

**SUPREME COURT OF INDIA**

Rashid Kapadia

Vs.

Medha Gadgil

Crl.A.No.1101 of 2012

(Altamas Kabir and J.Chelameswar, JJ.)

25.07.2012

**JUDGMENT**

**J.Chelameswar, J.**

1. Leave granted.
2. Aggrieved by the Judgment in Criminal Writ Petition No.3253 of 2011 of the Bombay High Court, the unsuccessful petitioner therein carried the matter to this Court.
3. The said writ petition was filed challenging the order of detention dated 20-07-2011 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (henceforth referred to as 'the Act'), by the 1st respondent. By the said order it was directed that the son of the appellant named Khalil Ahmed Rashid Ahmed Kapadia (hereinafter referred to as 'the detenu') be detained under the provisions of the Act.
4. Aggrieved by the said detention order, the appellant herein made a representation to the 1st respondent praying that the detention order be revoked, for various reasons mentioned in the representation. The said representation came to be rejected by the 1st respondent by an order dated 07-09-2011. Subsequently, the appellant filed the abovementioned writ petition on 18-10-2011 challenging the order of detention. By the Judgment under challenge the said writ petition was dismissed.
5. The facts, which lead to the passing of the detention order, are as follows:
6. A consignment of goods covered by eight shipping bills, all dated 26- 10-2010, being exported by a firm called M/s. Noble Impex, was detained by the Customs authorities. On examination of the consignment and the relevant documents, the authorities opined that there was a mis-declaration with respect to the quality, quantity and valuation of the goods sought to be exported. It appears that the said goods were being exported under a scheme known as "Drawback Scheme". According to the Customs Department, the goods were over-valued in

order to claim the benefit of higher export “drawback”. It is the case of the Customs Department that one Syed Naimuddin is the proprietor of the abovementioned M/s. Noble Impex. Syed Naimuddin and the detenu are said to be cousins. It is the further case of the Customs Department that the abovementioned cousins, with the aid and abetment of one Ashok Dhakane and Bala Jadhav, who are the partner and employee respectively of M/s. Khakane Co., a firm carrying on business as a clearing house agent, attempted to make the abovementioned export. Therefore, the Customs authorities moved the 1st respondent for the issuance of the detention order against the abovementioned four persons.

7. The 1st respondent, on a consideration of the material placed before her, issued the detention order.

8. The detention order is challenged on various grounds before the High Court; principally, that all the material relevant for enabling the Detaining Authority (1st respondent) to record the satisfaction that it is necessary to preventively detain the detenu is not placed before the authority; secondly, that the detaining authority mechanically passed the order of detention without carefully scrutinizing the material placed before her; and lastly, the detention is vitiated by the fact that the representation of the petitioner dated 06-08-2011 invoking Article 22(5) of the Constitution of India was rejected only on 07-09-2011 after an inordinate delay of one month.

9. Elaborate submissions were made before the High Court on the first two grounds mentioned above, which not find favored with the High Court. Coming to the last ground, i.e., delay in disposing of the representation made by the appellant, however, the High Court did not examine the same in the right perspective. The relevant portion of the Judgment of the High Court in that regard reads as follows: “He further submitted that the representation of the detenu was received on 06-08-2011 and the Detaining Authority considered the representation after taking into account the comments of the Sponsoring Authority and the representation was rejected on 07-09-2011. The learned counsel for the appellant Sri Nikhil Jain once again made elaborate submission on all the three grounds mentioned above. But, we are of the opinion that it is enough for us to consider the legality of the delayed disposal of the representation made by the appellant. The fact that the representation was made on 06-08-2011 and it was disposed of on 07-09-2011 by the 1st respondent is not in dispute. In the counter affidavit filed by the 1st respondent in the writ petition it is stated at para 19 as follows:

“19. With reference to paras 8(DD) of the petition, I say that the representation dated 6.8.2011 made by Shri Rashid Kapadia, was received in my office on 6.8.2011 late in the evening. The para wise comments from the Sponsoring Authority were called for

by letter dated 09.08.2011. I say that during this period 7.8.2011 was holiday. The Sponsoring Authority forwarded the para wise comments on 26.8.2011 which were received in the Department on 26.8.2011 late in the evening. There were holidays on 27.08.2011, 28.08.2011, 31.08.2011 and 01.09.2011 and on 29.08.2011 due to heavy rain fall the office work was paralyzed. I further state that the concerned Assistant submitted a detailed note and forwarded it to the Under Secretary on 30.8.2011. The Under Secretary endorsed it on 2.9.2011 and forwarded it to the Dy. Secretary. The Dy. Secretary endorsed it on 5.9.2011 and forwarded the papers to me. I say that during this period 4.9.2011 was holiday. I had independently considered the representation and rejected it on 7.9.2011. Accordingly rejection reply was issued on 7.9.2011 through Speed Post to the applicant. It can be seen from the above extracted portion that the 1st respondent called for the para wise remarks of the Sponsoring Authority (Customs Department) on 09-08-2011. However, the Sponsoring Authority responded to the inquiry of the 1st respondent on 26-08-2011 with a delay of fifteen days. The reasons for such delay have not been explained by the Sponsoring Authority, represented by the 3rd respondent herein. There is nothing on the record placed before us, which explains the abovementioned delay on the part of the 3rd respondent's Department. It is well settled that the right of a person, who is preventively detained, to make a representation and have it considered by the Authority concerned as expeditiously as possible, is a Constitutional right under Article 22(5). Any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu. The proposition is too well settled in a long line of decisions of this Court. We do not think it necessary to examine the authorities on this aspect, except to take note of a couple of Judgments where the principle is discussed in detail. They are; Mohinuddin alias Moin Master v. District Magistrate, Beed and Ors.[1] and Harshala Santosh Patil v. State of Maharashtra[2]. Therefore, we have no option, but to come to the conclusion that the detention order cannot be sustained on the abovementioned ground alone and it is required to be, accordingly, set aside. In view of such conclusion, we do not think it necessary to go into other contentions raised on behalf of the appellant. The Appeal is, therefore, allowed.

*Judgment Referred*

[1] (1987) 4 SCC 0058

[2] (2006) 12 SCC 0211