

CASE NO.:
Writ Petition (crl.) 83 of 2002

PETITIONER:
Sitthi Zuraina Begum

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 22/11/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, J. :

T. Mohamed Nazeer, husband of the petitioner herein, (hereinafter referred to as 'the detenu') was detained under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974) (for short 'the Act') by an order made on 7.5.2002. He is at present confined in Central Prison, Chennai, Tamil Nadu.

The gist of the allegations made against the detenu is that the Customs Authorities seized 200 cellphones, 4 cordless phones (base and handset), 4 cordless phones and 350 earphones totally valued at Rs. 13,19,500/- from the baggages of the detenu after he came from Singapore and landed at Chennai Anna International Airport along with his baggages on 20.3.2002; that in the declaration filed by the detenu goods valued at Rs. 80,000/- had been disclosed, while he was bringing goods valued at Rs. 13,19,500/- into India without payment of appropriate customs duty by misdeclaration and concealment; that he made a statement on 20.3.2002 before the DRI Officer confirming the seizure of the aforesaid goods and admitting the commission of an offence under the Customs Act. The detenu filed a bail application on March 22, 2002 before the Additional Chief Metropolitan Magistrate, Economic Offences-II, Chennai, claiming that he was innocent and had not committed the alleged offence. The learned Magistrate dismissed the said bail application on 10.4.2002.

In the meanwhile, the petitioner wrote a letter to the Finance Secretary, Ministry of Finance, complaining about the ill-treatment meted out to the detenu and the retracted statement made by the detenu before the concerned authorities. The grievance now made is that the order of preventive detention is passed against the detenu as stated earlier in spite of retraction of the earlier statement given to DRI. Now challenging the detention, this writ petition is filed:

Firstly, it is contended on behalf of the detenu that a representation was made to the President of India on 22.5.2002 which was received in the President's Secretariat on 29.5.2002. However, since the said representation was in Tamil language, the same was got translated and then forwarded to the concerned Ministry on 18.6.2002. It is urged that the delay that had occurred in sending the representation of the detenu to the Government is inordinate and unexplained. The learned Solicitor General submitted that if he desires to make any representation to the detaining authority, the same could be made to the State Government and also to the Government of India, if he so desires; that in the case of the State Government, the representation could be addressed to the Secretary to the Government of Tamil Nadu, Public (Law & Order) Department, Chennai or the Secretary to the Government of India, Ministry of Finance, Department of Revenue (COFEPOSA Unit), Central Economic Intelligence Bureau, Janpath Bhavan, New Delhi and the same could be forwarded through the Superintendent, Central Prison, Chennai. However, the detenu chose to send the said representation to the President of India on 22.5.2002 which is not

at all contemplated and in spite of specific instructions to the detenu, he had chosen to address the said representation to the President of India in order to make a ground of delay later on knowing fully well that in such cases there is bound to be delay in the receipt of the papers by the President's Secretariat and forwarding the same to the concerned Ministry. Therefore, we called for further affidavits from the Central Government in this regard. It is stated in the affidavit filed by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, as under :-

"As per the record of the President's Secretariat a letter dated 22.5.2002 in a regional language was received on 29.5.2002. There was no indication of the words "COFEPOSA" in the petition. As per the existing practice various letters received in regional languages are sent for translation for providing the gist of the letter. Typically, the President's Secretariat receives approximately 5000 petitions in a month out of which approximately 500 petitions are received in various regional languages. Since a very large number of petitions are received in various regional languages, in the interest of expeditious disposal, the translation work is also got done through a panel of translators maintained by the Ministry of HRD as well as through private individuals on payment basis. Hence, the process takes some time.

In the instant case, the petition in the regional language had no indication of the words "COFEPOSA". It was thus sent for translation to an outside translator and on receipt of the gist of the translation, it was forwarded to the Ministry of Finance on 18.6.2002, as a COFEPOSA case. There was, thus, no wilful delay on the part of any of the agencies concerned. However, the present arrangements for translation of petitions received in the Rashtrapati Bhavan in various regional languages into English or Hindi are time-consuming. Realising this, we are presently trying to work out an alternative system for the same that will reduce the time required to the minimum and would ensure prompt attention of these petitions.

The true copy of D.O. letter No. 9(9)/2002-P(1) dated 14.11.2002 is enclosed herewith and is marked as ANNEXURE 'R-1'.

Considering the volume of petitions received in the President's Secretariat and the fact that the petitions received in regional languages have to be translated and thereafter forwarded to the concerned Ministry and in the present case it took about 20 days to complete the process which in the circumstances of the case cannot be taken to be excessive so as to term the delay as inordinate in considering the representation of the detenu. When the said representation had been received from the President's Secretariat steps were taken to get the comments from the sponsoring authority on 26.6.2002 and the same was disposed of on 28.6.2002 itself. Considering the totality of the circumstances, we are of the view that the Ministry of Finance has explained the delay of 20 days in considering the representation and, in the circumstances, it is not necessary to consider the argument advanced on behalf of the Union of India that the representation made by the detenu to the President was deliberate and misleading when it ought to have been addressed to the Secretary in the concerned department nor is it necessary to consider the effect of the decisions in *Raghavendra Singh vs. Superintendent, District Jail, Kanpur and Ors.*, 1986 (1) SCC 650, *Rumana Begum vs. State of Andhra Pradesh & Anr.*, 1993 Supp. (2) SCC 341, and *Rajammal vs. State of T.N. & Anr.* 1999 (1) SCC 417, inasmuch as all these cases had been considered on the facts arising in these cases such as either the delay in disposing of the representation was not properly explained or otherwise.

Next ground urged by the learned counsel for the detenu is that he had studied only upto 5th class and he does not know English language at all and the document annexed to detention order was not translated in Tamil. In this context, the learned counsel for detenu relied upon the decision of this Court in *M. Ahamedkutty vs. Union of India & Anr.*, 1990 (2) SCC 1, that even if the

document was within the knowledge of the detenu, the same had to be served upon him. He further relied upon the decision of this Court in Powanammal vs. State of T.N. & Anr., 1999 (2) SCC 413, to the effect that the serving of document in English would not be an effective compliance with the provisions of Article 22 of the Constitution and the documents had to be translated. He submitted that that was a document (document at page No. 13) which pertains to the declaration filed by him. It is the stand of the respondents that it was a customs declaration card filled up by the detenu himself and, therefore, he was aware of the contents of the said declaration and he had also stated in the course of his statement before the authorities that he had filled up such a card. It is not the case of the detenu that the said document was not furnished by him. The said declaration which had been filled by the detenu himself was furnished to him but the translation thereof was not given to him. The grievance of the appellant is that Tamil translation of the said document was not given to him. However, when the said document had been filled by the detenu himself wherein he made some entries, non-furnishing of Tamil translation of the same would not result in any non-compliance of a document of which he had no knowledge. If he had made a declaration and same is supplied to him, we do not think that the same can be treated as non-furnishing of a document or furnishing of a document the translation of which is needed. Therefore, the two decisions on which the learned counsel for the detenu has placed reliance will be of no assistance to him.

He next contended that out of the three baggages seized from him one baggage did not contain baggage tag and the baggage being a checked in baggage there must be claim tag and a portion of the tag should have been affixed in the Air ticket and to prove the ownership of the baggage there must be baggage tag and claim tag; that here in the present case there is no baggage tag or claim tag and thus under these circumstances, there is no iota of evidence to prove that the baggage belonged to the detenu except the statement of the detenu; that thus it was contended that the detenu had only one checked in baggage that is a black colour zipper bag having marking Aero Star and the two baggage vide Grey colour zipper bag having marking as Fly way bag to the future and black colour zipper bag bearing marking as red stone did not belong to him; that the baggage tag and claim tag are the most important documents which prove the possession or ownership of the baggage of a passenger who came by flight; that in the absence of any material to connect the detenu with the baggage except the retracted statement by him, there is serious doubtful position as to the basic fact regarding the ownership of the baggage; that the detaining authority without ascertaining the prima facie proof of ownership of the baggage, came to the subjective satisfaction that the detenu was the owner of the baggage before passing the order of detention. The stand of the respondents is that on the basis of certain information the detenu was intercepted on 20.3.2002 when he arrived from Singapore by flight IC 556 at Chennai Anna International Airport; that the detenu in his customs declaration submitted to the Customs Authorities before he was intercepted declared that he had brought two checked in baggages and one hand baggage; that at the time of interception, he was found in possession of the said two checked in baggages, one baggage with a baggage tag in his name and the other without a baggage tag and one hand baggage; that even the said one baggage tag did indicate as 2/32 which means that the detenu had booked two checked in baggages weighing 32 kgs.; that the said two checked in baggages were examined by the Customs Officer in the presence of independent witnesses and in the presence of the detenu himself and the seizure of the goods effected therefrom.

Particularly when in the declaration filed by the detenu he himself had shown that he had brought two checked in baggages and the baggage tag did indicate that there are two items, it baffles anyone's imagination as to how the detenu can now contend that there was absolutely no material before the concerned authorities to prove the ownership of the baggages in the absence of baggage tag or claim tag. Further, this stand was not taken by the detenu in his statements made before the Magistrate in the different applications filed in respect of the bail petitions. Thus, we do not think that on this aspect there is no application of mind by the authorities concerned and the decision reported in Chowdarapu Raghunandan vs. State of Tamil Nadu & Ors., 2002 (3) SCC 754, cannot be made use of by the learned counsel for the detenu in this regard.

Lastly, it is urged on behalf of the detenu that on a solitary instance without any propensity to evade duty should not be made a ground for detention and particularly when his passport had been seized on the same day of his arrest, there is no chance of his committing further acts of smuggling for which he has now been detained. In this context, the learned counsel placed reliance on the decision in *Rajesh Gulati vs. Government of NCT of Delhi & Anr.*, 2002 (6) SCALE 142, to contend that retention or cancellation of passport will cripple the smuggling activity inasmuch as there is no material to show that even in the absence of a passport he would be able to continue the activities in respect of which he is detained; that such an attempt would be merely speculative based on no material.

The stand of the department is that whether there can be detention on a solitary instance would depend on the facts and circumstances of each case, on the magnitude of the case and other attendant circumstances. In the present case, it is stated that detenu's passport disclosed that he had made several trips abroad and he was not a man of such affluence as to make so many trips out of the country unless they be in the context of his business activities. Therefore, considering the number of trips he had made out of the country, the volume of goods seized now and the prima facie misdeclaration of value, an inference can be drawn that the detenu was a part of bigger network in bringing the goods for commercial distribution inside the country by avoiding the payment of duty. In this background, absence of passport will not be a handicap to the detenu for his activities in the present case in which the fact situation is different from the one available in *Rajesh Gulati's* case. Nor can we confine the meaning of the word 'smuggling' only to going out of country and coming back with goods which are contraband or to evade duty but may encourage such activities as well by dealing in such goods.

Therefore, we do not find any substance in any of the contentions urged on behalf of the detenu and the petition therefore stands dismissed.