

CASE NO.:
Appeal (crl.) 1033 of 2004

PETITIONER:
Kirti Kumar Nirula

RESPONDENT:
State of Maharashtra & Ors.

DATE OF JUDGMENT: 17/09/2004

BENCH:
N.Santosh Hegde & S.B.Sinha

JUDGMENT:
J U D G M E N T

(Arising out of SLP(Crl.)No.3387 of 2004)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

This is an appeal filed against the judgment and order of the High Court of Judicature at Bombay dated 24th of March, 2004 whereby the said High Court dismissed the criminal writ petition filed by the appellant herein challenging the detention of his brother Rajinder Nirula made under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Brief facts necessary for the disposal of this appeal are as follows:

On an information received by the Directorate of Revenue Intelligence, Mumbai, the Officers kept watch over the activities of the appellant in transit lounge of CST Airport, Mumbai on the night of 31st of July, 2002. The detenu who was to go to Ahmedabad in an international flight had come from Delhi to Bombay by Indian Airlines flight. He was apprehended when he handed over foreign currency of 700 notes of US \$ in denomination of 100 totalling of US \$ 70,000 equivalent to Indian Rs.35 lacs along with four mobile phones to one Tilak Raj Sharma in the transit lounge at Sahara Airport. Both the detenu and the said Tilak Raj Sharma were arrested and the statements under Section 108 of the Customs Act were recorded. It is pursuant to this incident after investigation an order of detention under Section 3 of the said Act was issued against the detenu on 18.1.2003, consequently, he has been in detention since 30th September, 2003. The period of detention being one year. Tilak Raj Sharma the person who received the above currency and the cell phones was also similarly detained. The detention of these persons came to be challenged by way of writ petitions before the High Court. Criminal Writ Petition filed challenging the detention of Tilak Raj Sharma came to be allowed by the High Court as per its order dated 19th September, 2003 wherein among other things the High Court came to the conclusion that there was no application of mind by the detaining authority to certain material facts as also on the ground that the detention being based on a single incident was liable to be quashed.

The appellant in his writ petition before the High Court has raised various grounds including the ground of single incident based on which the detention order of co-detenu of Tilak Raj Sharma was quashed. It was also urged that the benefit given to the

co-detenu should also be made available to the detenu in his case. The High Court by a detailed order after considering all the facts and law placed before it came to the conclusion that the detention order in regard to the present detenu, namely, Rajinder Nirula did not suffer from any such infirmity as was noticed by the court in the case of Tilak Raj Sharma and came to the conclusion that a valid detention order could also be based on single incident, hence, dismissed the writ petition.

In this appeal, Ms.Sangeeta Bhyana, learned counsel appearing for the appellant urged three points for our consideration. They are : -

(i) The order of detention being based on a single incident, the same was liable to be quashed as the said incident alone could not have been the basis for an opinion being formed by the detaining authority that the detenu would indulge in such activities in future also.

(ii) The detention order of the co-detenu of Tilak Raj Sharma being quashed by the High Court which was based on the very same grounds on which present detenu's detention order is based, he is also entitled to the same benefit.

(iii) There was inordinate and unexplained delay in considering the representation submitted by the detenu to the detaining authority and the State Government.

Learned counsel has cited various decisions of this Court in support of her contention.

While considering the first argument of the learned counsel, we must notice at the outset that there is no statutory provision against detaining a person based on a single incident provided the detaining authority had material before it to come to a reasonable opinion that from the surrounding circumstances coupled with the incident in question a satisfaction as to the future illegal activities of the detenu could be inferred. This is clear from the very judgment sought to be relied upon by the learned counsel in the case of Chowdarapu Raghunandan vs. State of Tamil Nadu & Ors.

(JT 2002 (3) SC 110) wherein at para 13 of the said judgment this Court held that in an appropriate case, an inference could legitimately be drawn even from a single incident of smuggling that the person may indulge in smuggling activity but for that purpose antecedents and nature of the activities carried out by a person are required to be taken into consideration for reaching justifiable satisfaction that the person was engaged in smuggling and that with a view to prevent further smuggling, it was necessary to detain him.

We will now consider the facts of this case to find out whether a single incident in this case would be sufficient to detain the appellant, keeping in mind the principle of law enunciated by this Court in the above referred case.

The fact that the detenu was arrested at the Airport while he was handing over foreign currency totalling of US \$ 70,000 with four mobile phones to the co-detenu Tilak Raj Sharma is not denied. The explanation of the detenu is that he had brought the same when he came into India from abroad and had declared the same to the Custom Authorities as required in law, hence, there is no illegality in his taking back this money with him when he is going out of India. This explanation cannot be accepted because of the fact that if he had brought the money and he wanted to take the money out of India then there was no need for him to hand over this money to Tilak Raj Sharma at the Airport lounge. Therefore, we will have to proceed on the basis that the detenu was arrested when he handed over the foreign currency to Tilak Raj Sharma at the Airport. Now this incident being a single incident, we will have to see whether there was any other material before the detaining authority to come to a legitimate satisfaction that the detenu in this case would indulge in similar activities of smuggling currency in future also. In this regard, it is seen from the material placed on

record that the detenu had a work permit to work in UAE but on enquiry it was found that he was neither working in UAE nor was a regular resident of UAE. From the material placed before the detaining authority, it is noticed that these detenu had travelled abroad number of times and also he had made it a practice to travel between Delhi \026 Bombay \026 Ahmedabad in a particular manner, that is, he would take a domestic flight of Indian Airlines from Delhi to Bombay and in Bombay he will change over an international flight which touches Ahmedabad on the way. It is also seen from the records in almost all these flights the co-detenu Tilak Raj Sharma used to be a co-passenger. This detenu had taken 16 such flights during a short period of time and it is during one or such flights he was arrested, as stated above. Thus on the facts and circumstances of this case, we are in agreement with the finding of the High Court that the material placed before the detaining authority coupled with the fact of arrest and seizure of the foreign currency which is handed over by the detenu to Tilak Raj Sharma are sufficient to form a reasonable conclusion that the detenu is likely to indulge in similar activities in future also. Therefore, we find no merit in this argument.

Coming to the second contention of the learned counsel for the appellant that the co-detenu having been released, benefit of the said order should also be extended to the detenu in this case. We notice that the High Court while considering this argument came to the conclusion that the detention order of the co-detenu Tilak Raj Sharma was set aside by the High Court on two grounds : one of the grounds being non application of mind because in the grounds of detention it was mentioned that the detenu in the present case had handed over the money in assorted currency and not only in American Dollars. This erroneous statement noticed by the detaining authority was not explained by the respondents in that case in the counter affidavit. Therefore, to that extent the High Court came to the conclusion that there was a non application of mind. While in the present case in the counter filed before this Court the department specifically adverted to the said error and stated that that was a typographical error which should be ignored and it was also contended that by such error the opinion formed by the detaining authority did not, in any manner, get vitiated. The High Court accepted this argument and we find no reason to differ from the same. We are also of the opinion that this argument pointed out in the grounds of detention has not, in any manner, prejudiced the detenu in making his representation. We do not think that the judgments relied upon by the learned counsel in support of her contention could really help the detenu on the facts of this case. As a matter of fact, the High Court in this regard rightly relied on a judgment of this Court in the case of Pushpa Devi M.Jatia vs. M.L.Wadhawan, Additional Secretary, Government of India & Ors. (1987 (3) SCC 367) wherein this Court ignored similar minor error found in the detention order.

Coming to the last contention of the learned counsel for the appellant pertaining to the delay in consideration of his representation, we notice that this is not a ground which was taken before the High Court. Be that as it may, the same is raised in this appeal in the following manner :

"Because the High Court has erred in having failed to appreciate that it was incumbent upon the detaining authority and the State Government to satisfy the Hon'ble Court as to whether the representation submitted by the detenu to the Advisory Board at the time of its meeting on 6.11.2003 was considered by the detaining authority and the State Government independently of each other and uninfluenced by the opinion of the Advisory Board and as to whether the same was so considered

expeditiously and without any avoidable delay and as to whether the replies by the detaining authority and the State Government were forwarded and served on the detenu without any loss of time. The Hon'ble High Court failed to appreciate that the detention of the detenu was liable to be held as violative of Article 22(5) of the Constitution inasmuch as the detaining authority and the State Government had failed to satisfy the Hon'ble Court on the aforesaid issues."

In the counter affidavit filed in this regard on behalf of the detaining authority, it is stated that the appellant had submitted an unsigned and undated representation jointly addressed to the Advisory Board, detaining authority, the State Government and the Central Government and the same was received by the Government along with a copy of the report of the Advisory Board on 11.12.2003. After explaining the time taken for considering the said representation in the said counter affidavit, it is stated that it was rejected on 17.12.2003 and the order of detention was confirmed on 20.12.2003. The affidavit further states that the representation which was forwarded along with the report of the Advisory Board was considered and rejected since there was no signature of the detenu on the said representation as such it was not a representation within the meaning of Article 22(5) of the Constitution. This information of rejection was conveyed to the detenu on 16.1.2004. From the above pleadings, it is clear that the detenu who did not send any representation immediately on receipt of the detention order and the material accompanying therein deliberately tried to mislead the authorities by filing an undated and unsigned representation simultaneously to the State Government, the Union Government and the detaining authority which was sent to the Advisory Board knowing very well that this was likely to cause some delay, thus he has tried to mislead the authorities by the above act of his. We are in agreement with the stand taken by the respondent-State that undated and unsigned representation cannot be treated as a representation within the meaning of Article 22(5) of the Constitution requiring immediate attention of the authorities concerned. In the said view of the matter, we are satisfied that there was no delay in considering the representation of the appellant. Hence, we find no merit in this appeal and the same is dismissed.