

A CHOWDARAPU RAGHUNANDAN
v.
STATE OF TAMIL NADU AND ORS.

MARCH 15, 2002

B [M.B. SHAH AND DORAISWAMY RAJU, JJ.]

C *Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Section 3(1)(i)—Detention—Dutiable goods recovered from detenu—Ownership of baggages, containing the goods doubtful—Investigation inconclusive—No other allegation—Denial of bail in criminal proceedings for the offence—Detention challenged—Plea that single incident not sufficient to warrant detention order—Held, detention can be ordered even for single incident if from the nature of the incident it can be inferred that person is likely to repeat such acts so as to warrant his detention—In the instant case, inference of detenu's involvement in smuggling activities could not be drawn—Hence, detention not justified—Constitution of India, 1950—Article 21—Customs Act, 1962—Sections 111(d)(i)(i) and (m), 132 and 135—Foreign Trade (Development and Regulation) Act, 1992.*

E Customs authority seized baggages, containing dutiable goods, of petitioner-detenu, while he was returning from Singapore. It was alleged that the detenu made statement before the customs authority admitting that he was carrying the dutiable goods and that he had earlier visited Singapore twice as a tourist.

F In criminal proceedings for the alleged offences, detenu had made bail applications narrating the facts that the statements before the customs authority were made under coercion. The bail applications were rejected.

G Detenu made representation to customs department stating that the baggages seized, did not belong to him as there were no tags on them so as to connect him with the same, and he specifically stated that the same belonged to someone else bearing his ticket numbers and address, against whom no action could be taken, and investigation in this regard had not concluded.

H Thereafter detention order was passed against the petitioner-detenu under Section (3)(1)(i) of Conservation of Foreign Exchange and Prevention

of Smuggling Activities Act, 1974 (COFEPOSA). Petitioner challenged the detention order by filing writ petition in this Court. A

Petitioner contended that detention order was passed without application of mind as the detaining authority did not consider the fact that it was his case throughout that he had not brought the goods; that relevant records were not placed before the detaining authority; that even if presumed that seized goods were of the detenu, the solitary act could not be a ground for detaining him under COFEPOSA; and that there was no necessity of detaining him, since criminal proceedings with regard to the alleged offence were pending and his bail applications in that case were rejected. B

Respondents contended that order of detaining authority was not arbitrary as the same was passed on its subjective satisfactions; and that in view of detenu's admission that he had previously visited Singapore twice as a tourist, it could be inferred that the petitioner might have indulged and was likely to indulge in activities of smuggling. C

Allowing the appeal, the Court D

HELD :

Per Shah, J.

1. From the facts-that there was no other allegation as to detenu's involvement in any anti-social activities; that he had alleged that he made statement before customs authority under coercion; and that there were no tags on the baggages so as to connect him with the baggages and the crime - it is totally unreasonable to arrive at a prognosis that the petitioner is likely to indulge in any prejudicial activities of smuggling. From the fact that a person had visited Singapore twice earlier as a 'tourist', inference cannot be drawn that he was involved in smuggling activities or is likely to indulge in such activities in future. [494-E; 495-A] E

2.1. In appropriate case, an inference could legitimately be drawn even from a single incident of smuggling that the person may indulge in smuggling activity but for that purpose antecedents and nature of the activities carried out by a person are required to be taken into consideration for reaching justifiable satisfaction that the person was engaged in smuggling and that with a view to prevent, it was necessary to detain him. It is also settled law that an order of preventive detention is founded on a reasonable prognosis of the H

A future behaviour of a person based on his past conduct judged in the light of surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. If there is non-application of mind by the authority on this aspect, then the Court is required and is bound to protect the citizen's personal liberty which is guaranteed under the Constitution. Subjective satisfaction of the authority under the law is not absolute and should not be unreasonable. [494-A-D]

Mohd. Subrati alias Modh. Karim v. State of West Bengal, [1973] 3 SCC 250; *Anil Dey v. State of West Bengal*, [1974] 4 SCC 514; *Debu Mahato v. State of West Bengal*, [1974] 4 SCC 135; *Attorney General for India and Ors. v. Amratlal Prajivandas and Ors.*, [1994] 5 SCC 54 and *V.C. Mohan v. Union of India and Ors.*, JT (2002) 2 SC 365, referred to.

2.2. Preventive Detention is not a punitive Act and it is not alternative to criminal trial under the law. It does not empower the authority to punish a person without trial. Its purpose is to prevent a person from indulging in activities, such as smuggling and or such other anti social activities as provided under the Preventive Detention Law. [490-E-F]

Per Raju, J. (Concurring)

1. Though, Courts exercising powers of judicial review do not consider the challenge to an order of detention, as if on an appeal re-appreciating the materials, yet since an order of detention in prison involves the fundamental rights of citizen, freedom of movement and pursuit of normal life and liberty, no absolute immunity can be claimed by the respondents as to the decision arrived and it is open to the Courts to see whether there has been due and proper application of mind and that all the relevant, and vital materials for the purpose have been noticed, adverted to and considered. [498-D-E]

2. The impugned order suffers the vice of total non-application of mind to relevant and vital materials touching question of the culpability as well as the necessity to order the detention of the petitioner. The seriously doubtful position about the elementary and basic fact regarding the ownership of the baggages and the admitted inconclusive stage of the investigation in this regard could not legitimately help the authorities to pass any order of detention against the petitioner on the perfunctory and inchoate materials relied upon.

[499-B-C; 498-H; 499-A]

V.C. Mohan v. Union of India and Ors., JT (2002) 2 SC 365 and Attorney General for India and Ors. v. Amratlal Prajivandas and Ors., [1994] 5 SCC 54, referred to. A

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 218 of 2001.

(Under Article 32 of the Constitution of India). B

V. Balaji and A.T.M. Sampath for the petitioner.

Mukul Rohtagi, Additional Solicitor General, S. Balakrishnan, Ashok Bhan, B. Krishna Prasad and Revathy Raghvan for the Respondents. C

The Judgments of the Court were delivered by

SHAH, J. Petitioner has challenged the detention order dated 28th May, 2001 passed under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA") with a view to prevent him from smuggling goods in future. The allegations against the petitioner in the grounds of detention are that he was holding an Indian Passport dated 26th October, 1994 and he arrived from Singapore on 30th March 2001 at Chennai Airport. After completing migration formalities, he collected his baggages and was proceeding to exit gate where he was intercepted by Customs Intelligence Officer on suspicion that he might be carrying any dutiable goods. From his possession. Panasonic GD 92 Cellphones with accessories 100 Nos., Nokia 3310 Cellphones with accessories 50 Nos. Siemens C35 Cellphones with accessories 50 Nos. Nokia cellphone adapter 100 Nos. Nokia 5110 cellphone batteries 100 No. were recovered. According to the grounds of detention, the value of the seized goods was Rs. 13,90,000. His Boarding Pass and Customs Declaration Card were also seized. It is alleged that in his voluntary statement he admitted that he had visited Singapore twice earlier as a tourist he had gone to Singapore on 29th March, 2001 and that his friend helped him in procuring cellphones to market them in India for monetary consideration. D E F G

Petitioner was arrested on 31st March 2001 and his bail application was rejected by the trial court. Thereafter, he sent a representation dated 24th April, 2001 to the Commissioner of Customs, Chennai through the Superintendent, Central Prison, Chennai, stating that the seized goods did H

A not belong to him. Thereafter, on 28th May, 2001, the impugned detention order was passed.

B At the time of hearing of the matter, learned counsel for the petitioner submitted that there was total non-application of mind by the detaining authority before passing the impugned order, relevant record was not placed before the detaining authority and that there was delay in considering the representations. For the first ground, it has been contended that the petitioner was not involved in any smuggling activities and for the time being presuming that goods seized were of the petitioner it would hardly be a ground for detaining him under the COFEPOSA. The detaining authority C has not considered the fact that it was the contention of the petitioner all throughout that he had not brought the said cellphones. For that purpose, he submitted that the boarding card was his but the baggages having no tags were not belonging to him. In any set of circumstances for the alleged incident, criminal prosecution was pending against him and his bail applications were rejected, therefore, there was no necessity of detaining the petitioner. D

E As against this, learned counsel for the respondents submitted that even though it is a solitary incident, goods worth Rs. 13 lakhs and above were found from the possession of the petitioner and that it has been admitted by him that previously also he had gone twice to Singapore, therefore, subjective satisfaction of the detaining authority cannot be said to be, in any way, arbitrary.

F Before deciding the contention raised by the petitioner, it is to be reiterated that the Preventive Detention is not a punitive Act and it is not alternative to criminal trial under the law. It does not empower the authority to punish a person without trial. Its purpose is to prevent a person from indulging in activities, such as smuggling and or such other anti social activities as provided under the Preventive Detention Law.

G In *Mohd. Subrati alias Mohd. Karim v. State of West Bengal*, [1973] 3 SCC 250, 256 this Court observed thus :-

H "It must be remembered that the personal liberty of an individual has been given an honoured place in the fundamental rights which our Constitution has jealously protected against illegal and arbitrary deprivation, and that this Court has been entrusted with a duty and invested with a power to enforce that fundamental right."

Dealing with solitary act in a preventive detention matter, *Krishna Iyer J. in Anil Dey v. State of West Bengal*, [1974] 4 SCC 514 observed as under:- A

“A swallow cannot make a summer ordinarily, and a solitary fugitive act of criminality may not normally form the foundation for subjective satisfaction about the futuristic judgment that the delinquent was likely to repeat his offence and thereby prejudicially affect the maintenance of supplies and services essential to community”. B

The Court finally dismissed the matter after considering grounds of detention but observed thus :-

“But to jail a man on subjective satisfaction of possible prejudicial activity and to forget about him after the statutory formalities have been performed is not fair to the constitutional guarantees. It is appropriate for a democratic government not merely to confine preventive detention to serious cases but also to review periodically the need for the continuance of incarceration.” C

It appears that the aforesaid aspect to review periodically the need for the continuance of incarceration is forgotten. D

Similarly, in *Debu Mahato v. State of West Bengal*, [1974] 4 SCC 135 at page 138 this Court observed as under :-

“We fail to see how one solitary isolated act of wagon breaking committed by the petitioner could possibly persuade any reasonable person to reach the satisfaction that unless the petitioner was detained he would in all probability indulge in further acts of wagon breaking. No criminal propensities for wagon breaking could reasonably be inferred from a single solitary act of wagon breaking committed by the petitioner in the circumstances of the present case. We must of course make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. *The nature of the act and the attendant circumstances may in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future.* The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the H

A surrounding circumstances. Such past conduct may consist of one
single act or of a series of acts. But whatever it be, it must be of such
a nature that an inference can reasonably be drawn from it that person
concerned would be likely to repeat such acts so as to warrant his
detention. It may be easier to draw such an inference where there is
B a series of acts evincing a course of conduct but even if there is a
single act, such an inference may justifiably be drawn in a given case.
Here, however, that is not possible. We do not think that one single
act of wagon breaking attributed to the petitioner was of such a
character that any reasonable man could be satisfied, merely on the
basis of the commission of such a solitary isolated act, that the
C petitioner would be likely to indulge in further acts of wagon breaking
in future and in order to prevent him from doing so, he must be
detained.”

The aforesaid judgment was considered by the Constitution Bench in
Attorney General for India and Ors. v. Amratlal Prajivandas and Ors., [1994]
D 5 SCC 54 and it was held thus :-

“Though ordinarily one act may not be held sufficient to sustain
an order of detention, one act may sustain an order of detention if the
act is of such a nature as to indicate that it is an organised act or a
manifestation of organised activity. The gravity and nature of the act
E is also relevant. The test is whether the act is such that it gives rise
to an inference that the person would continue to indulge in similar
prejudicial activity.”

The Court further observed (in para 53) thus :-

F “In matters touching liberty, greater care is called for on the part
of the authorities exercising powers of detention.”

Recently, this Court in *V.C. Mohan v. Union of India and Ors.*, JT
(2002) 2 SC 365 held as under :-

G “The accepted methodology of governmental working should
always be in tune with the concept of fairness and not *de hors* the
same - *a person is being placed under detention without trial and
there is neither any scope for overzealous nor acting in a manner
without due and proper application of mind - in either of the situation
law Courts should be able to protect the individual from the
H administrative ipse dixit.* The draconian concept of law has had its

departure quite some time back and rule of law is the order of the day. It is this rule of law which should prompt the law Courts to act in a manner fair and reasonable having due regard to the nature of the offences and *vis-a-vis* the liberty of the citizens.”

The Court further observed thus :-

“Preventive detention admittedly is an ‘invasion of personal liberty’ and it is a duty cast on the law Courts to satisfy itself in regard to the circumstances under which such a preventive detention has been ordered—in the event, however, the same does not conform to the requirements of the concept of justice as is available in the justice delivery system of the country, *the law Courts would not shirk of its responsibility to provide relief to the person concerned.* The guardian-angel of the Constitution stands poised with a ‘responsibility to zealously act as a watchdog so that injustice does not occur : Let us not be understood to mean however that there ought to be any over zealousness since the same may lend assistance to a situation which is otherwise not compatible with social good and benefit.”

In the present case, it has been pointed out that the petitioner specifically made representation on 24.4.2001 to the Commissioner of Customs that the baggages without tags were not belonging to him. Same thing was contended in the bail applications which were rejected. It was submitted that other passenger travelling with the petitioner who arrived in the same flight and whose baggages were mixed up with that of the petitioner, was served with the summons by the authorities but thereafter nothing is known about him. In representation to the Commissioner, it was pointed out that he was Managing Director of Padmaja Infotech limited, a public limited company, having office at Hyderabad, Andhra Pradesh and that he had gone to Singapore regarding his company’s business. He only purchased some toys and clothes for his children. As he was not having any dutiable item, he decided to go by green channel. To the officer who checked him, he informed that baggages were not belonging to him but the officer told him that he was pushing the trolley and, therefore, he without listening him opened the baggages without tags. It was also pointed out that the officer arrested him for no fault and locked him with unclaimed baggages without tags under some mistake. Hence, it is submitted that the State Government without applying its mind to the aforesaid facts and alleged solitary incident erroneously arrived at the conclusion that there was likelihood of petitioner indulging in such prejudicial activities again while on bail, even though the bail application of the petitioner was rejected.

A It is true that in appropriate case, an inference could legitimately be drawn even from a single incident of smuggling that the person may indulge in smuggling activity but for that purpose antecedents and nature of the activities carried out by a person are required to be taken into consideration for reaching justifiable satisfaction that the person was engaged in smuggling and that with a view to prevent, it was necessary to detain him. It is also

B settled law that an order of preventive detention is founded on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned

C would be likely to repeat such acts so as to warrant his detention. If there is non-application of mind by the authority on this aspect, then the Court is required and is bound to protect the citizen's personal liberty which is guaranteed under the Constitution. Subjective satisfaction of the authority under the law is not absolute and should not be unreasonable. The question, therefore, would be from the past conduct of the petitioner as set out in the

D grounds of detention or other circumstances, whether reasonable inference could be drawn that he is likely to repeat such acts in the future. In the present case, past conduct of petitioner is that he is Engineering graduate and at the relevant time he was managing director of a public limited company. There is no other allegation that he was involved in any other anti-social

E activities. Only allegation is that he visited Singapore twice as a 'tourist'. Admittedly, the petitioner has filed bail application in a criminal prosecution for the alleged offence narrating the fact that his so-called statement was not voluntary and was recorded under coercion. The baggages were not belonging to him and there were no tags on the same so as to connect him with the said baggages and the crime. At the time of hearing of this matter also, it is

F admitted that the baggages were without any tags. It is also an admitted fact that there is nothing on record to hold that the petitioner was involved in any smuggling activity. However, the learned Additional Solicitor General submitted that in the statement recorded by the Customs Department petitioner had admitted that previously he had visited Singapore twice as a 'tourist',

G and, therefore, it can be inferred that the petitioner might have indulged and was likely to indulge in such activities. This submission is far fetched and without any foundation. From the fact that a person had visited Singapore twice earlier as a 'tourist', inference cannot be drawn that he was involved in smuggling activities or is likely to indulge in such activities in future. Hence, from the facts stated above it is totally unreasonable to arrive at a

H prognosis that the petitioner is likely to indulge in any such prejudicial activities.

In the result, the writ petition is allowed. The impugned detention order is quashed and set aside. The petitioner be released forthwith if not required in any other case.

RAJU, J. I am in respectful agreement with the judgment of my esteemed and learned brother that the impugned order of detention in this case need be quashed and the Writ Petition be allowed by releasing the detenu. But, I would like to confine the ground for the same on the question of non-application of mind to all the relevant facts then make any observations on the general principles of law, which, in my view, are well and firmly settled.

The petitioner has been ordered to be detained by the orders of the Government of Tamil Nadu in G.O. No. SR.I/531-7/2001 Public (SC) Dept. dated 28.5.2001 in exercise of the powers under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 [hereinafter referred to as "The Act"] and kept in custody in the Central Prison, Chennai. From the grounds on which the said order came to be made, it could be seen that the incident said to have occurred on 30.3.2001 when the petitioner arrived from Singapore by IC 556 at Chennai Anna International Airport was the main basis. The allegation against the petitioner is that though he brought in his baggage (a) Panasonic GD92 Cell phones with accessories 100 Nos; (b) Nokia 3310 Cell phone with accessories 50 Nos; (c) Siemens C35 Cell phones with accessories 50 Nos; (d) Nokia Cell phone adapter 100 Nos; (e) Nokia 5110 Cell phone batteries 100 Nos without having any valid document for their lawful import, not only he grossly mis-declared the value of the goods in his possession, but after completing immigration formalities and collection of his baggage and moving towards the Exit Gate when intercepted by Customs Intelligence Officer and asked, the petitioner gave a negative reply as if he is not in possession of any dutiable goods in trade quantity. After opening the baggage, the above-referred goods were said to have been found in his baggage and seized after following the required procedure. Beside the same, he was also arrested on 31.3.2001 and lodged in prison after following the procedure therefor. On the above materials, the petitioner was considered to have committed violations justifying action under Section 111 (d) (i) (1), & (m) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 in addition to rendering himself to be proceeded against for committing an offence punishable under Sections 132 and 135 of the Customs Act. The CIF value of the goods seized was said to be Rs. 13,90,000 and the market value of the same was

A Rs. 20,85,000 on the date of the seizure.

B It is on the above materials, in addition to the adjudication proceedings and prosecution to be pursued further against the petitioner, the Detaining Authority was said to have been satisfied that it was necessary to detain the petitioner under the Act with a view to prevent the petitioner from indulging in smuggling goods in future. On that view of the matter, the impugned detention order came to be passed and the same is challenged by means of the above Writ Petition under Article 32 of the Constitution of India, for the alleged violation of his fundamental rights.

C Heard Shri A.T.M. Sampath, learned counsel for the petitioner, and Shri Mukul Rohtagi, learned Additional Solicitor General for respondents No. 2 & 3 and Shri S. Balakrishnan, Senior Advocate for the State of Tamil Nadu. The extreme stand taken for the petitioner as a ground based on law that a solitary incident, even if it be true, though the involvement of the petitioner in the occurrence is seriously questioned, cannot be the basis for invoking the powers of detention necessarily obligated the learned Additional Solicitor General also to take a contra stand to the other extreme. Though, several decided cases have been brought to our notice, including the latest decision since reported in *VC Mohan v. Union of India and Ors.*, JT (2002) 2 SC 365, I consider it unnecessary to deal with every one of them.

E The decision rendered in *Attorney General for India and Ors. v. Amratlal Prajivandas and Ors.* by a Constitution Bench of 9 Judges reported in [1994] 5 SCC 54, has laid down the law on the said aspect succinctly and conclusively in the following terms:

F “48. Now, it is beyond dispute that an order of detention can be based upon one single ground. Several decisions of this Court have held that even one prejudicial act can be treated as sufficient for forming the requisite satisfaction for detaining the person. In *Debu Mahato v. State of W.B.* It was observed that while ordinarily speaking one act may not be sufficient to form the requisite satisfaction, there is no such invariable rule and that in a given case one act may suffice. That was a case of wagon-breaking and having regard to the nature of the Act, it was held that one act is sufficient. The same principle was reiterated in *Anil Dey v. State of W.B.* It was a case of theft of railway signal material. Here too one act was held to be sufficient. Similarly,

G in *Israil SK v. District Magistrate of West Dinajpur and Dharua*

H

Kanu v. State of W.B. single act of theft of telegraph copper wires in huge quantity and removal of railway fish-plates respectively was held sufficient to sustain the order of detention. In *Saraswathi Seshagiri v. State of Kerala*, a case arising under COFEPOSA, a single act, viz., attempt to export a huge amount of Indian currency was held sufficient. In short, the principle appears to be this: Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organized act or a manifestation of organized activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and organization. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.”

In the above context, what is required to be seen is as to whether on the materials placed on record, it could reasonably be said to indicate any organized act or manifestation of organized activity or give room for an inference that the petitioner would continue to indulge in similar prejudicial activity warranting or necessitating the detention of the person to ensure that he does not repeat his activity in future. So far as the facts on record in this case are concerned, it is seen that a stand has been taken for the petitioner, at any rate, from the time of filing the bail application on 18.4.2001, that the

A baggage in question did not belong to him, that the earlier statement obtained was under threat, coercion and undue influence and that those baggage did not contain any tag also to connect the same with him. That apart the specific stand taken for the petitioner is also that the baggage containing the goods in question were in the name of one Babu with his ticket number and address and no action could be taken against him before recording a finding properly and deciding on the basis of any concrete material the ownership of the disputed baggage. All the more so when the Department itself has been after the said person also and the matter has not reached to any final conclusion. As for the grievance that these relevant materials have not been adverted to or considered by the Detaining Authority before ordering the detention of the petitioner, in the counter affidavit filed on behalf of the 1st respondent Detaining Authority, it is admitted that investigation is still pending to ascertain the involvement and role of the other person but that may not have any significance or relevance in the teeth of the admission contained in the confessional statement of the petitioner and that at any rate the Detaining Authority was very much aware of those facts when the order of detention came to be passed.

Though, no doubt Courts exercising powers of judicial review do not consider the challenge to an order of detention, as if on an appeal re-appreciating the materials, yet since an order of detention in prison involves the fundamental rights of citizen, freedom of movement and pursuit of normal life and liberty, no absolute immunity can be claimed by the respondents as to the decision arrived and it is open to the Courts to see whether there has been due and proper application of mind and that all the relevant and vital materials for the purpose have been noticed, adverted to and considered. So far as the facts of the present case are concerned, the plea on behalf of the petitioner is not that someone else also is concerned with the offending act but that he has nothing to do with it and that the baggage containing the contraband really belonged to such other person. Such plea cannot be also brushed aside in this case as one merely invented in the air but seem to have necessary basis from the fact that baggage ticket Nos. 0021777 and 0021771 were registered in the name of one Babu and that concedingly action and investigation in this regard is still pending and has not concluded so far. If the baggage really belonged to another person as was stated to have been registered, it necessarily follows that the petitioner cannot be the owner of the very same baggage. The seriously doubtful position about the elementary and basic fact regarding the ownership of the baggage and the admitted inconclusive stage of the investigation in this regard could not legitimately

help the authorities to pass any order of detention against the petitioner on the perfunctory and inchoate materials relied upon. Apart from the absence of any positive or concrete materials to connect the baggage in question with the petitioner, the nature of stand disclosed in the counter affidavit filed on behalf of the 1st respondent on this aspect does not really help the Authority to prove that the said material and such vitally relevant aspect was either adverted to or really considered before passing the order of detention. Consequently, the impugned order suffers the vice of total non-application of mind to a relevant and vital material touching question of the culpability as well as the necessity to order the detention of the petitioner. The impugned order of detention, therefore, has been rightly quashed and the writ petitioner ordered to be released from detention in prison.

K.K.T.

Petition allowed.