJ.)

23.02.2000

ORDER

1. The petitioner is a law graduate. He is preventively detained under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'the COFEPOSA Act'). His detention commenced on 26.4.1999 and is for a period of one year. This writ petition is filed under Section 32 of the Constitution challenging the aforesaid detention order.

2. The petitioner arrived at Anna International Airport, Chennai on 25.4.1999 from Singapore by Singapore Airlines. He was intercepted by customs authorities and on interrogation the authorities realised that he was carrying with him in one of his baggage items electronic goods worth about Rs. 16 lakhs. After recording his statement he was arrested on the next day. He moved the Chief Metropolitan Magistrate, Chennai for bail on 28.4.1999 Though his application for bail was dismissed by the said Magistrate and again dismissed when the motion was repeated by him he was, however, released on bail by order dated 28.6.1999.

3. It was in the aforesaid background that detention order, now under challenge, has been passed against him. Mr. K.K. Mani, learned Counsel who argued for the petitioner raised mainly 4 grounds for assailing the said detention order, they are: (1) there was delay in disposing of the representation made by him to the Central Government; (2) the documents referred to in the grounds of detention have not been supplied to him; (3) the application for bail and the connected documents relating to one Mr. Rajappa Neelakantan, who was co-traveler of him, who too was arrested in connection with the same transaction, have not been supplied to the petitioner; and (4) there was no compelling reason to preventively detain the petitioner.

4. At the outset, we may point out in fairness to learned Counsel that he did not pursue the ground No. 3 mentioned above, probably, as he felt that he could succeed on other grounds.

5. While dealing with the 1st ground, learned Counsel contended that his representation was set to the Central Government on 2.9.1999 but the same was rejected only by order dated 15.9.1999. Apparently, there was delay. Hence the question is whether the said delay was explained by the Central Government. As we required a counter-affidavit filed on behalf of the Central Government, Mr. Tarsem Lal, Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue has sworn to the affidavit in answer to the said allegations. He said that the representation actually reached the Secretary, Unit of COFEPOSA, Ministry of Finance only on 9th September,

1999. As early as possible the same was forwarded to the sponsoring authority for remarks or comments thereon on the same day and those comments were received in the Department only on 13th September, 1999. The deponent said that the representation was considered and final order rejecting the representation was passed on 15.9.1999. The intervening period between reception of the comments/ remarks from the sponsoring authority and the final order rejecting the representation was only one day. We cannot in any manner treat that as sufficient to amount to unreasonable delay.

6. Mr. KK Mani, learned Counsel further contended that the delay was more discernible at the stage of receipt of the representation by the COFEPOSA Unit which is noted to be 9.9.1999. Learned counsel for the Union of India pointed out that as a matter of fact the representation reached the Secretary, Ministry of Finance on 7th September, 1999 and after processing the same at the level of Deputy Secretary and Joint Secretary the same was put up on 9.9.1999. The above would sufficiently explain the various steps taken in the matter and hence we are not disposed to treat the intervening days as amounting to unreasonable delay.

7. Dealing with the 2nd ground, learned Counsel laid emphasis to the non-supply of 3 documents: (1) the application for bail submitted by the detenu; (2) the counter filed by the Customs Department thereto; and (3) the order passed by the Sessions Court rejecting the bail application.

8. We may make it clear that there is no legal requirement that copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. It is admitted by the learned Counsel for the petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail. But learned Counsel emphasised that the counter filed by the Department was a relevant document, a copy of which has not been supplied to him. In support of the said contention learned Counsel invited our attention to para 4 of the grounds of detention which reads thus:

4. While arriving at the subjective satisfaction to detain you under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the State Government have taken into consideration all the facts and materials referred to and relied upon in these grounds mentioned above and also the statements, mahazars, etc. accompanying thereto.

9. Shri V.R. Reddy, learned senior counsel appearing for the State of Tamil Nadu submitted that the expression "all the facts and materials referred" need not necessarily include the counter-affidavit filed by the Customs Department and in fact no such counter was considered by the detaining authority. He substantiated the said contention by reference to paragraph 16 of the grounds which reads thus:

(xvi) The Government have taken into consideration allegations contained in the bail application/retraction letter, but from the material placed on record, the Government are satisfied that the said allegations are baseless, afterthought and devoid of any merit and hence the Government reject the same.

10. We agree with the arguments of Shri V.R. Reddy, learned senior counsel that counter filed by the

Department as against the bail application was not a matter which engaged the attention of the detaining authority while passing the detention order.

11. Regarding the remaining ground the broad features have been presented before us that the detenu was a law graduate, that he had visited Singapore on a prior occasion (the present was his 2nd visit to Singapore), and that he collected foreign exchange from a resident by name Bhaskar at Singapore and that electronic goods worth about Rs. 16 lakhs have been detected from his baggage. It is not for the court to substitute its satisfaction but it is only a scrutiny to be made to ascertain whether the detaining authority had really arrived at the satisfaction that the detenu has to be preventively detained in public interest. We do not think that the detaining authority had no good reason or compelling reasons to pass such an order in the aforesaid circumstances.

12. In the result, we dismiss this writ petition.