

ANDHRA PRADESH HIGH COURT

Mehrunnisa Begum

Vs

The Secretary to Government

(R.M Bapat and B.Prakash Rao, JJ.)

21.06.2001

JUDGMENT

B. Prakash Rao, J.

1. These three applications seeking a writ of habeas corpus are filed by the wife, friend and wife respectively of Mohd. Riazuddin Ahmed, Sharada Prasad Samal and Sadhamani Srinivas (hereinafter referred to as the "detenus") challenging the orders of the first respondent made in Order No. 70/L&O.II/ A.1/2001-2, 3 and 4 dated 12-2-2001 under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the Act") detaining them under Section 3(1)(1) of the Act.

2. Since common questions of fact and law arise in all the three writ petitions, they are heard together and are being disposed of by this common judgment.

3. In the grounds of detention, it is alleged that on 31-12-2000, a consignment has arrived at the Air Cargo Complex, Hyderabad from Sharjah under Air Way bill No. 058-3800-4455 of the Indian Airlines by flight I.C. No. 564 wherein four cartons were declared as containing Year-2001 diaries having no commercial value. The declared weight of the cargo was 144 kgs. However, on examination of the said cartons, it was found that in each of the cartons, along with certain diaries and books in Arabic language, there is one packet containing 100 foreign marked gold bars thus totalling to 400 foreign marked gold bars weighing 46.68 kgs which were valued at Rs. 2,14,72,800/-. Thereupon, the authorities have seized the entire gold along with the diaries under a pachanmama dated 31-12-2000 on the allegation of illicit import of gold and removal thereof without payment of the necessary taxes. It is also the case that the detenu-Mohd. Riazuddin Ahmed was engaged by one Asif of Dubai, who has been the consignor of gold to Hyderabad from Gulf countries and the other detenus viz., S. Srinivas and Sharda Prasad Samal who were working in the Air Cargo Complex as loaders, used to help the said Mohd. Riazuddin Ahmed in removing the gold from the cargo. Thereupon the statements of all the detenus were

recorded under Section 108 of the Customs Act and recovered certain materials from their possession. The said statements were confessional in nature and from the statement of the detenu Mohd. Riazuddin Ahmed it was revealed that on earlier three occasions, viz. 10-12-2000, 17-12-2000 and 22-12-2000 he got the gold removed from the APSTC godown with the help of the aforesaid two loaders. Five cartons sent on the aforesaid dates have been identified by the authorities and were seized under a panchanama dated 2-1-2001 and accordingly a case was booked in File No. VIII/48/2/2000-HRU under Section 135 of the Customs Act against all the three detenus. The detenus were arrested on 1-1-2001 and produced before the Special Judge for Economic Offences, Hyderabad, who remanded them to judicial custody. Thereupon, the detenus moved bail applications before the said Court, which were dismissed. However, later, this Court granted bail to the detenus on certain conditions.

4. The case of the petitioner in W.P. No. 5153 of 2001 is that the sureties were furnished before the Judge on 12-2-2001 as 10th and 11th February, 2001 happened to be the second Saturday and Sunday respectively and the detenu could not get himself released and the order of release issued by the said Court was served on the jail authorities at 4.15 p.m. on 12-2-2001 and the impugned order of detention under the COFEPOSA Act was passed on 12-2-2001 and the same was served at 5.00 p.m. on the same day at the Central Prison, Hyderabad and thus he had been detained.

5. After issuance of notice, the respondents have filed a counter affidavit.

6. Sri P. Govind Reddy, counsel for the petitioners, has raised in all five contentions which are as follows :

(i) Any preventive detention should correlate to the purposes mentioned under Section 3 of the Act and it cannot be for any collateral purpose. The purpose mentioned in the detention order and also the grounds supplied there with has no direct bearing on the purpose mentioned under Section 3 of the Act.

(ii) The orders of detention are passed on 12-2-2001 and were served in the evening whereas, the grounds of detention as supplied to the detenus were signed on 16-2-2001 and, therefore, the order and the grounds having not been formulated or framed or signed by the authority contemporaneously as mandatorily required under Section 3 of the Act and also under Article 22(5) of the Constitution of India, the detention is vitiated.

(iii) The material which has been relied on by the detaining authority viz., the remarks of the officers of the D.R.I, noted on the back of the manifest, the panchanama conducted on 31-12-2000, the manifest itself and the proposal made by the sponsoring authority i.e., the Customs Department on the basis of which the detention orders were passed, were not communicated to

the detenus along with the grounds of detention and, therefore, it violates Article 22 of the Constitution of India denying them of an opportunity of making an effective representation and thus their detention is vitiated.

(iv) The detaining authority did not take into consideration the orders of bail granted by this Court and also the conditions imposed therein which are more than sufficient for the purpose of the authorities and, therefore, the impugned detention is invalid.

(v) The detenus being under-trials, cannot be detained unless there is any cogent material or compelling circumstances and in the absence of such material, the order of detention is vitiated.

7. Replying to these submissions, it was contended by the learned Advocate General though there is no denial as to the basic fact that the order of detention was passed on 12-2-2001 and the grounds as served on the detenus were signed on 16-2-2001 that the grounds as urged on behalf of the petitioners are being sought to be mixed up by putting together two aspects viz., the absence of subjective satisfaction and service of grounds and further, admittedly, there being three earlier instances against the detenus and the object under the Act being to prevent persons from indulging in the activity of smuggling and other clandestine activities, and violation of foreign exchange regulations, the detention orders as passed are valid. Therefore, it is stated that despite Articles 22 and 21 of the Constitution of India, the law contemplates sufficiently for such preventive detention for national purposes and for the security of the State. It was suggested that the facts themselves amply satisfy the object and the purposes and the documents as pointed out on behalf of the detenus are not such vital documents which have been relied on and the non-supply of which do not prejudice in any way the rights of the detenus in making an effective representation. Even as provided for under Article 22(5) of the Constitution of India and Section 3 of the Act, the service of grounds need not be simultaneous with that of the detention order and the very provision contemplates a period of five days within which such service should be effected and in these cases, the same having been duly complied with and more so the grounds as served on the detenus were in existence as on the date of the detention, there is no violation of either of the provisions.

8. On a consideration of the submissions made on either side, the entire question is squarely based upon the fact that the detenus were arrested on 1-1-2001 and their earlier bail applications were rejected by the competent Court and subsequently, this Court granted bail on 9-2-2001 whereas the orders of detention were passed on 12-2-2001 and it was served on them on the same day. The grounds of detention were signed on 16-2-2001 and the same were served. There is no dispute about these facts.

9. The orders of detention dated 12-2-2001 were passed in exercise of powers under Section 3(1)

of the Act and it was stated therein that "with a view to preventing the detenus effectively from further smuggling of goods, it is necessary to make the detention order". The grounds of detention are admittedly signed on 16-2-2001 by the Secretary to the Government, Political and Specially Empowered Officer under the Act. Section 3 of the Act, after referring to the competent authorities empowered to exercise the power of detention, states that if satisfied with respect to any person (including a foreigner) that 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-

(i) smuggling goods,

(ii) abetting the smuggling of goods, or

(iii) engaging in transporting or concealing or keeping smuggled goods, or

(iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or

(v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods.

It is necessary so to do, make an order directing that such person be detained.

10. Sub-section (3) of the Act contemplates the communication of the grounds of detention as provided under Article 22(5) of the Constitution of India as soon as may be after the detention but not later than five days. The incident in present was on 31-12-2000 and as per the statements recorded by the authorities, there were three earlier instances on 10-12-2000, 17-12-2000 and 22-12-2000 for which the authorities have already booked the cases. The detenus had, no doubt, obtained bail with certain conditions from this Court and before the same could be given effect to, the orders of detention were passed.

11. In *Kuldip Singh v. Administrator, Delhi Admn*¹. a Division Bench of the Delhi High Court held that the detention under Section 3 of the Act must be only for the purpose mentioned therein and not for any collateral purpose. In that case, the order of detention was proposed and ordered not merely from preventing the detenu therein from indulging in suspected act of transport of smuggled goods but also for preventing him from interfering with the witnesses and criminal prosecution. According to the learned Judges, it could have justified in an application for cancellation of bail instead of the Land Customs Department proposing punitive detention as the detenu was on bail. This was held to completely vitiate the detention as being one for a collateral purpose and not for the purpose postulated under Section 3 of the Act.

12. In *Ram Manohar v. State of Bihar* a case arising under the De'fence of India Rules, 1962 the Supreme Court held that the order of detention must be strictly in accordance with the acts as contemplated therein viz., prejudicial to the public safety and maintenance of law and order and if the order is not in terms thereof, it is illegal. It is also held therein that the Court cannot enquire into the grounds of satisfaction nor the State can prove the legality of the order except on its terms and extraneous evidence is not admissible.

13. In *Krishna Murari v. Union of India*, a case arising under Section 3 of the Maintenance of Internal Security Act, 1971, which is in pari materia with the expression used in the COFEPOSA Act. It was held :The statute does not contemplate a sort of composite or a Joint order passed by several authorities. Unless the order made and the grounds prepared are signed by the authority concerned, the order is not made as contemplated by Section 3 of the Act. Furthermore, since the order is based on grounds to be served on the detenu, the order of detention can be passed only if the grounds are in existence and are prepared contemporaneously, otherwise, the order of detention becomes purely illusory.

(emphasis supplied)

14. In *Mohd. Abubakar v. Union of India*², a Division Bench of the Bombay High Court considering the very provisions under the Act, held :

Grounds of detention - formulation, framing and signing of grounds must be contemporaneous with making of order - Constitution of India -- Article 22(5) -- Formulation, framing and signing of the grounds by the detaining authority at about the time of making of the order of detention is an important assurance and a safeguard inter alia on the question that there was material, that the said material was scanned and sifted; that the irrelevant, if any, was rejected and the relevant only relied upon; that thereafter conclusions were drawn and grounds formulated therefrom, and there was thus, at the relevant time, a case for detention made out, although under the subjective but bona fide satisfaction of the detaining authority.

15. In *Rajeshwari v. State of A.P*³. a Division Bench of this Court considering the provisions of the Act held :

Preventive detention - Grounds of detention not even formulated before order was passed by detention authorities, order passed was without, application of mind - order violative of Section 3(1) and Article 22(5) of the Constitution.

16. In that case, it was found that the grounds of detention were not even formulated before the Chief Minister approved the proposal for detention on behalf of the State Government. Accordingly the order was quashed.

17. In Sophia Gulam Mohd. Bham v. State of Maharashtra, considering the provisions of the COFEPOSA Act in regard to the fact of non-supply of the documents, it was held:

A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language. The word "grounds" used in clause (5) of Article 22 means not only the narration or conclusions of facts, but also all materials on which those facts or conclusions which constitute "grounds" are based. Detenu found to be in possession of diamonds at airport from where he was alleged to have been trying to smuggle those diamonds out of India seizure of documents from premises detaining authority making its opinion on basis of such documents that detenu was a 'carrier' for some smugglers and feeling satisfied that detention order required to be passed against detenu - non supply of such documents, however, to detenu - detention order illegal.

18. In respect of the same plea, reliance was also placed on the decisions in Mohd. Zakir v. Delhi Administration, ; Kirit Kumar v. Union of India, ; Shalini Soni v. Union of India and Uma Shanker Verma v. Supdt., Central Jail, Naini⁴,

19. There is no dispute as to the proposition laid down in the aforesaid decisions. The only submission made on behalf of the State is that no prejudice was caused to the detenus due to the non-supply of the documents as pointed out. In Siraj Khan v. L. Himtnghiana⁵ a Division Bench of the Bombay High Court considering a similar case especially the fact that the detenu was already on bail, held :

Preventive detention- detenu already on bail on certain conditions - detention without consideration of this fact - not sustainable.

20. From the principles as already laid down, there cannot be any denial as to the mandatory nature of the provisions of Section 3 of the Act viz-a-vis Article 22(5) of the Constitution of India. In this case, admittedly, the order of detention was passed on 12-2-2001 whereas the grounds were signed on 16-2-2001. Therefore, it cannot be said that there is any formulation of grounds as held in Rajeshwari v. State of A.P. 1990 Cri LJ 2631 (supra) and other references. It has to be held that there is a clear violation of the mandatory requirements and the order of detention cannot be sustained.

21. In regard to the non-supply of documents mentioned above and which were referred to in the grounds of detention, there is no dispute that those documents were not supplied. The only argument advanced in support thereof is that the non-supply of the said documents would not

prejudice the detenus. There cannot be any dispute that these documents refer to the principal allegations as sought to be made out against the detenus and have a direct nexus and bearing to the foundation on which the very decision to make preventive detention is made. Therefore, it cannot be said that these documents have no relevance. As held in *Powanammal v. State of T.N.* , the order of detention gets vitiated for want of supply of documents as it deprives the detenu of making an effective representation. We are not prepared to accept the contention on behalf of the respondents that the decisions referring to similar expressions in other enactments have no bearing.

22. In view of the existence of the aforesaid two grounds, it is not necessary for us to go into the other grounds which have been urged on behalf of the petitioners. It would suffice to hold that the orders of detention are vitiated being violative of Article 22(5) of the Constitution of India and the procedure as contemplated under Section 3 of the Act.

23. The writ petitions are- accordingly allowed and the orders of detention are set aside. The detenus are directed to be set at liberty forthwith, if not required in any other case.

Cases Referred.

1(1980) 17 DLT 532

21982 Cri LJ 53

31990 Cri LJ 2631 (Andh Pra)

41990 Cri LJ 2114 (All)

51989 Cri LJ 392