(1994) 08 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 532 of 1993

Mohinder Pal Shukla		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: Aug. 26, 1994

Acts Referred:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 3
- Constitution of India, 1950 - Article 226, 227

Citation: (1995) 50 ECC 103 : (1994) 3 RCR(Criminal) 493

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Final Decision: Allowed

Judgement

V.K. Jhanji, J.
The present petition has been filed under Article 226227 of the Constitution of India by one Mohinder Pal Shukla, son of Ayodhia Parkash, resident of Phagwara (now confined in Central Jail, Bhatinda), for the issuance of a writ directing the respondent, Union of India, to release the petitioner who was detained in pursuance of order, Annexure P-1, passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) (in short, the Act).

2. As per case set out in the petition and revealed from various annexures appended to the petition, on May 31, 1993, an information was received in Jalandhar Zonal Office of Enforcement Directorate that the petitioner was running a shop under the name and style of M/s. Shukla Ghee Store, Mandi Road, Phagwara, and was engaged in the sale and purchase of foreign exchange in association with one Pradeep Kumar @ Bunty of Indira Colony, Phagwara. On the basis of this information, residential premises and shop of the petitioner were searched u/s 37 of the Act, with the result that six cheques of Midlantic National Bank for a total value of $ 8250 (US dollars) and one unsigned cheque for ï¿½

850 were recovered. The petitioner was arrested u/s 35 of the Act (sic) by the Enforcement Directorate, Jalandhar, on 1.6.1993. In this case, he was released on bail on 19.6.1993 by the Sessions Judge, Jalandhar. The detention order was passed against the petilioner on 6.9.1993, leading to his arrest on 15.9.1993.

3. The detention order passed against the petitioner is being assailed on the grounds, that there is an inordinate delay in passing the detention order. The alleged activity forming the basis of detention of the petitioner took place on 1.6.1993, whereas detention order was passed on 6.9.1993; that the representation was submitted to the detaining Authority through the Superintendent, Jail on 4.10.1993, but till date the same has not been decided, and that petitioner was served with the detention order and grounds of detention, but the material/documents on the basis of which grounds of detention were prepared, have not been supplied to the petitioner.

4. In opposition to these grounds, learned Counsel for Union of India, respondent, has submitted that there is no delay in passing the detention order. He further submitted that representation dated 4.10.1993 of the petitioner was received in the Ministry on 15.11.1993. The Joint Secretary (COFEPOSA) called for the para wise comments from the Sponsoring Authority, and on receipt of the same from the Sponsoring Authority, the representation was processed and put up before the Joint Secretary (C) on 23.11.1993, who considered it and thereafter, submitted the file to the Member (Anti-Smuggling) & Director Genaral, EIB, on 24.11.1993, who further submitted it on the same day before the Minister of State (Revenue & Expenditure). The said Minister considered and submitted the file to the Finance Minister on 26.11.1993, who considered and rejected the representation on 30.11.1993. The file was then received back through proper channel in the COFEPOSA unit on 1.12.1993 and a Memo, intimating about the rejection of the representation was issued to the petitioner on the same very day. As regards non-supply of material/documents, counsel for the respondent submitted that previous history of the detenu as well as recovery of cheques drawn in foreign exchange, were relied upon by the detaining Authority. He further submitted that since the pass-book and cheque-book were recovered from the business premises of the petitioner, the same were not relied upon by the Detaining Authority while passing the detention order.

5. After hearing learned Counsel for the parties, I am of the view that this petition deserves to be allowed. Petitioner has specifically alleged that there is a delay of more than three months between alleged activity and passing of detention order. Respondent was required to explain the delay, but instead of explaining the delay, what is stated in its reply is that "in reply to para 4(a), it is submitted that the seizure was effected on 1.6.1993 and not on 31.5.1993. After thorough investigation, the case was sponsored to the Ministry for issuance of detention order. The competent Authority after applying its mind and going through the materials on record issued the detention order." It has not been stated as to when the case was sponsored, when was it received, how was it processed and when recommendation was made to the concerned Ministry. No details whatsoever have been given in the affidavit filed by the respondent. [Of] course, there is no hard and

fast rule that merely because there is a delay of three months between the offending acts and the date of order of detention, the causal link must be taken to be broken and the satisfaction of detaining Authority, regarded as wham [sham?] or unreal, but when there is an undue and long delay between the prejudicial activity and passing of detention order, the Court has to scrutinise as to whether the Detaining Authority has satisfactorily explained such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer, and further the Court has to investigate whether the causal connection has been broken. In the present case, no explanation at all is forthcoming as to why there was a delay of more than three months in passing the order of detention from the date of alleged activity. Representation was made to the Detaining Authority through Superintendent [of] Jail on 4.10.1993. The representation was required to be sent to the Detaining Authority immediately for consideration. Here in this case, as admitted by the respondent, the representation was received in the Ministry only on 15.11.1993. Respondent lias not disclosed in the affidavit as to why representation was not sent to the Ministry concerned, immediately on its receipt. It is true that there is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. It always depends upon the facts and circumstances of each case. The requirement is that there should not be supine indifference, slackness or callous attitude in considering the representation. It has been held by the Supreme Court in K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, , that any unexplained delay in disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. The absence of any explanation for not placing the representation before the detaining authority immediately after 4.10.1993, therefore, renders the detention illegal. This petition also deserves to be allowed on the ground that material/documents forming the basis of grounds of detention were not supplied to the petitioner along with order of detention. It is well-settled that it is necessary for the detaining Authority to supply material/documents forming the basis of grounds of detention, to the detenu along with detention order, and failure to supply such material would render the detention order unsustainable. The Supreme Court in S. Gurdip Singh Vs. Union of India (UOI) and Others, , has held that service of grounds of detention is complete only when grounds of detention are accompanied by documents forming basis thereof. Again, in case [of] Lallubhai Jogibhai Patel v. Union of India and Ors. AIR 1931 SC 728 the detention order was held to be unsustainable on the ground that the documents relied upon for detention were not forwarded to the detenu. From a reading of ground of detention, it is abundantly clear that what weighed with the detaining Authority was the recovery of cheques and pass-book from the residential and shop premises of the petitioner, and also that in the year 1991, during search of his business premises, US $.2230/- and ï¿½ 100/- were recovered. Though counsel for the respondent has submitted that documents were sent to the petitioner by speed-post for service upon him, when the same were asked for by his wife, Raman Bala, but as is clear from the reply, these documents were sent only on 20.10.1993 and that too after the representation had already been made by the petitioner.

In these circumstances, it cannot be said that the petitioner was able to make an effective representation when the detention order was not accompanied by the documents forming the basis of detention order.

6. Consequently, this petition stands allowed and detention order, Annexure P-l and grounds of detention, Annexure P-2, quashed. Respondent is directed to set the petitioner at liberty forthwith. No costs.