

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.3.2009

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE R.SUBBIAH

Habeas Corpus Petition No.1037 of 2008

Maninder Singh

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep.by the Secretary to the Government,
Public (SC) Department,
Fort St.George, Chennai-600009.

2.The Union of India,
rep.by the Secretary to the Government,
Ministry of Finance,
Department of Revenue (COFEPOSA UNIT)
Central Economic Intelligence Bureau,
Janpath Bhavan, VI Floor, 'B' Wing,
Janpath, New Delhi-110001.

3.The Superintendent of Central Prison,
Central Prison, Puzhal,
Chennai.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution, praying to call for the records relating to the detention order in G.O.No.SR.I/350-2/2008, public (SC) Department dated 4.6.2008 passed by the first respondent, quash the same and direct the respondents to produce the body of the person of the detenu, Maninder Singh, son of Pritam Singh, now detained in the Central Prison, Chennai as COFEPOSA detenu before this Court and set him at liberty.

For petitioner : Mr.Habibulla Basha,
Senior Counsel for
Mr.M.M.K.Alifudeen

For respondents : Mr.M.Gopikrishnan, ACGSC for R-2
Mr.N.R.Elango,
Additional Public Prosecutor for RR1 & 3

O R D E R

ELIPE DHARMA RAO, J.

The petitioner, who has been detained under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short 'COFEPOSA'), has filed this Habeas Corpus Petition, challenging the order of detention clamped on him by the first respondent.

2. It is alleged that on a specific intelligence that poppy seeds (khas khas) were smuggled into India in the name of M/s.Venkateswara Impex, a proprietary firm situated at Shop No.11, 2nd Floor, Maharani Building, No.280/4, Anna Salai, Puducherry, the proprietor of which is Mr.Vardharam Mejlaji Dewaji, and the petitioner/detenu is the key person behind the said smuggling, the officials of the Department of Revenue Intelligence (in short 'DRI') initiated investigation and visited the said premises of M/s.Venkateswara Impex on 30.1.2008 and found it to be locked and therefore, they have sealed the said premises under a mahazar on the same day. Thereafter, the officials of the DRI were keeping a watch for imports made in the name of M/s.Venkateswara Impex and they have detained a consignment declared as 'Mong Whole' (green gram) vide container Nos.BLPV 2583929, BLPV 066177-7, CAXU 233404-2, BLPV 359173-5 and BLUP 38261-2, vide switch Bill of Lading No.SBLSINO2145, dated 15.1.2008. It is alleged that according to the documents relating to the said switch bill of lading, the consignor of the goods was M/s.Jayakant J.Shah Co. Pvt. Ltd., 186, High Street, Singapore; that the bill of lading and the manifest indicated the declared cargo as 'Mong Whole'; that the containers were examined on 8.2.2008 and were found to contain white poly sack bags of Mong whole sacked in front three rows in all the containers and white poly sack bags containing poppy seeds stacked in the remaining rear portion of the container. and in this way, 53 Metric Tons of poppy seeds were concealed, the value of which is estimated at Rs.1.13 crores and therefore, the sleuths of DRI seized the said 53 MTs of Poppy seeds and 48.4 MTs of 'Moong whole' under a mazahar dated 8.2.2008 under the Customs Act, 1962 and the total value of the seized goods is estimated at Rs.1.25 crores.

3. It has further been alleged that none of the above said containers have touched Singapore on their voyage from Karachi to Chennai, even though the Switch Bills of Lading show the port of loading as Singapore and the containers have traversed in the mother vessels from Karachi to Colombo and thereafter transshipped from Colombo to Chennai on feeder vessels; that poppy seeds can be imported only under a license from Narcotics Commissioner, Gwalior and it was a restricted item and that the poppy seeds were not

declared in the bill of lading and import manifest and require license to import into India, which was a restricted item and was dutiable under the Customs Tariff Act; that the petitioner/detenu used to import spices like poppy seeds, cardamom, kala zeera etc. from Pakistan, Afghanistan and Singapore and is having a godown at Chennai and that on his instructions, the imported goods were delivered at his godown at Thiruvottiyur Express Highways, Ennore, Chennai, instead of taking them to Pondicherry, since there was no godown for him at Puducherry; that on 31.1.2008, the officers of DRI, Chennai, searched the residence of the petitioner at No.AK55, Flat No.4B, 4th Floor, Juniper Apartments, 10th Main Road, Shanthi Colony, Anna Nagar, West, Chennai-40 in the presence of independent witnesses and in the presence of his wife and son and during the said search, the officers have recovered a polythene cover containing poppy seeds weighing about 500 gms. from one of the dust bins, one Lenovo Laptop and certain documents in 28 pages and seized the same under a cover of mahazar.

4. It has further been alleged that the investigation revealed that the petitioner involved in the said smuggling of poppy seeds under the guise of Moong Whole, which is a restricted/prohibited item under Foreign Trade Policy 2004-2009 and hence summons was issued to the petitioner on different dates for his appearance on 1.2.2008, 9.2.2008 and 18.2.2008 and since he has not responded to the summons and was absconding, a complaint under Section 174 IPC was lodged before the Court of Additional Chief Metropolitan Magistrate Court, E.O.-II, Egmore, Chennai on 7.3.2008; that thereupon, having come to know that the petitioner was available at his residence, the officers of DRI, Chennai visited his residence on 4.5.2008 for serving summons under Section 108 of the Customs Act and having found him there, they have served summons on the petitioner and after enquiry under Section 108 of the Customs Act, 1962, his voluntary statement was recorded and later he was arrested on the same day and was produced before the learned Additional Chief Metropolitan Magistrate, E.O.II, Chennai for remand. Thereupon, the impugned order of detention came to be slapped on the petitioner, which is being challenged by him in this habeas corpus petition.

5. The learned senior counsel appearing for the petitioner/detenu would argue that a letter of the Public Prosecutor dated 4.6.2008 and a piece of paper with a civil court stamp on it alone were supplied to the detenu along with a covering letter and the covering letter does not contain the particulars as to for what purpose they were supplied and whether the documents will be placed before the Advisory Board, and therefore, the order of detention is liable to be set aside.

6. Page No.13 of the spiral bind typed set contains the letter addressed by the Secretary to the Government, Public (Law and Order-

F) Department, Chennai to the detenu, through the Superintendent, Central Prison, Chennai, the operative portion of which reads as follows:

"I am directed to send herewith copies of the following documents as received now from the Deputy Director, Directorate of Revenue Intelligence, Chennai:

- 1) Letter of Thiru R.Dhanapal Raj, M.A., B.L., Special Public Prosecutor, Customs, Central Excise and Enforcement Directorate, dated 4.6.2008'
- 2) Bail petition dated 03.06.2008 and typed set of papers filed on behalf of you before the Hon'ble High Court, enclosed with the above letter;"

This has been commented on the part of the petitioner that the copy of the letter of the Special Public Prosecutor and the covering letter does not contain the particulars as to for what purpose they were supplied and whether the documents will be placed before the Advisory Board, and therefore, the order of detention is liable to be set aside.

7. In support of his arguments, the learned senior counsel for the petitioner/detenu would rely on a judgment of the Honourable Apex Court in STATE OF T.N. vs. SENTHIL KUMAR AND ANOTHER [1999 SCC (Cri) 299] wherein it has been held:

"In the instant case the documents in question given to the detenu are not supplemental or additional grounds but additional material in support of the grounds already conveyed to the detenu. The documents were sent to the detenu in a casual manner without a covering letter and without being told for what purpose they were sent to him and without mentioning that they would be placed before the Advisory Board as well as the Government in connection with the confirmation of the order of detention; consequently, he was deprived of his right to make an effective representation to the Government.

The manner in which the documents were served on the detenu did cause confusion to the detenu as he was kept in the dark about the purpose of furnishing the documents and far from giving him the earliest opportunity to make an effective representation, it deprived him of the chance of making a representation which resulted in infringement of the right guaranteed under Article 22(5) of the Constitution."

8. There cannot be any doubt that when additional material is being supplied to the detenu, he must be apprised of as to for what purpose the material is being furnished to him, so as to pave way for him to make an effective representation. In the case on hand, though additional documents have been supplied to the detenu, as has been rightly pointed out by the learned senior counsel for the petitioner,

nowhere the purpose of such documents being furnished to the detenu has been mentioned, thus creating a state of confusion in the mind of the detenu and impairing his chance of making an effective representation to the authorities.

9. The learned senior counsel for the petitioner/detenu would also rely on an unreported order of a Division Bench of this Court in H.C.P.No.1079 of 2003, dated 26.2.2004 [David Christopher vs. State of Tamil Nadu], wherein also the detention order was assailed on the ground that the detenu was served with additional sets of documents on four different dates with covering letters, but he was not informed as to at whose instance they were served upon him, the purpose of their service and whether the said documents are going to be placed before the Advisory Board as well as before the confirming authority and the detenu having been not furnished with such details, he was prevented from making an effective representation and it has caused confusion in his mind. The Division Bench of this Court, taking into consideration the said submission advanced on the part of the detenu, more particularly, the nature of the documents subsequently supplied to the detenu, has quashed the order of detention.

10. Similar is the situation on hand also since no details as to for what purpose the documents are being furnished to the detenu are mentioned. Therefore, we are in total conformity with the arguments advanced in this regard by the learned senior counsel.

11. The other contention urged on the part of the learned senior counsel for the petitioner is that the detenu through his representation dated 26.6.2008 has requested to provide him a legal assistance, but his request was rejected on 14.7.2008, after the meeting of the Advisory Board held on 10.7.2008. On behalf of the respondents, by their counter, it has been submitted that the question of representation on behalf of the detenu before the Honourable Advisory Board by a lawyer is not envisaged under the provisions of the COFEPOSA Act, 1974 and in the grounds of detention itself, the detenu has been clearly informed that he can have a friend or relative other than a lawyer to appear before the Honourable Advisory Board to represent him and therefore, the detention order is valid in law.

12. In support of his arguments, the learned senior counsel for the petitioner would rely on a judgment of the Honourable Apex Court in STATE OF MAHARASHTRA AND OTHERS vs. ZUBAIR HAJI QUASIM [(2008) 3 MLJ (Cr1) 627 (SC)], wherein the Honourable Apex Court following its earlier judgment in SMT.KAVITA vs. STATE OF MAHARASHTRA AND OTHERS [(1981) 3 SCC 558] has held as follows:

"Though a detenu has no right under Section 8(e) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 to appear through a legal practitioner in the proceedings before the Advisory Board, he is entitled to make a representation for the services of a lawyer to appear before the said Board which is under obligation to consider the same dispassionately in the facts of a particular case. The representation made by a detenu for legal assistance before the Advisory Board, has to be considered not perfunctorily but with due application of mind, since in each case of detention, the liberty of an individual is involved."

13. There is no doubt that the detenu has no right under Section 8(e) of the COFEPOSA Act to appear through a legal practitioner in the proceedings before the Advisory Board. But, as has been held by the Honourable Apex Court, when a representation has been made by the detenu for legal assistance before the Advisory Board, the same has to be considered with due application of mind. But, the pathetic situation in the case on hand is that such a valid representation of the petitioner/detenu, dated 26.6.2008 was rejected on 14.7.2008, much after the meeting of the Advisory Board on 10.7.2008. Our endeavour to find any scrap of paper to indicate that the said request was duly considered by the Advisory Board has ended in vein. Therefore, the above judgment of the Honourable Apex Court would clearly apply to the facts of the case on hand.

14. The learned senior counsel for the petitioner would further argue that in Para No.vii of the grounds of detention, it has been mentioned that one Kuppan has stated that once in ten days, Thiru Md.Safiullah used to come and unload pulse items, but he did not know anything about Safiullah and that a person by name Maninder Singh (the detenu herein) used to accompany him; that though the statement in Tamil contains the words as mentioned above, the English translation did not have the same and though the detenu has sought for correct translated version through his representation dated 26.6.2008, the same was supplied only on 14.7.2008 along with the rejection letter, that too after the completion of the meeting of the Advisory Board on 10.7.2008 and therefore, the order of detention is liable to be set aside. In support of his arguments, the learned senior counsel for the petitioner would rely on an unreported order of a Division Bench of this Court in W.P.No.6492 of 1990, dated 23.1.1991 [Subramania Thevar vs. The State of Tamil Nadu]. In the said case, the Division Bench of this Court, considering the fact that the want of supply of a proper and complete transaction of the mahazar dated 9.2.1990 even though was represented by the detenu, the same was supplied only after the meeting of the Advisory Board and further relying on an earlier order rendered in W.P.No.4499/90, dated

10.1.1991 [Bairose Begum vs. The State of Tamil Nadu, represented by the Chief Secretary to Government, Madras and another], has allowed the said writ petition, setting aside the order of detention passed thereunder.

15. In the case on hand, the respondents have fairly accepted in the counter affidavit that it is an inadvertent omission that has crept into while translating the documents. The contention of the petitioner/detenu that he do not know to read and write Tamil has not been denied by the respondents. When such is the situation and when the petitioner/detenu has required correct translation copies of the documents, a legal duty is cast upon the respondents to comply with his request at the earliest, so as to facilitate the petitioner/detenu to make his effective representation to the Advisory Board. But, in the case on hand, we are pained to note that though the petitioner/detenu has requested for correct translated copies of the documents and also to furnish copies of certain other relied upon documents, they were supplied only on 14.7.2008, i.e. after the meeting of the Advisory Board on 10.7.2008, thus defeating the very purpose of the request made on the part of the petitioner/detenu and thus has caused much prejudice to the petitioner/detenu.

16. Though many other grounds have been raised by the learned senior counsel for the petitioner/detenu, since the above discussed grounds are sufficient to hold the impugned detention order as bad in law, we feel it not necessary to take all such other grounds for discussion.

In the result, this Habeas Corpus Petition is allowed, setting aside the impugned order of detention. The petitioner/detenu is ordered to be set at liberty forthwith, if his detention is not required in any other case.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

Rao

To

1.The Secretary to the Government
of Tamil Nadu,
Public (SC) Department,
Fort St.George,
Chennai-600009.

2.The Secretary to the Government of India,
Ministry of Finance,
Department of Revenue (COFEPOSA UNIT)
Central Economic Intelligence Bureau,
Janpath Bhavan, VI Floor, 'B' Wing,
Janpath, New Delhi-110001.

3.The Superintendent of Central Prison,
Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

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

1 cc To Mr.M.Gopikrishnan, Advocate, SR.10659

1 cc To Mr.M.M.K.Alifudeen, Advocate, SR.11513.

Order in HCP.No.1037 of 2008

MBS (CO)
RVL 09.04.2009

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