IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : HABEAS CORPUS

WP(Crl.) 1326/2002

Date of Hearing : January 23, 2008

Date of Decision : February 07, 2008

Rudra Pratap Singh	...Petitioner through Ms. Sangita Bhayana, Adv.
Union of India & Ors.	...Respondent through Ms. Barkha Babbar, Adv.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE P.K. BHASIN

VIKRAMAJIT SEN, J.:

J U D G M E N T

1. This Writ Petition prays for the issuance of a writ of Habeas Corpus or any other writ, order or direction to quash the impugned Detention Order dated 11.4.2002. There is also a prayer for setting the Petitioner at liberty, which has been rendered infructuous as the Detention Order has already run its course. The challenge is predicated on three grounds- (a) delay in passing the Detention Order, (b) delay in execution of the Detention Order and (c) non-supply of documents.

2. Almost four decades ago it had been observed in Moti Lal Jain -vs- State of Bihar, AIR 1968 SC 1509 that the interest of society are no less important than that of an individual and that when these two rights collide with each other, a balance

must be maintained between them by the Courts. A score years later, in T.A. Abdul Rahman -vs- State of Kerala, (1989) 4 SCC 741 = AIR 1990 SC 225 the Supreme Court opined that "when there is unsatisfactory and unexplained delay between the date of detention and the date of securing arrest of the detenu such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner". These observations have been extracted and reiterated in Rajinder Arora -vs- Union of India, AIR 2006 SC 1719: 2006(4) SCC 796 . This kind of delay has been found to be fatal in P.M. Hari Kumar -vs- Union of India, (1995) 5 SCC 691 and SMF Sultan Abdul Kader -vs- Jt. Secy. to Govt. of India, (1998) 8 SCC 343. A complete analysis of the law is available in the decision of the Division Bench of this Court in Dalbir Singh-vs- Union of India, 1995 I AD (Delhi) 1169 which deals with the circumstances that can be considered as constituting delay both in the passing of the Detention Order as well as its execution. Dalbir Singh also discusses the facet of non-supply of documents. Therefore, it would apply on all fours to the case in hand unless, in the decade that has elapsed since its pronouncement, the Supreme Court has varied the law. It appears to us that the law has not been changed. This is evident from a reading of Rajinder Arora, Vinod K. Chawla -vs- Union of India, (2006) 7 SCC 337 and Sheetal Manoj Gore -vs- State of Maharashtra, (2006) 7 SCC 560 .

3. Indeed, a plethora of precedents has been cited before us by learned counsel for the parties. In Sk. Nizamuddin -vs- State of West Bengal, AIR 1974 SC 2353 it has been observed that the Detaining Authority is obliged "to place all relevant facts before the Court and if there is any delay in arresting the Detenu pursuant to the Order of Detention which is prima facie unreasonable, the State must give reasons explaining the delay". In that case no explanation had been tendered and the Detention Order was quashed. The facts in Issac Babu -vs- Union of India, (1990) 4 SCC 135 were that the Detenu was implicated by the main culprit in his statement under Section 108 of the Customs Act recorded on 30.11.1986. The Detention Order came to be passed only on 7.10.1987 and was executed on 23.5.1988. The delay was considered sufficient reason to quash the Detention Order. In A. Mohammed Farook -vs- Jt. Secy. to G.O.I., JT 1999 (10) SC 290 : 2000(2) SCC 360 the Order was made on 25.2.1999 and executed on 5.4.1999. But in the interregnum the Detenu was available in Court proceedings on 25.2.1999 and 25.3.1999. Since no explanation was forthcoming as to why the Order was not executed at least on these dates, it was quashed. In Abdul Kader the Detention Order was passed on 14.3.1996 and executed on 7.8.1997 and the Court found that no explanation had been given for the period 14.3.1996 to 25.4.1996. In P.V. Iqbal -vs- Union of India, 1992 (1) Crimes 166 the

Detention Order was dated 21.8.1989, received by the Superintendent of Police on 1.9.1989 who further dispatched it to the Circle Inspector, Thrissur, who thrice reported that the Detenu was not available in his native place. The Government issued an Order under Section 7(1)(b) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) on 14.5.1990. Eventually, the Detenu was arrested on 9.8.1990 from his village. The Court was of the view that "the Detaining Authority, after passing the Detention Order, was indifferent in securing the Detenu by not taking appropriate action with greater promptitude. The police officials have treated the Warrant of Arrest in a casual manner and unduly delayed its execution". The Order was quashed for this reason. In K.P.M. Basheer -vs- State of Karnataka, 1992 Crl. L.J. 1927 : (1992) 2 SCC 295 the Detenu was, on 12.11.1990, found in possession of gold with foreign making for which no valid explanation was forthcoming. The impugned Order was passed on 7.1.1991 and it was served on 28.6.1991. The Order could have been served on the Detenu as he had appeared before the Assistant Collector of Customs on 6.2.1991 and 20.2.1991. It was in these circumstances that the Court was unable to find the live and proximate links between the grounds of detention, and took the view that the purpose of detention had snapped on account of undue and unreasonable delay. It should be noted that Section 7 (1)(b) of the COFEPOSA Act had not been resorted to.

4. In Shafiq Ahmad -vs- District Magistrate, Meerut, JT 1989(3) SC 659 : (1989) 4 SCC 556 it was noted that from 15.4.1998 to 12.5.1988 and thereafter from 29.9.1988 to 2.10.1988 no attempt had been made to contact or arrest the Detenu and no explanation had been offered for this inactivity. In Ahamed Mohaideen Zabbar -vs- State of Tamil Nadu, 1999 (2) JCC (SC) 292 : 1999 (4) SCC 417 a Show Cause Notice was issued to the Detenu under the Customs Act on 4.5.1998 and the adjudication proceedings were completed on 9.1.1998. The Detention Order was passed on 23.11.1998 and since no explanation was tendered for the delay, it was struck down. In S.K. Serajul -vs- State of West Bengal, (1975) 2 SCC 78 delay at the stage of passing of the Detention Order as well as its execution was found not to have been specifically explained. The Court clarified that they "must not be understood to mean that whenever there is delay in making an Order of Detention or in arresting the Detenu pursuant to the Order of Detention, the subjective satisfaction of the Detaining Authority must be held to be not genuine or colourable. Each case must depend on its peculiar facts and circumstances. The Detaining Authority must have a reasonable explanation for the delay and that might be seen to dispel the inference that its satisfaction was not genuine". In Manju Ramesh Nahar -vs- Union of India, (1999) 4 SCC 116 the Detention Order was passed on 3.2.1997 which was executed on 23.4.1998. The Court was not impressed with the vague allegation that

the Detenu was absconding and was apprehended on 21.3.1998; it was found that the parties had not given details of any steps that might have been taken in the meantime to execute the Order.

5. From a distillation of these decisions it appears to us that if we are subjectively satisfied that unexplained and unjustified delay has occurred either in the passing of the Detention Order or in its execution, this assault on the liberty of an individual must be redressed forthwith. However, the jural assessment of such grounds is not akin to that prevailing in criminal matters. This distinction has been drawn in Union of India -vs- Amrit Lal Manchanda, JT 2004(2) SC 378 : AIR 2004 SC 1625 where their Lordships observed thus:

8. ....The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would loose all their meanings provide the justification for the laws of prevention detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment for individual liberty. "To, lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs". This, no doubt, is the theoretical jurisdictional justification for the law enabling prevention detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other.

6. In Hemlata -vs- State of Maharashtra, (1982) 1 SCR 1028 the Apex Court has clarified that the Constitution of India does not empower the writ Court or even the Supreme Court to function as an appellate forum on the merits of the Detention Order. Their duty is to ensure that all the formalities enjoined by Article 22(5) have been complied with by the Detaining Authority.

7. So far as first ground is concerned, that is delay in passing the Detention Order, it appears that the incident which eventually led to its passing occurred in May, 2001; the Detention Order was passed on 11.4.2002, palpably after almost one year. We are aware that Courts have struck down the Detention Orders passed after a delay of even one month and therefore the explanation proffered by the Respondents must be looked at with strictness and severity. The Respondents contend that since the present case is of commercial fraud involving disposal of goods imported on an actual user licence, leading to evasion of large amounts of Customs Duty, the matter required thorough investigation by linking the events and roles of several persons in these clandestine and illegal operations. We have perused the chronology of events narrated in Annexure R-1 to the Counter Affidavit. It contains over fifty dates uniformally spread over the period of eleven months disclosing the actions taken and the investigations carried out and the summons issued by the Respondents, culminating with the passing of the impugned Detention Order on 11.4.2002. In our opinion, clandestine activity such as importation of commodities for use in the manufacture of goods earmarked for export requires careful, intricate and extensive investigation. It is not for the Court to judge the nature of investigation, as that is within the province of prosecution; the Court must consider whether the delay resulted in the snapping of the links between the commission of the offence and its likely recurrence. The investigation must be steady and steadfast. Preventive detention, there is no gainsaying, concerns itself with the recurrence of the offence. We have already mentioned that as many as fifty incidents and events have been narrated by the Respondents, which not only manifests the depth and detail of the investigation, but also that there was no lull or break in activity such as would indicate that the eventual order had become stale or unnecessary.

8. We must next consider whether there was any delay in the execution of the Order. It will be recalled that the Detention Order against the Petitioner was passed on 11.4.2002 and served upon him on 10.6.2002. It has been explained that the Petitioner was not available in his home despite surveillance being maintained. Consequently, an order under Section 7 (1)(b) of the COFEPOSA Act was issued on 21.5.2002, a copy whereof has been supplied in the course of the hearing. Learned counsel for the Petitioner has objected to the late filing but since it is a copy of the Gazette, the genuineness of which has not been assailed, we have taken it on record and in our deliberation. We are prima facie satisfied that the Petitioner was absconding or keeping out of the way of service upon him of the Detention Order. This is fortified by the fact that recourse has been taken to Section 7 (1) (b) of COFEPOSA Act. The possibility that the Detaining Authority or the Executing Authority made no efforts to serve the Order on the Detenu and instead published it

in the Gazette an order under Section 7 (1) (b) of COFEPOSA Act Order does not appeal to us, since the former action is so much easier to undertake. On publication of such a Notice in the Official Gazette, the Detenu's knowledge of the existence of the Detention Order will have to be presumed. Therefore, the Petitioner would have to show that he had immediately surrendered pursuant to the publication of this Notice and he may then be heard to assert that a delay had occurred which has the effect of snapping links between the incident and the passing of the Detention Order. The challenge to the Order was rejected by the High Court as well as the Supreme Court. We are satisfied with the explanation that there was no inordinate or unexplained delay in the execution of the Detention Order. In Vinod K. Chawla as well as in Sheetal Manoj Gore the Court was satisfied that keeping in view the detailed account given by the Detaining Authority that the matter was being continuously processed and considered, no delay could be attributable to the issuance of the Order of Detention.

9. We shall now consider the third assault of the Petitioner on his detention on the grounds that documents had not been supplied to him. The document in question is the Remand Order dated 4.10.2001 and the argument of Ms. Bhayana is that since this document had been relied upon, it was not incumbent for the Petitioner to prove that prejudice had in terms been caused to him.

10. In Powanammal -vs- State of Tamil Nadu, JT 1999(1) SC 31 : 1999(2) SCC 413, Kamarunnissa -vs- Union of India, AIR 1991 SC 1640 was relied upon while reiterating the position that the non-supply of a copy of a document relied upon in the grounds of Detention must be viewed as fatal. Article 22(5) of the Constitution of India was given effect to. The distinction between a document which has been relied upon by the Detaining Authority in the grounds of Detention and a document which merely finds a reference in the grounds of Detention, was delineated and emphasised upon. Powanammal had represented that he could not understand English and, therefore, should be supplied with a Tamil version of the copy of the Remand Order, which the Court found had been relied upon. It was opined that since the non-supply was of a 'relied upon' document, precise prejudice caused to the Detenu need not have been made good by him.

11. Reliance has also been placed by Ms. Bhayana, learned counsel for the Petitioner on the Order dated 8.3.2004 in Criminal Writ Petition No.677/2003 by which the Detention of the co-accused, Ravindra Rastogi, had been quashed. We have perused the Order and find that it was predicated primarily on the non-supply of the letter dated 27.2.2003 which was seen as a vital document in that case since the

entire satisfaction of the Detention Authority was contained therein. The decision is thus of no avail to the Petitioner.

12. One of the arguments that had been raised in Kamarunnissa was that the Detention Order was liable to be quashed since requisite and necessary copies of the documents had not been supplied. While affirming the Order of the Bombay High Court their Lordships made the following observations:
....In the counter it is specifically mentioned that 'these documents were not placed before the detaining authority nor the detaining authority has relied upon those documents while issuing the detention order'. The detenus would have been entitled to any document which was taken into consideration while formulating the grounds of detention but mere mention of the fact that certain searches were carried out in the course of investigation, which have no relevance to the detention of the detenus cannot cast an obligation on the detaining authority to supply copies of those documents. Much less can an obligation be cast on the detaining authority to supply copies of those documents in Tamil language. In the peculiar circumstances of the present petitions we are of the opinion that the view taken by the High Court cannot be assailed. Reliance was, however, placed on a decision of the Delhi High Court in Gurdip Singh v. Union of India and Ors. Criminal Writ No. 257 of 1988 decided on 7th October, 1988 [1989 Crl. L.J. NOC 41 (Delhi)] wherein Malik Sharief-ud-din, J. observed that the settled legal position was that all the documents relied upon for the purpose of ordering detention ought to be supplied pari passu with the grounds of detention to the detenu and documents not relied upon but casually referred to for the purpose of narration of facts were also to be supplied to the detenu if demanded. Where documents of the latter category are supplied after the meeting of the Advisory Board is over it was held that that would seriously impair the detenu's right to make an effective and purposeful representation which would vitiate the detention. Counsel for the petitioners, therefore, submitted that in the present case also since the search authorisations were supplied after the meeting of the Advisory Board, the detention orders stood vitiated. But in order to succeed it must be shown that the search authorisations had a bearing on the detention orders. If, merely an incidental reference is made to some part of the investigation concerning a co-accused in the grounds of detention which has no relevance to the case set up against the detenu it is difficult to understand how the detenus could contend that they were denied the right to make an effective representation. It is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand but it must further be shown that the non-supply has impaired the detenu's right to make an effective and purposeful representation. Demand of any or every document, however irrelevant it may be for the concerned detenu, merely on the ground that there is a reference thereto in the grounds of detention, cannot vitiate an otherwise legal detention order.

No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to supply the documents before the meeting of the Advisory Board had impaired or prejudiced his right, however slight or insignificant it may be. In the present case, except stating that the documents were not supplied before the meeting of the Advisory Board, there is no pleading that it had resulted in the impairment of his right nor could counsel for the petitioners point out any such prejudice. We are, therefore, of the opinion that the view taken by the Bombay High Court in this behalf is unassailable.

13. Ms. Barkha Babbar has drawn our attention to Prakash Chandra Mehra -vs- Commissioner and Secretary, AIR 1986 SC 687 where two questions had been raised by learned counsel for the Petitioner but repelled by their Lordships. The Court found that the Petitioner understood English, and rejected his plea that he understood only Gujarati. Non-communication of grounds of Detention was, therefore, rejected. Secondly, the Court severed one ground from another and opined that since satisfaction had been reached not only on the basis of the retracted confession but also on other material warranting Detention, the fact that the retraction of the confession had not been brought to the notice of the Authorities would not vitiate the Order. Ms. Babbar has also relied on Abdul Sathar Ibrahim Manik -vs- Union of India, AIR 1991 SC 2261 which lays down that even though a Detenu may be in Jail, there is always a likelihood of his release on bail and hence preventive detention cannot always be ruled out; even a solitary incident may manifest the potentialities of Detenu in activities of smuggling. Therefore, lack of antecedents cannot automatically lead to the quashing of the Detention Order. Thirdly, documents neither referred to nor relied upon by the Detaining Authority need not be supplied to the Detenu and Article 22(5) would not be violated in such a case. In the Counter Affidavit it has been asseverated that the Remand Order had "not been relied upon by the Detaining Authority for the purpose of passing the Detention Order against him and hence copies of these documents have not been supplied to him. It is a fact that the Petitioner/detenu herein was remanded to judicial custody on 4.10.2001 and was granted bail on 3.12.2001. This is established by relied upon documents at pages 193-194, 195-196 and 239-240, which have all been supplied to the Petitioner/detenu herein". In this conspectus, we find no merit in the contention of learned counsel for the Petitioner even on the third ground. Supply of copies of documents is calculated to enable and ensure that the Petitioner/Detenu can make an effective representation against his preventive detention. While it has to be appreciated that preventive detention curtails the Fundamental Rights of the Detenu, thereby requiring meticulous adherence to technicalities, Detention Order should not be quashed merely on the strength of factors and elements which have not undermined the substance of the Detenu's assault on the Detention Order. In Ravindra Rastogi the

Division Bench was of the opinion that the document in question was integral to the Petitioner's defence, which is not the case before us. We are accordingly of the view that non-supply of the Remand Order which was not a relied upon document, did not prejudice the defence or right of representation of the Petitioner.

14. Writ Petition is devoid of merit and is dismissed.

Sd/-
(VIKRAMAJIT SEN)
JUDGE

Sd/-
(P.K. BHASIN)
JUDGE