

IN THE HIGH COURT OF KARNATAKA, BANGALORE
DATED THIS THE 30TH DAY OF MARCH 2004

PRESENT

THE HON'BLE MR. N K JAIN, CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE V.G.SABHAHIT
WRIT PETITION (HC) No 93 OF 2003

BETWEEN :



MS SUNILA JAIN
W/O.D.K.JAIN, MAJOR
601, "B" WILSON MANOR
13TH CROSS, WILSON GARDEN
BANGALORE-560 027

... PETITIONER

(By Sri : KIRAN S JAVALI, ADV)

AND :

1 THE UNION OF INDIA
THROUGH THE SECRETARY TO THE
GOVT.OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE
NORTH BLOCK, CENTRAL SECRETARIAT
NEW DELHI

2 R K GUPTA
THE JOINT SECRETARY TO THE GOVT.
OF INDIA, MINISTRY OF FINANCE,
DEPT.OF REVENUE, "B" WING,
6TH FLOOR, JANAPATH BHAVAN,
JANPATH, NEW DELHI

3 SENIOR SUPERINTENDENT
CENTRAL PRISON
BANGALORE-560 009

... RESPONDENTS

(By Sri : H S CHANDRAMOULI, SPP FOR R3 AND Sri P S DINESH KUMAR
CGSC FOR R1&2)

WRIT PETITION (HC) FILED U/A 226 & 227 OF THE CONSTITUTION
OF INDIA FOR PRAYING TO ISSUE A WRIT IN THE NATURE OF HABEAS
CORPUS IOR ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTION
DECLARING THE DETENTION OF MR DEVENDRA KUMAR JAIN BY ORDER
F NO.673/02/2003-CUS.VIII DT 12.6.2003(ANNEX.A) AND CONFIRMED BY
ORDER BEARING F NO.673/02/2003-CUS VIII DATED 14.8.03(ANNEX F) AS
ILLEGAL AND AB-INITIO VOID.

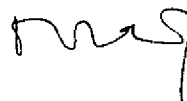
This petition having been heard on 25.3.2004 and reserved for orders,
this day, the CHIEF JUSTICE made the following :

ORDER

ORDER
As per Chief Justice:

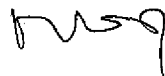
One Sunila Jain wife of detenu D.K.Jain s/o Padamsen Jain has filed this habeas corpus petition challenging the detention order dated 12.6.2003 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) (hereinafter called 'COFEPOSA').

2. It is stated that the second respondent on the basis of specific information that the husband of the petitioner was making undue monetary gains by use of duty-free imported mulberry raw silk yarn and exporting bricks and other waste material instead of power grade silk yarn after making use of the duty free imported material i.e., mulberry raw silk yarn. Surveillance was kept by the officials of the Directorate of Revenue Intelligence (DRI) Bangalore. On 29.1.2003, a detailed examination of the contents of the container revealed that there were 110 bales of polythene sacks in it, each bale had 16 brown paper packets tied with plastic string, each such packet was found to contain a brick wrapped in tangled textile yarn waste and covered with cardboard on two sides and tied with plastic string. The authority also found that despite the suspension of the duty free licence granted to M/s. Amisha International at Bangalore and the fact that the petitioner-detenu has been released on bail having regard to the magnitude of the operation and well organised manner in which prejudicial activities were being carried out



and nature and gravity of the offence and also the propensity and high potentiality of the detenu to indulge in such prejudicial activities in future, the detention order has been passed under Section 3(1) of COFEPOSA as stated. The grounds of detention were served on 12.6.2003 along with the list of documents. Representations were filed. Further representation was made to the Government. The matter was referred to the Advisory Board and the same was confirmed on 14.8.2003.

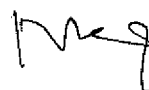
3. Kiran S.Javali, learned counsel for the petitioner submits that the detention order is liable to be set aside as the petitioner was on bail and the detaining authority failed to furnish him a copy of the bail application and to consider the same. He further submits that the licence granted to M/s. Amisha International has been suspended and subsequently cancelled. Therefore the question of indulging in activities as alleged by the detaining authority does not arise. The show cause notice and suspension of the licence have not been considered by the detaining authority although they were relevant for arriving at the subjective satisfaction. It is also submitted that when the petitioner was released on bail, the conclusion that the petitioner would continue to indulge in such activities is unfounded and baseless and therefore the detention order and the confirmation order are liable to be set aside. He relied on the decisions in ABDUL SATHAR IBRAHIM MANIK vs. UNION OF



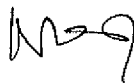
INDIA (AIR 1991 SC 2261); SHABAN ABDUL RAHMAN vs. UNION OF INDIA (1993 CRL.L.J. 1515); KURJIBHAI DHANJIBHAI PATEL vs. STATE OF GUJARAT (1985(1) SCALE 964; SMT.JYOTI NANDLAL MANGLANI vs. STATE OF MAHARASHTRA {(Criminal Appeal No.305/94 (SC)) and in ABDUL SATHAR vs. UNION OF INDIA { Crl. W.P.Nos.105 with 106/1991 (AIR 1991 SC 2261)}.

4. P.S.Dinesh Kumar, the learned Central Government Standing Counsel submits that the order of detention has been passed in accordance with law. All the documents which were relevant and relied upon have been supplied and copy of the bail application was not relevant. More so, the bail application was made by the petitioner himself even before the detention order was passed. He relied on the decisions in A.SGWKATH ALI vs. UNION OF INDIA (2000(7) SCC 148); RADHAKRISHNA PRABHAKARAN vs. STATE OF TAMIL NADU & OTHERS (2000(9) SCC 170; and UNION OF INDIA vs. ARVIND SHERGILL & ANOTHER (2000(7) SCC 601.

5. We have heard the learned counsel appearing for the parties, perused the material on record and the decisions relied upon.



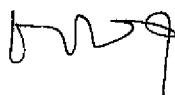
6. The law is well settled. The constitutional safeguard enshrined under Article 22(5) has to be followed. There should be strict compliance of the provisions before passing a detention order. This Court, cannot go into the merits of the detention order, but at the same time, a detention order can be quashed if no opportunity is given to the detenu for making a representation or if the representation is not decided within a reasonable time. It is also settled that copies of such documents which are relied upon are to be supplied so as to arrive at a subjective satisfaction. At the same time, the copies of the documents which have not been relied upon by the detaining authority and to which only a casual or passing reference is made in the course of narration of facts and not relied upon by the detaining authority are not necessary to be supplied. This Court would not be sitting in appeal. It is also settled that it is not for this Court to substitute its own satisfaction, but it has only to see whether the procedure has been followed. Further a scrutiny be made to ascertain whether the detaining authority has really arrived at satisfaction that the detenu has to be preventively detained in public interest. The above legal position and the principle in the various decisions referred above, has not been disputed. However, to ascertain to arrive at subjective satisfaction, each case depends upon the facts and grounds of its own.



7. In the facts of the given case as per settled law, the material on record is considered and the decisions relied upon are referred to. It is not necessary to discuss each case relied upon as the law is well settled. The argument that since the copy of the bail application has not been furnished and has not been considered, it is sufficient to set aside the detention order in view of the decision rendered in ABDUL SATHAR IBRAHIM MANIK'S case (AIR 1991 SC 2261) on the basis of the observation made in para 12(6) as under:

“ In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.”

To our mind the learned counsel for the petitioner cannot take advantage of the said observation as it is not helpful. In ABDUL SATHAR's case supra, the accused was in custody and it was held that non-supply of the order rejecting bail was not material. It has also been observed in the same case by relying upon the earlier decision that copies of the documents which have not been relied upon by the detaining authority need not be supplied to the accused. The Constitution Bench in RAMESHWAR SHAW vs. DISTRICT MAGISTRATE, BURDWAN (AIR 1964 SC 334) held thus:



".....whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released.

Xxx xxxx xxxxx

Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail will always have to be determined in the circumstances of each case".

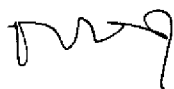
Further, in the decision of RADHAKRISHNAN PRABHAKARAN'S case (2000(9) SCC 170), it has been clearly observed by the Supreme Court that non-supply of the copy of the bail application which has not been relied upon by the detaining authority would not cause any prejudice to the detenu as the application for bail has been submitted by the detenu himself and the order of detention was passed only subsequent to the order granting bail. In the instant case, it is not disputed by the learned counsel for the petitioner that the order of bail and remand order have been furnished and considered by the detaining authority. As specifically observed in the order of detention, even though the detenu was on bail, having regard to his propensity and potentiality to indulge in prejudicial activities in future, the authority was satisfied that his preventive detention was necessary. That apart, the learned counsel has not been able to satisfy us what prejudice has been caused by non-supply of copy of bail application which was filed by him



and more so when the same was not relied. Therefore, the contention of the learned counsel for the petitioner that non-supply of copy of bail application resulting to quashing of detention order, cannot be accepted.

8. So far as the other contention is concerned, it is clear that the order of suspension which has been produced as Annexure-H to the writ petition has been considered by the detaining authority and the detaining authority on the basis of the material on record, copy of which has been admittedly supplied to the detenu, has come to the conclusion that the petitioner has propensity and potentiality to indulge in similar activities in future having regard to his conduct even subsequent to suspension of the licence in the name of M/s. Amisha International. Therefore the detention order cannot be quashed on the basis of this argument.

9. As discussed, we have already held that non-supply of copy of bail application would not vitiate the order. In the facts of the given case, the detaining authority has specifically considered the order suspending licence in the name of M/s. Amisha International. Admittedly, all documents that are relied upon by the detaining authority have been supplied to the detenu. Under the circumstances, the subjective satisfaction arrived that the detenu has the potentiality to indulge in such activities in future, cannot be said to be baseless or unfounded and calls no interference.



No other point was raised and argued before us.

10. As discussed, the learned counsel for the petitioner has not been able to satisfy us that the required provision of COFEPOSA has not been followed in this case before arriving to subjective satisfaction as stated. In view of what we have discussed, we do not think that the detaining authority had no good or compelling reasons to pass the detention order in such circumstances as discussed.

Accordingly, this habeas corpus writ petition is dismissed with no order as to costs.

Sd/-
Chief Justice

Sd/-
Judge

ksv/snb