

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 28.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Habeas Corpus Petition Nos.5 of 2006

Kaja Mohideen

... Petitioner

vs.

1. State of Tamilnadu,
rep. by Secretary to Govt.,
Public (SC) Department,
Fort St. George, Chennai-9.

2. Union of India, rep. by
Secretary to Govt.,
Ministry of Finance,
Department of Revenue,
COFEPOSA Unit, Janapath Bhawan,
'B' Wing, 6th Floor,
Janapath, New Delhi 110 001.

... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records of the 1st respondent made in S.R.1/1061-3/2005, dated 8.12.2005, and quash the same, direct the respondents to produce detenu Kuthus Rowthar Manzoor Ali, son of Kaja Mohideen, now detained in Central Prison, Chennai, under the provisions of COFEPOSA Act and set him at liberty.

For Petitioner

: Mr.B.Kumar, Senior Counsel
for Mr.R.Loganathan

For Respondent-1

: Mr.Abudukumar Rajarathinam,
Government Advocate (Crl. Side)

For Respondent-2

: Mr.P.Kumaresan, Additional
Central Govt. Standing Counsel

O R D E R

P. SATHASIVAM, J.

The petitioner herein, who is the father of the detenu by name Kuthus Rawther Mansor Ali, challenges the impugned order of detention, dated 08.12.2005, detaining his son under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).

2. Heard Mr.B.Kumar, learned Senior Counsel for the petitioner; Mr.Abudukumar Rajarathinam, learned Government Advocate for R-1; and Mr.P.Kumaresan, learned Additional Central Government Standing Counsel for R-2.

3. After taking us through the grounds of detention and all other connected materials, Mr.B.Kumar, learned Senior Counsel, at the foremost, submitted that, while passing the impugned order of detention, reliance has been made on the documents enclosed at page Nos.60 to 62 of the paper book, which have no relevance to the detention order passed against the detenu, therefore, it is apparent that extraneous factors have been taken into consideration, thereby, the subjective satisfaction arrived at by the Detaining Authority is vitiated.

He also contended that even though this aspect was pointed out in the representation, the same has not been properly considered by the Detaining Authority, thus, the consideration of the representation stands vitiated.

He further contended that though the detenu sent a detailed representation addressed to the superior officer in the Customs Department at New Delhi on 28.11.2005, and the said Communication, sent on behalf of the detenu, had been received by the said authority; the same had not been forwarded to the Detaining Authority, who passed the detention order on 08.12.2005. According to him, a vital document has not been placed before the Detaining Authority, hence, the subjective satisfaction is vitiated.

4. Learned counsel appearing for both the respondents, by placing Files and other materials, met all the contentions raised by the learned Senior Counsel.

5. Coming to the first contention, it is the grievance of the petitioner that the document at page No.60 of the Booklet has no relevance to the detention order, hence, the detenu got confused and unable to make an effective representation. In the light of the said contention, we verified page No.60 of the paper book, which is 'General Declaration'.

6. Mr. Abudukumar Rajarathinam, learned Government Advocate appearing for the first respondent, has submitted that the documents at page Nos. 60 to 62, supplied along with grounds of detention, are relevant documents as they form part of the Flight Manifest, containing the names of the passengers including the detenu, who travelled in the subject flight from Singapore to Chennai on that day. As rightly pointed out, the document at page No. 60 has to be read along with the list of passengers travelled in the flight (available at page No. 64 of the paper book). It contains the names of Captain V.K. Bhalla, Captain K.S. Gujral, who piloted the flight and other crew members, viz., air hostesses and flight pursers. The said names are of responsible officials of Indian Airlines, who performed their work for the international flight IC 558 on 12.11.2005. Page No. 64 of the paper book contains the list of passengers, who travelled in I.C. 558 on 12.11.2005 from Singapore to Chennai. Name of the detenu (Mansoor Ali) finds place in the said list. In such circumstances, we are satisfied that the documents available at page Nos. 60 to 62 are not irrelevant as claimed by the learned Senior Counsel for the petitioner, on the other hand, the same are relevant and rightly enclosed along with the grounds of detention. Accordingly, we reject the said contention.

7. The next contention is that the pre-detention representation, dated 28.11.2005, being a vital document, ought to have been placed before the Advisory Board and the Government. According to the learned Senior Counsel, absolutely there is no reference to the said document in the detention order.

8. In the counter affidavit filed by the Additional Secretary to Government, Public (Law and Order) Department, Secretariat, Chennai-9, on behalf of the first respondent, it is stated that the detention order was passed on 08.12.2005 by the State Government, whereas, the representation, dated 28.11.2005, sent by the detenu's father, was received in the Sponsoring Authority's Office on 09.12.2005, i.e., after passing of the detention order. It is further stated that subsequently, the said representation, dated 28.11.2005, was considered by the Finance Ministry and rejected vide F.No. 686/61/2005-Cus.VIII, dated 13.12.2005. The said order shows that no case was foisted on the detenu and the recovery of the contraband in the presence of independent witnesses and the voluntary statement given by the detenu all bear testimony to the smuggling activity and the offence committed by the detenu.

9. In the counter affidavit filed on behalf of Union of India, i.e., second respondent, it is stated that the letter, dated 28.11.2005, in Tamil Language, made by the petitioner, addressed to the Revenue Secretary, Central Secretariat, Finance Ministry, Central Economic Intelligence Bureau, B Division, 6th Floor, Janpath

Bhawan, New Delhi, was received in the COFEPOSA Unit of the Ministry of Finance, Department of Revenue, New Delhi, on 01.12.2005. In the said letter, the petitioner herein claimed that a false case has been foisted on his son who was arrested without any proper reason. In the counter, it has been explained that, after knowing the contents of the said letter, which were in Tamil language and subsequent enquires about the Sponsoring Authority, the letter was sent to the Joint Commissioner of Customs, COFEPOSA Air, Chennai Airport, Chennai, on 07.12.2005 for furnishing parawise comments and English translation of the letter and he was also requested that a copy of the letter may be sent to the Detaining Authority in case any proposal for detention under the COFEPOSA Act is envisaged. The counter further shows that the said letter was received by the joint Commissioner of Customs, Chennai Airport, on 09.12.2005, and after receiving the parawise comments on the letter and English translation thereof on 10.12.2005, the case file was submitted to the Special Secretary and Director General, Central Economic Intelligence Bureau, Ministry of Finance, Department of Revenue, New Delhi, on 12.12.2005. The said letter was considered by the Special Secretary and Director General, Central Economic Intelligence Bureau, Ministry of Finance, Department of Revenue, New Delhi, on behalf of the Central Government and the same was rejected by him on 13.12.2005 as devoid of merits. The detenu as well as the petitioner herein was intimated about the rejection of the letter dated 28.11.2005 vide memorandum dated 13.12.2005. The detenu acknowledged the receipt of the Memorandum dated 13.12.2005 on 16.12.2005. It is also explained that the said letter was received by the Sponsoring Authority on 09.12.2005, in the meantime, the Detention Order was issued by the Government of Tamil Nadu on 08.12.2005 and the Central Government came to know about the issue of Detention Order against the son of the petitioner herein on 12.12.2005. Hence, the letter dated 28.11.2005 could not be placed before the Detaining Authority by the Sponsoring Authority.

10. The above information from the counter affidavits filed by respondents-1 and 2 amply shows that the said representation was duly considered and rejected by the competent authority and the same was intimated to the detenu as well as the petitioner herein, hence, the subjective satisfaction in passing the detention order would not have been vitiated, if the letter dated 28.11.2005 was not placed before it.

11. The decision relied on by the learned Government Advocate, viz., 2004 SCC (Cri) 579 (UOI vs. Sneha Khemka), makes it clear that the Apex Court has nowhere stated that copy of the representation made by the detenu to one authority must be placed before all the authorities and all such authorities also should consider and pass orders on those representations, though really not made to any one of them. In A.C.Razia vs. Govt. of Kerala (2004

SCC (Cri) 618), three Judges Bench of the Hon'ble Supreme Court has considered disposal of the representation in terms of Article 22(5) of the Constitution. The following conclusion of Their Lordships is as follows:-

" 19. The emerging result of the above discussion is that the additional remedy or safeguard provided by Section 11 has been projected into the fabric of Article 22(5) so as to be absorbed into the ambit of safeguard provided by the latter part of Article 22(5). A provision like Section 11 may or may not be necessary to give effect to that safeguard, but, once a provision like Section 11 finds its place in the detention law, the detenu's constitutional right to make representation gets amplified. His right extends to making representations to all those authorities who can grant him relief and the opportunity afforded to the detenu to submit such representations thus becomes a part of the guaranteed right under Article 22(5). That is how the ratio of the above decisions has to be understood. In fact, that is how it has been understood by the detaining authority in the instant case. We find at the end of the order a note to the effect that the detenu has the right to make representations to the detaining authority, the Central Government and COFEPOSA Advisory Board against the detention. The addresses of the said authorities were also mentioned.

20. What then is the width and amplitude of the power exercisable under Section 11 by the Central/State Government to revoke the order of detention? Are there inherent limitations in such power? This question assumes some relevance in resolving the controversy arising in the present case. The decisions of this Court starting from Pankaj Kumar Chakrabarty case ((1969) 3 SCC 400) make it clear that there is qualitative difference between the manner of disposal of representation by the Government on the receipt of the report from the Advisory Board or otherwise and the manner of consideration by the Advisory Board. It was observed in the above case thus: (SCC p.405, para 10)

" [W]heras the Government considers the representation to ascertain whether the order is in conformity with its power under the relevant law, the Board considers such representation from the point of view of arriving at its opinion whether there is sufficient cause for detention.

.....

.....

21. Thus, the principle is well settled that the Government in exercise of the power under Section 11 does not consider the question of sufficiency or adequacy of the grounds but it would only see whether the detention order is within the parameters of the power conferred under the statute. In other words, it will not review the case as if it is an original or appellate authority. That is why the power under Section 11 has been described as supervisory in nature as pointed out by G.P.Mathur, J. taking support from the observations in Sabir Ahmed v. Union of India ((1980) 3 SCC 295) and Sat Pal v. State of Punjab ((1982) 1 SCC 12). Obviously, this supervisory power cannot be equated to the subjective satisfaction of the detaining authority or the power of the Advisory Board to examine whether there is sufficient material for detention. The range of consideration by the Advisory Board is thus wider. "

12. It is clear from the above decision that reasonable delay in procuring the translation is not fatal and where there is reasonable explanation for the delay, the detention does not get invalidated. The decision makes it clear that the Government, in exercise of the power under Section 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, does not consider the question of sufficiency or adequacy of the grounds but it would only see whether the detention order is within the parameters of the power conferred under the statute. In other words, it will not review the case as if it is an original or appellate authority. In the light of the above mentioned legal position, we are unable to accept the contention raised by the learned Senior Counsel for the petitioner.

13. Coming to the contention relating to non-placing of bail petition and the order passed thereon, as rightly pointed out by the learned Government Advocate, the details relating to awareness on the part of the authority regarding the said aspect are available in the grounds of detention. Even otherwise, in the

light of the decision of the Supreme Court reported in 1992 SCC (Cri) 1 (Abdul Sathar Ibrahim Manik v. Union of India), non-supply of copy of bail application or order, refusing bail, cannot affect the right of the detenu. The fourth principle laid down in the said decision is relevant and the same is extracted below:

" Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same."

In the light of the law laid down by the Hon'ble Supreme Court, the contrary argument made by the learned Senior Counsel is liable to be rejected.

14. It is also contended that the grounds of detention, particularly paragraph No.(iii) of the Tamil and English version, are materially different. In the counter affidavit filed by the first respondent, in para No.14, it is stated thus:-

" it had been mentioned in the grounds of detention in Tamil that 'அப்பொருட்களின் மதிப்பை குறைவாக அறிவித்து' for the word mis-declaration, which was a translation error. However, it will not affect the gravity of the offence committed by him." .

Further, as rightly pointed out, the grounds of detention supplied to the detenu in English were explained to the detenu in the language known to him and he had also acknowledged receipt of the same. Even otherwise, our verification shows that the error is trivial in nature and it would not affect the detention order passed by the authority.

15. In the light of what is stated above, we do not find any error or infirmity in the impugned order of detention. Consequently, the Habeas Corpus Petition fails and the same is dismissed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

To

1. Secretary to Government, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.

2. Secretary to Govt., Ministry of Finance,
Department of Revenue, COFEPOSA Unit, Janpath Bhawan,
'B' Wing, 6th Floor, Janpath, New Delhi 110 001.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

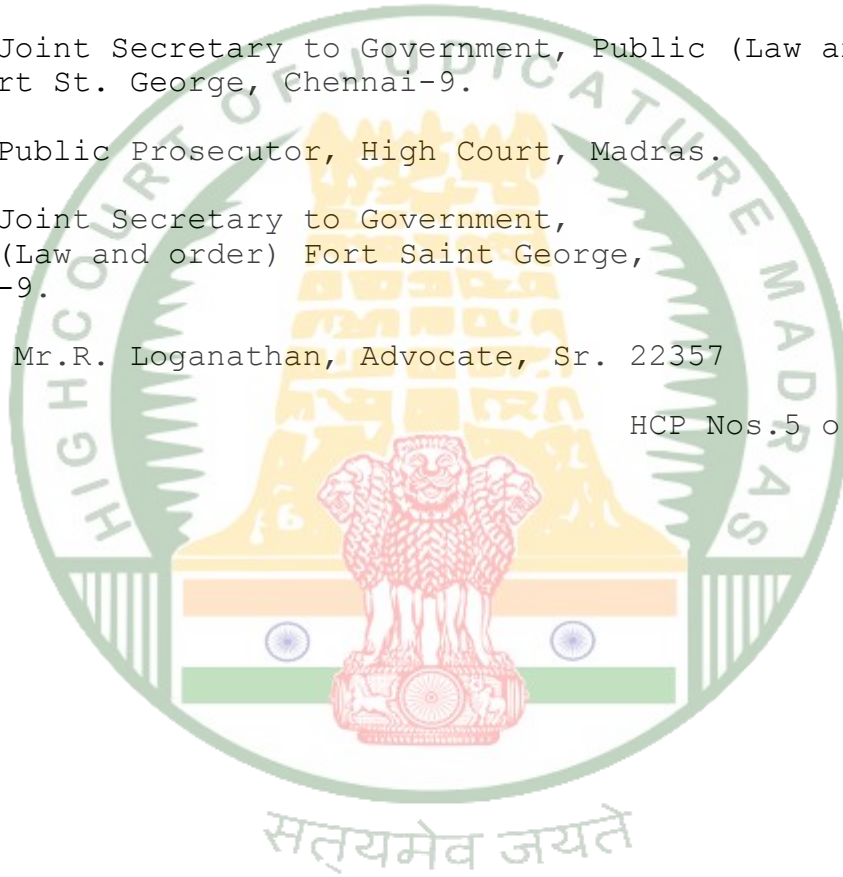
5. The Public Prosecutor, High Court, Madras.

6. The Joint Secretary to Government,
Public (Law and order) Fort Saint George,
Chennai-9.

1 cc to Mr.R. Loganathan, Advocate, Sr. 22357

HCP Nos.5 of 2006.

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