

# SUPREME COURT OF INDIA

Rajappa Neelakantan

Vs.

State of T.N.

(K.T. Thomas and M.B. Shah JJ.)

07.03.2000

## ORDER

1. This Writ Petition is filed by a detenu challenging the order of detention passed against him on 2.8.99 under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as 'COFEPOSA'). The detention actually commenced on 4.8.99 and it is for a period of one year. We are told that presently the detenu is on parole and the parole is being extended by orders of this Court.

2. The detention order was passed in the following background. The petitioner arrived at Anna International Airport on 25.4.99 in the company of one Radhakrishnan Prabhakaran. The Petitioner was an Assistant Public Relation Officer attached to the Department of Tourism under the Government of Tamil Nadu. On suspicion, the petitioner and his co-traveller Radhakrishnan] Prabhakaran were intercepted and on search 102 mobile phones were detected from the baggage of the petitioner alone and from the baggage of his co-traveller 92 mobile phones were detected. Both of them were arrested on the next day and their statements were separately recorded. Petitioner was released on bail on 28.6.99.

3. The preventive detention order was passed against Radhakrishnan Prabhakaran. We may mention now that the said order was challenged in this Court but we did not interfere with the said order as per the judgment of this Court dated 2.3.2000.

4. Mainly three points have been raised by the petitioner in challenge of the detention order passed against him. They are:

1. The sponsoring authority (the Customs Department) did not place relevant and vital documents for consideration before the detaining authority.

2. There was delay in considering and disposing of the representation made by the petitioner before the Central Government.

3. There was no compelling necessity to preventively detain the petitioner.

5. For elaborating the first ground learned Counsel contended that records connected with the detention of the co-traveler -Radhakrishnan Prabhakaran were not placed before the detaining authority. Had those records been placed, perhaps, the detaining authority would have come to a

different conclusion, contended learned Counsel.

6. We cannot appreciate the said contention for two reasons. First is that the detention order in respect of the present petitioner should be based principally on the facts centered on what he had done in collaboration with his co-traveler. In other words, if the detention order and the connected records relating to the co-traveler were to be placed before the detaining authority there could possibly be an apprehension that the detaining authority would be biased against the petitioner because of the various allegations contained therein. Second is that the detaining authority cannot be said to be totally ignorant of the fact that Radhakrishnan Prabhakaran was also detained under a separate order, for, the aforesaid detention order against Radhakrishnan Prabhakaran was passed by the same detaining authority just six days prior to the impugned detention order. So we do not see much force in the said ground raised now.

7. While dealing with the second ground we initially thought that the petitioner has really a case to put forward because at the first blush it may appear that there was delay on the part of the Central Government in disposing of the representation made by the detenu. We may point out that representation to the Central Government was actually made by the detenu on 1.9.99 and the same was disposed of by the Central Government only on 15.9.99. No doubt there is delay. It is not the law that whenever there is any delay the detention order would be vitiated. The law is that the delay should not be unexplainable and that the explanation offered must appear to the court to be reasonable and acceptable.

8. In the present case the representation sent by the detenu to the Central Government on 1.9.99 has reached the COFEPOSA Unit of the Finance Department only on 9.9.99. Shri T.L.V. Iyer, learned senior counsel who argued for the Union of India submitted after verifying the documents that there is some lapse in the Department for mentioning the exact date on which the representation had reached the Secretary, Ministry of Finance, Department of Revenue, New Delhi. Normally, a seal would be affixed showing the date on which the representation was received in the Department, but such a seal is not seen affixed on the particular representation. Of course, that does not mean that the representation had not reached the Department at all at any time. It is a certainty that it would have reached the Department on a day prior to 9.9.99. Learned senior counsel pointed out that as 3rd, 4th and 5th of September, 1999 were Government holidays the representation would have possibly reached the Department either on 2nd evening or on 6th of September. If that be so, the question is whether, placing the said representation before the COFEPOSA Unit on 9.9.99 can be treated as unreasonably delayed.

9. Learned senior counsel pointed out the practicalities involved in sifting and sorting various mails which would have heaped up in the Department by 6.9.99 on account of the preceding Government holidays for a continuous three days period. He submitted that it is not enough that somebody in the Department would see the outer cover of the representation. Every mail should have been opened, read and found out as to which Department it should be placed and only after such sorting process is made the representation could be sent to the appropriate section. We are inclined to accept the said explanation for the intervening period between 6th and 9th September for the representation to reach the COFEPOSA Unit. We may note here that there can possibly be no grievance that the order of disposal made on 15th May, 1999 was vitiated by delay subsequent to 9.9.99. We, therefore, hold that the grievance regarding delay in disposing of the representation made by the detenu to the Central Government is not valid in the circumstances of this case.

10. While elaborating the third ground, i.e. want of compelling necessity to preventively detain the petitioner, Shri K.K. Mani learned Counsel for the petitioner vehemently stated that when the co-traveler was preventively detained there was no need to detain the petitioner separately as he who had only accompanied him. On the other hand, Shri V.R. Reddy, learned senior counsel arguing for the State of Tamil Nadu pointed out the broad features surrounding the catch made at the Airport on 25.4.99. This was not the only occasion when petitioner travelled to Singapore and surrounding places. On a previous occasion also the petitioner had gone up to those places. It is pertinent to point out that on the previous occasion also the petitioner had gone to some places with the same co-traveler. On the second occasion when he came back with all the contraband articles it is for the detaining authority to subjectively satisfy whether this petitioner has acquired the wherewithals to continue with the nefarious activities. Considering the fact that petitioner is a Public Relation Officer attached to the Tourism Department we cannot accept the contention of the learned Counsel for the petitioner that he should be treated at a lesser degree than his co-traveler so far as the formation of subjective satisfaction of the detaining authority.

11. The Writ Petition is accordingly dismissed. It is needless to say that the parole benefit which petitioner is enjoying by virtue of the order passed by this Court will stand terminated forthwith.