

IBRAHIM NAZEER

A

v.

STATE OF TAMIL NADU AND ANR.

JULY 10, 2006

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

B

*Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; Section 3(1)(i):*

*Smuggling of goods by accused—Detention—Filing of habeas corpus petition by wife of the detenu—Dismissed by High Court observing that the detaining authority on the basis of the material available had shown compelling necessity to continue detention of the accused so as to prevent him from smuggling goods—On appeal, Held: Five bail applications filed earlier by the accused had already been rejected—It was not a normal case—Subjective satisfaction of the authority that the detenu is likely to be released on bail was based on material available before him—Under the circumstances, the High Court was right in dismissing the appeal.*

C

D

The appellant-detenu was intercepted by the Customs Officer at the airport. On examination of his baggage, he was found in possession of smuggled goods. The goods so recovered were seized by the authorities and the order of detention was passed against him under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act to prevent him from indulging in smuggling of goods. The detention was questioned by the wife of the appellant by filing a *habeas corpus* petition. Stand of the appellant before the High Court essentially was that the Detaining Authority had merely, without application of mind followed the allegations of the Customs authorities without any independent inquiry. Further there was no basis for holding that there was imminent possibility of the detenu coming out on bail. The Petition was dismissed by the High Court. Hence the present appeal.

E

F

G

Appellant-detenu contended that since he did not file any bail application after withdrawal of the first petition, the detaining authority could not have inferred that there was possibility of his being released on

A bail.

**Dismissing the appeal, the Court**

**HELD: 1.1. Whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipsi-dixit of the detaining authority. [361-C]**

**1.2. On the basis of materials before the detaining authority, it came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. In fact, five bail applications filed by the detenu had already been rejected. Thus, it was not “normal” case. Hence, the High Court was justified in rejecting the stand of the appellant. [361-D-E]**

*Rajesh Gulati v. Govt. of NCT of Delhi and Anr, [2002] 7 SCC 129, distinguished.*

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 732 of 2006.**

From the Judgment and Order dated 15.2.2006 of the Madras High Court in H.C.P. No. 1126/2005.

**K.K. Mani for the Appellant.**

Mohan Parsaran, AGG, V. Krishnamurthy, Manish Sharma and B. Krishna Prasad for the Respondent.

**The Judgment of the Court was delivered by**

**ARIJIT PASAYAT, J. Leave granted.**

**Appellant calls in question legality of the judgment rendered by a Division Bench of the Madras High Court dismissing the *habeas corpus* petition filed by one Rizwana Ziyath seeking release of her husband, the**

present appellant Ibrahim Nazeer (hereinafter referred to as the 'detenu') A  
 who was detained and kept in custody in the Central Prison of Chennai under  
 the Conservation of Foreign Exchange and Prevention of Smuggling Activities  
 Act, 1974 (in short the 'COFEPOSA Act'). The order of detention was passed  
 under Section 3(1)(i) of COFEPOSA Act with a view to prevent the detenu  
 from indulging in smuggling goods in future. The order of detention is dated B  
 20.9.2005.

The background facts which led to the detention of the detenu as set  
 out in the grounds of detention are as follows:

On 31.8.2005, the detenu-Ibrahim Nazeer, arrived Chennai from C  
 Singapore by Indian Airlines Flight IC 558 with Ticket No. 51671263862.  
 After immigration clearance, he collected three bags from the conveyor belt  
 and proceeded to Customs Table No.8 where he declared that he was in  
 possession of electronic goods worth Rs.30,000/-. At this point, he was  
 intercepted by the Customs Officer who questioned him about the contents D  
 of his baggage. He reiterated the declaration given at the table that he was  
 in possession of electronic goods of the value of Rs.30,000/-. Since his reply  
 was not convincing, his three bags were taken up for examination in the  
 presence of two independent mahazar witnesses. He produced two claim  
 Tags bearing Nos. SQ 441432 and SQ 441433 and further stated in the  
 presence of independent witnesses that the cardboard carton bearing Tag No. E  
 SQ 442077 tagged in the name of Smt. Selvi Narayanan actually belonged  
 to him and that as he was already having excess weight, he made use of her  
 baggage weight entitlement. Enquiries by the officer showed that the said  
 Selvi Narayanan had already left the arrival hall and that she had not filed  
 any claim for missing baggage. In the presence of witnesses, his three bags  
 were opened and examined one by one. Examination of navy blue colour bag F  
 bearing baggage Tag No. SQ 441432 resulted in the recovery of 12 Nos.  
 Pioneer (model DEH-P 7750 MP) Car Stereos and 500 Nos. of Hynix 256  
 MB RAMs. Examination of indigo colour bag bearing baggage Tag No. SQ  
 441433 resulted in the recovery of 10 Nos. of Panasonic (model NV-GS 25  
 GC) digital video cameras, 5 Nos. of Sony (model DCR-TRV 285E) digital G  
 video cameras, 3 Nos. of Pioneer Car Stereos and 10 Nos. of Motorola V3  
 mobile phones (without accessories). Examination of Pioneer cardboard carton  
 bearing baggage Tag No. SQ 442 077 resulted in the recovery of 4 Nos. of  
 Panasonic (model No. NV-MD 9000 EN) Digital Video Cameras. It is also  
 stated in the grounds that after fulfilling all the formalities, the value of the  
 seized goods was ascertained. On the date of seizure, the value of the seized H

A goods was Rs.8,22,500/- (CIF) and Rs.11,51,500/- (Market Value) approximately. After finding that the adjudication and prosecution proceedings are likely to be initiated under Customs Act, 1962 (in short the 'Customs Act'), the State Government after satisfying itself with the materials placed, arrived at a conclusion that it is necessary to detain him under the provisions of the COFEPOSA Act, with a view to prevent him from indulging in smuggling goods in future. The grounds further show that while arriving at the subjective satisfaction to detain him under the COFEPOSA Act, the State Government has taken into consideration facts and materials referred to and relied upon in the grounds mentioned above and also the statements, bail petition, representation and mahazars etc.

C The detention was questioned by the wife of the appellant by filing a *habeas corpus* petition. Stand of the appellant before the High Court essentially was that the Detaining Authority has merely, without application of mind, followed the allegations of the Custom authorities without any independent inquiry. Further there was no basis for holding that there was imminent possibility of the detenu coming out on bail. The High Court noted the factual position and found that though one of the bags was in the name of Selvi Narayanan, it was in the possession of the detenu who collected three bags from the belt and carried them to the customs examination table. The customs declaration slip clearly established this fact. Further the said Selvi Narayanan went out of the airport without claiming any baggage and did not complain of any loss of baggage. Therefore, the customs authorities were justified in holding that the baggage belongs to the detenu. So far as the valuation is concerned, it was noted that though the appellant claimed so, the Valuation Rules, 1988 are not applicable to cases of baggage of passengers who are governed by the Baggage Rules, 1988. So far as the plea relating to imminent possibility of the detenu coming out on bail, the High Court noted that the Detaining Authority clearly indicated that it was aware of the fact that the detenu had filed petition for bail on 8.9.2005 which was withdrawn on 17.9.2005. It was also noted that the Detaining Authority was of the view on the basis of the materials collected that the detenu was likely to indulge in activities again while on bail and there was compelling necessity to prevent him from smuggling of goods. Accordingly the *habeas corpus* petition was dismissed.

H In support of the appeal learned counsel for the appellant submitted that the only plea raised was that the High Court was not justified in holding that the Detaining Authority's view about imminent possibility of detenu

coming out on bail was correct. It was also submitted that since the detenu had not filed any bail application after withdrawal of the first petition, the detaining authority could not have inferred that there was possibility of his being released on bail. Reference has been made to several decisions of this Court to contend that there must be material to show about such imminent possibility.

*Per contra* learned counsel for the respondent-State and the Union of India supported the impugned judgment of the High Court.

It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be *ipsi-dixit* of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. Appellant has not disputed correctness of this statement. Strong reliance was placed by learned counsel for the appellant on *Rajesh Gulati v. Govt. of NCT of Delhi and Anr.*, [2002] 7 SCC 129. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not "normal" case. The High Court was justified in rejecting the stand of the appellant.

The inevitable result is that the appeal is without merit and is accordingly dismissed.

S.K.S.

Appeal dismissed.