SUPREME COURT OF INDIA

Moulana Shamshunnisa

Vs.

Additional Chief Secretary

Crl.A.Nos.2391-2392 of 2010

(H. S. Bedi and Chandramauli Kumar Prasad JJ.)

15.12.2010

JUDGMENT

Harjit Singh Bedi, J.

1. These appeals arise out of the following facts:

> "The son of the Appellant, Nazhar Ahmed by name, was detained under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) by the order of the Additional Chief Secretary to the Government, Home Department dated 20th January, 2010. As per the case put up against the detenu, he had been arrested at the Bangalore International Airport after he had been found in possession of 4.35 kgs. of Gold Jewellery which he had not declared to the Customs. He moved an application for bail which was rejected by the Special Court for Economic Offences. He thereafter filed an appeal before the City Civil and Sessions Judge, Bangalore (which was numbered as Criminal Miscellaneous No. 4858 of 2009) which was ultimately allowed and bail was granted to him on the 5th December, 2009. He was however detained under the COFEPOSA on the 24th January, 2010. He was thereafter produced before the Advisory Board and the Board too confirmed his detention for a period of one year from the date of his detention. A writ petition was thereafter filed by the Petitioner impugning the detention of her son. Before the High Court, several submissions were made:
>
> (i) that the advisory board did not send a report within 11 weeks from the date of the order of detention as required by Section 8(c) of the COFEPOSA;
>
> (ii) that in view of the seizure of the passport of the detenu by the Respondents, the apprehension of the detaining authority that the Petitioner's son would continue his smuggling activities could not be accepted as it would not have been possible for him to leave India without a passport.

In reply, the Government's stand was that the report of the Advisory Board has been submitted within time and that the Additional Chief Secretary had made the detention observing that there were clear chances that the detenu would continue his smuggling activities despite the seizure of his passport as the smuggling activities could continue even within India after he had been released on bail."

2. The High Court examined both the contentions and held that there was no violation of Section 8(c) of the COFEPOSA and insofar as the second contention was concerned, the apprehension that if enlarged on bail the detenu could continue with his smuggling activities without even travelling abroad was a possibility, and as such, the detention order was justified. The writ petitions were, accordingly, dismissed.

3. Mr. K.K. Mani, the learned Counsel for the Appellants has raised substantially one plea before us. He has pointed out that this Court had upheld the vires of several preventive detention statutes primarily on the ground that adequate safeguards for the protection of the rights of a detenu had been provided while noticing that smuggling activities by individuals was a matter of deep concern to India and its economy, but if the procedural safeguards were in any manner not observed, the detention order would fail. The learned Counsel has in this connection relied on the observations made by this Court in *Smt. Icchu Devi Choraria v. Union of India and Ors.*[1]: *and Kamlesh kumar Iswardas Patel v. Union of India and Ors.*[2]. He has pointed out that in the light of the observations in these two judgments, if the detaining authority was oblivious of certain significant facts with regard to the detention that itself was a ground for the quashing of a detention order. In this background, he has submitted that the observations of the detaining authority and the High Court therefore, that in case the detenu was released from jail, he could continue with his smuggling activities within India, notwithstanding that he could not travel abroad as his passport had been seized, was not acceptable as there was no material to justify this conclusion. In this connection, the learned Counsel has placed reliance on *Rajesh Gulati v. Govt. of NCT of Delhi and Anr.*[3]: *and Gimik Piotr v. State of Tamil Nadu and Ors.*[4].

4. In Rajesh Gulati's case (supra), the question that came to be canvassed on behalf of the detenu was that as his passport continued to be in the possession of the customs authorities, there was no question of the Appellant travelling abroad or indulging in any smuggling activity. This plea was accepted by this Court by observing that it was not the case of the detaining authority at any stage that the detenu would be able to continue with his smuggling activities within India, though he could not go abroad his passport having been seized. It was observed thus:

"15. XXXX

The conclusion that despite the absence of his passport the Appellant could or would be able to continue his activities is based on no material but was a piece of pure speculation on the part of the detaining authority. These findings are sufficient to

invalidate the impugned detention order and it is not necessary to consider the other issues raised by the Appellant.

This opinion has been further fortified by this Court in Gimik Piotr's case (supra).

In para 32, it has been held as under:

32. In the present case, the detention order was passed under Section 3(1) (i) of COFEPOSA. The Customs Department has retained the passport of detenu. The likelihood of the Appellant indulging in smuggling activities was effectively foreclosed.

As observed by this Court in Rajesh Gulati case that the contention that despite the absence of a passport, the Appellant could or would be able to continue his activities is based on no material but was a piece of pure speculation.

And again in para 35;

35. In our considered view, the submission of the learned Counsel for the Appellant requires to be accepted. In the instant case as the facts reveal that there was no pressing need to curtail the liberty of a person by passing a preventive detention order. Foreign currency cannot be smuggled as the person cannot move out of the country on account of his passport being impounded. Merely because a person cannot otherwise survive in the country, is no basis to conclude that a person will again resort to smuggling activities, or abetting such activities by staying in the country. There is higher standard of proof required in these circumstances involving the life and liberty of a person. The material provided by the Respondents is not enough to justify the curtailment of the liberty of the Appellant under an order of preventive detention in the facts and circumstances of the case."

5. The learned Counsel for the Respondents has, however, contended that the Respondent had been intercepted on specific intelligence and he had been arrested twice earlier on similar charges. We are of the opinion that this fact is immaterial insofar as the present detention order is concerned.

6. We, accordingly, allow these appeals and quash the detention order dated 24th January, 2010.

[1]*1980 (4) SCC 531*
[2]*1995 (4) SCC 5*
[3]*2002 (7) SCC 129*
[4]*2010 (1) SCC 609*