

PETITIONER:
BAL CHAND BANSAL

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 11/04/1988

BENCH:
SHARMA, L.M. (J)
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SHARMA, L.M. (J)
SEN, A.P. (J)

CITATION:
1988 AIR 1175 1988 SCR (3) 494
1988 SCC (2) 527 JT 1988 (2) 65
1988 SCALE (1) 688
CITATOR INFO :
RF 1988 SC1256 (13)

ACT:
Conservation of Foreign Exchange and Prevention of
Smuggling Activities Act, 1974: s.3(1)-Preventive detention-
Compelling necessity for-Detenu already in judicial custody-
Likely to be released on bail-order whether punitive.

HEADNOTE:

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The petitioner was apprehended on April 2, 1987 on information provided by his associate that he was the main person directing illegal remittances of money to foreign countries. He was formally arrested on April 3, 1987 and remanded to judicial custody till April 13, 1987. His associate was in the meantime enlarged on bail and being apprehensive that the petitioner too may be released on April 13, 1987 when his application was to come up, an order of detention made under Section 3(1) of the COFEPOSA Act was served on him on that day. The application for bail filed by him was actually allowed the same day i.e. April 13, 1987.

Petitioner's representation against the detention was rejected and a Writ of Habeas Corpus under Article 226 of the Constitution was dismissed by the High Court. In the Special Leave Petition arising out of the High Court's Order and the Writ Petition under Article 32 of the Constitution, it was contended that the impugned order amounts to double detention as the petitioner was already in jail when the detention order was made, and that it was essential for the detaining authority to have been aware of the fact that the petitioner was already in jail and was likely to be released on bail and further he had to be satisfied that compelling necessity existed for the detention, none of which conditions were satisfied.

Dismissing the petitions,

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HELD: 1. A perusal of the grounds of detention clearly indicates that the detaining authority was conscious of the fact that the petitioner was in judicial custody and was apprehensive that he would be released on bail when an application for bail moved on his behalf was going to be

heard on April 13, 1987. The order passed on the bail application of the

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petitioner's associate was also referred to therein. Thereafter, the detaining authority had mentioned his satisfaction about the necessity of the detention. [497F-H]

2. The object of detention has to be prevention of a detenu from indulging in activities prejudicial to the conservation of foreign exchange resources, and not to frustrate his trial in a criminal case nor as a punitive measure. [498B]

In the instant case the role of the petitioner has been detailed in the grounds showing how he got illegally siphoned the foreign exchange to the tune of about 2 crores of rupees out of the country. The grounds also refer to the statements made by his associates which indicate that offences in respect of which the detenu was accused of were so interlinked and continuous in character and were of such nature that they fully justified the detention order. In the circumstances, the satisfaction of the detaining authority specifically recorded cannot be doubted. [498C,D,G]

Suraj Pal Sahu v. State of Maharashtra, [1986] 4 SCC 378, referred to.

3. Merely because the prayer for bail made on behalf of the petitioner was not opposed on behalf of the respondents before the Magistrate, it cannot be said that his detention was not called for. Having regard to the circumstances arising in the case, no such inference is permissible to be drawn in favour of the petitioner. [498H; 499B]

Ramesh Yadav v. District Magistrate, Etah, [1985] 4 SCC 232, distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Criminal) No. 3115 of 1987.

From the Judgment and Order dated 29.10.1987 of the Delhi High Court in Criminal Writ Petition No. 219 of 1987.

Kapil Sibal, Pinaki Mishra, Ms. Bina Gupta and Atul Tewari for the Petitioner.

Kuldip Singh, Additional Solicitor General, V.C. Mahajan, C.V. Subba Rao, Ms. A. Subhashini, Hemant Sharma and Arun Madan for the Respondents.

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The Judgment of the Court was delivered by

SHARMA, J. The petitioner has challenged his order of detention made under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the COFEPOSA). He filed an application under Article 226 of the Constitution before the Delhi High Court, being Writ Petition No. 219 of 1987, which was dismissed by the judgment dated 29-10-1987 impugned in the S.L.P. (Crl.) 3115 of 1987. He has also filed an application directly before this Court under Article 32 of the Constitution which has been registered as Criminal Writ Petition No. 830 of 1987.

2. In January 1987, on receipt of a confidential information by the Directorate of Enforcement, Delhi Zone, New Delhi, that a group of persons were engaged in illegal activities causing remittances of large amounts of money to foreign countries, an inquiry was instituted. It appeared that the remittances were ostensibly made for import of certain goods on the basis of forged documents and actually goods were not received from outside. Information collected

in the course of inquiry disclosed that a number of persons were engaged in the criminal activities and were operating through five Indian firms and a number of foreign firms in Hong Kong and Singapore. On 20-2-1987, one Sita Ram Aggarwal, associate of the petitioner, disclosed during his interrogation, facts which indicated that the petitioner was the main person directing the illegal activities. The petitioner was apprehended in a hotel in Calcutta on 2-4-1987 and on being questioned, made certain statements. He was formally arrested the next day and was produced before the Additional Chief Metropolitan Magistrate, New Delhi, who remanded him to judicial custody till 13-4-1987. Sita Ram Aggarwal, the aforesaid associate of the petitioner was in the meantime enlarged on interim bail which was extended after expiry of the initial period, and, according to the case of the respondents, the detaining authority apprehended that the petitioner also was likely to be released on bail on 13-4-1987. In this background the impugned order of detention was passed and served on him. The application for bail by the petitioner which had already been filed was actually allowed the same day, i.e. on 13-4-1987. After his representation against the detention order was rejected, the petitioner moved the Delhi High Court for a writ of habeas corpus which was dismissed by the order dated 29-10-1987 challenged in the special leave petition. The Writ Petition No. 830 of 1987 was filed before this Court on 9-11-1987. Both the cases are being disposed of by this judgment.

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3. When the cases were placed for preliminary hearing before us, we directed notice to be issued only on two of the grounds taken by the petitioner, namely, whether there was compelling necessity for passing the order as the petitioner was already in judicial custody, and whether the order was passed for the collateral purpose to frustrate the grant of bail and was punitive in nature.

4. The learned counsel for the petitioner has contended that the impugned order amounts to double detention of the petitioner as he was already in jail when the detention order was made. Relying upon several decisions of this Court it was argued that it was essential for the detaining authority to have been aware of the fact that the petitioner was already in jail and was likely to be released on bail and further he had to be satisfied that compelling necessity existed for the detention. It is said that none of these conditions is satisfied.

5. Mr. Kuldip Singh, the learned Additional Solicitor General appearing on behalf of the respondents said that there cannot be any manner of doubt that the detaining authority was fully aware of the fact that the petitioner was already in custody and that he was likely to be released on bail on 13-4-1987. Besides, relying on the counter affidavit, the learned counsel placed before us the original records of the case for our perusal. It appears that a note specifically mentioning these facts was on the file and immediately there-after the detaining authority recorded his order. It was urged on behalf of the petitioner that the respondents were not entitled to rely on the original file for this purpose and that the awareness of the detaining authority ought to have appeared from the grounds themselves and unless that is shown, the detention order cannot be defended. Even assuming that the stand taken on behalf of the petitioner is correct, he cannot succeed in the present case. A perusal of the grounds which runs into many pages clearly indicates that the detaining authority was conscious

of the fact that the petitioner was in judicial custody and was apprehensive that he would be released on bail. In paragraph 24 of the grounds it was stated that the petitioner had been arrested on 3-4-1987 and was in judicial custody till 13-4-1987 and in paragraph 26, the detaining authority reminded the petitioner that an application for bail moved on his behalf was going to be heard by the Additional Chief Metropolitan Magistrate on 13-4-1987. In paragraph 38, the order passed on the bail application of the petitioner's associate Sita Ram Aggarwal was referred to. Thereafter, the detaining authority had mentioned his satisfaction about the necessity of the detention.

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6. On the question as to whether the detaining authority was satisfied about the compelling necessity for the detention order also, there is no merit in the petitioner's case. It is true that the order could not have been passed for the purpose of circumventing the expected bail order. The object of detention has to be prevention of a detenu from indulging in activities prejudicial to the conservation of foreign exchange resources, and not to facilitate his trial in a criminal case nor as a punitive measure. The learned Additional Solicitor General placed before us the grounds served on the petitioner, at some length, wherein it is inter alia stated that the petitioner was running a business firm under the name and style of "M/s. B.N. Corporation" in Hong Kong as also offices in other places including Singapore and got certain business firms in India detailed therein registered in Nagaland under 'farzi' names and employed a number of persons who were acting at his behest. The role of the petitioner has been detailed in the grounds showing how he got illegally siphoned the foreign exchange to the tune of about 2 crores of rupees out of the country. Besides the aforementioned Sita Ram Aggarwal and the petitioner's nephew Subhash Aggarwal, the other associates working in accordance with the direction of the petitioner are mentioned along with their activities. The grounds also referred to the statements made by Sita Ram Aggarwal which indicated that the petitioner was travelling by air under assumed names and has been dodging the authorities when they attempted to contact him, before he was apprehended in a Calcutta hotel. It is further said that the petitioner's firm M/s. B.N. Corporation of Hong Kong received remittances through bank worth Rs.85-90 lacs during the year 1986 but did not supply or ship any goods for which the invoices were supposed to have been issued. Some of the documents are alleged to bear his signatures. We do not think it necessary to deal with the grounds in greater detail. The statements indicate that the offences in respect of which the detenu is accused of are, in language of Mukharji, J., in *Suraj Pal Sahu v. State of Maharashtra*, [1986] 4 SCC 378, "so interlinked and continuous in character and are of such nature" that they fully justify the detention order. In the circumstances, we do not doubt the satisfaction of the detaining authority specifically recorded in paragraph 41 of the grounds.

7. It was also urged on behalf of the petitioner that since the prayer for bail made on behalf of the petitioner was not opposed on behalf of the respondents before the Additional Chief Metropolitan Magistrate, it must be held that this detention was not called for. Reliance was placed on paragraph 6 of the judgment in *Ramesh Yadav v. District Magistrate, Etah*, [1985] 4 SCC 232. The learned counsel is not

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correct in interpreting the observation of this Court relied upon by him as laying down a principle for general application. The Bench while considering the merits of the case before it, made the remark in the background of the facts and circumstances of the case. Having regard to the circumstances arising in the case before us, no such inference is permissible to be drawn in favour of the petitioner. Besides, according to the respondents, the bail application was as a matter of fact opposed. In any view of the matter, this factor is not of much consequence in the facts of the present case. In the result, both the writ application and the Special Leave Petition are dismissed.

P.S.S.

Petitions dismissed.

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