2024 INSC 612

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3082 OF 2024

SHABNA ABDULLA ...APPELLANT(S)

VERSUS

THE UNION OF INDIA & ORS. ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. The present appeal challenges the final judgment and order dated 24th January 2023 in Writ Petition (Crl.) No. 596 of 2022, passed by a Division Bench of the High Court of Kerala, whereby the High Court dismissed the petition filed by the appellant, who is the sister-in-law of the detenue, and thereby upheld the detention order dated 24th August, 2021 issued against the detenue (one Abdul Raoof) under Section 3 of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act,

1974 (hereinafter referred to as, "COFEPOSA") and its confirmation vide order dated 24th May, 2022.

2. The facts, *in brief*, giving rise to the present appeal are as given below.

2.1 On 20th April, 2021, the unaccompanied baggage of one Althaf Moosan Mukri was checked and inside the compressor of a refrigerator amongst the baggage, contraband gold weighing 14,763.30 grams valued at Rs. 7,16,16,768/- was found and seized.

2.2 Statements of co-accused persons were recorded, whereby they admitted that the detenue who was residing in Dubai, UAE, was running a cargo handling and forwarding business and was scouting passengers who had unaccompanied cargo to be sent to India. It was stated that the detenue would send contraband gold concealed in compressors of refrigerators along with unaccompanied baggage.

2.3 On 24th August, 2021, detention orders under Section 3 of COFEPOSA were issued against the three co-accused persons namely Mohammad Ali (father-in-law of detenue), Abdulla S.S. (brother-in-law of detenue) and Biju V. Joy (Customs G

Cardholder) and they were arrested. They later challenged their respective detention orders by way of separate Writ Petitions filed before the High Court of Kerala.

2.4 On 27th December, 2021, the detenue reached India. He repeatedly wrote letters/issued reminders to the Director General (DG), Central Economic Intelligence Bureau (hereinafter, "CEIB") as well as the Joint Secretary, COFEPOSA, stating that he has not received any information of a detention order issued against him.

2.5 On 5th March, 2022, the detenue was arrested and he was served with the detention order dated 24th August, 2021. He was supplied the grounds of detention on 7th March, 2022. Thereafter, by an order dated 24th March, 2022, the case of the detenue was referred by the CEIB to the Advisory Board under Section 8(b) of COFEPOSA Act.

2.6 On 5th April, 2022, the detenue wrote letters to the DG, CEIB and Joint Secretary (COFEPOSA), seeking various documents that had not been provided to the detenue. He *inter-alia* sought audio recordings of the voice messages pertaining to the WhatsApp conversations relied upon by the Detaining

Authority, as was evident from the grounds of detention. The Joint Secretary (COFEPOSA) rejected the request of the detenue, whereas the DG, CEIB kept the request pending for the Advisory Board to take an opinion on.

2.7 On 24th May, 2022, in view of the opinion of the Advisory Board, the Central Government confirmed the detention order of the detenue for a period of one year from the date of detention.

2.8 On 3rd June, 2022, a Division Bench of the High Court by a common judgement, allowed the three writ petitions filed by the co-accused persons being W.P. (Crl.) Nos. 107-109 of 2022. The High Court was of the opinion that documents sought had been relied upon in the detention orders and the same ought to have been furnished to the detenus when they requested for the same. It, accordingly, held that the non-supply had vitally affected the right of the detenus under Article 22(5) of the Constitution of India & therefore, the detention order was bad.

2.9 On 29th June, 2022, the appellant filed a Writ Petition being W.P. (Crl.) No. 596 of 2022, challenging the detention order dated 24th August, 2021, as well as the confirmation of detention vide order dated 24th May, 2022, by the Central Government on the

ground of non-supply of relevant documents and therefore sought release of the detenue.

2.10 On 24th January, 2023, a Division Bench of the High Court (other than the one which adjudicated upon the writ petitions filed by the co-accused persons), dismissed the Writ Petition filed by the appellant. Aggrieved thereby, the present appeal arises.

3. We have heard Mr. Raghenth Basant, learned Senior Counsel appearing for the appellant and Mr. Nachiketa Joshi, learned Senior Counsel for the respondent(s).

4. Mr. Raghenth Basant, learned Senior Counsel, submitted that the Division Bench of the High Court while dismissing the petition of the present appellant has failed to take into consideration the judgment and order dated 3rd June 2022 in the cases of ***Nushath Koyamu vs. Union of India and others***[1] and other connected matters delivered by a Coordinate Bench of the same High Court wherein it was held that the detention of the co-detenus was vitiated on account of non-supply of WhatsApp chats. He submits that the grounds of detention, insofar as the detenue in the present appeal is concerned, are identical with the

[1] [2022 (3) KLT 885]

grounds of detention with that of the co-detenue Mr. Biju V. Joy and two other detenus, whose detention was set aside by the order of the High Court dated 3rd June 2022. It is, therefore, submitted that the detention order is liable to be quashed on this short ground.

5. Mr. Nachiketa Joshi, learned counsel appearing on behalf of the Union of India, submits that the learned Division Bench of the High Court has rightly distinguished the decision of the Coordinate Bench of the same High Court in the cases of ***Nushath Koyamu*** (supra) and other connected matters. He, therefore, submitted that no inference with the impugned judgment and order is warranted.

6. The material placed on record would reveal that the grounds of detention insofar as the present detenue and Mr. Biju V. Joy and other two detenus, whose detention has been held to be illegal by the judgment and order 3rd June 2022 passed by the Coordinate Bench of the same High Court in the cases of ***Nushath Koyamu*** (supra) are almost identical.

7. It will be relevant to refer to the following ground of detention:

> "1. Mr. Biju V. Joy, G card holder of M/s The Mercantile and Marine services was summoned on 03.08.2021 and his voluntary statement was recorded under Section 108 of Customs Act, 1962 wherein he, inter alia, reiterated that his previous statements dated 20.04.2021 and 28.04.2021 were true and correct. He further submitted printouts of WhatsApp chats between him and Mr. Abdul Raoof i.e. you containing the passport details of passenger Mr. Althaf Moosan Mukri and details of previous consignments which were cleared on behalf of Mr. Abdul Raoof i.e. you; that he signed on the printouts of same and confirmed that they were retrieved from his mobile phone."

8. Undisputedly, the said WhatsApp chats refer to the detenue in the present appeal as well as said Biju V. Joy.

9. In the cases of ***Nushath Koyamu*** (supra) and other connected matters, the Coordinate Bench of the same High Court has recorded the submissions of the petitioner(s) therein with regard to non-supply of the WhatsApp chats. The same reads thus:

> "15. The learned counsel for the petitioner submits that in W.P. (Crl) No. 107 of 2022, the detenue had filed Ext. P12 request for supply of the documents mentioned therein, particularly, a screen shot taken from the detenus phone which was relied upon by the detaining authority. It is mentioned in Ext. P12 that there were at least six voice messages visible on the screen shot which were relied on and those messages appear to be of 19th April 2021, a day

before the detenus in this case were taken into custody by the DRI. It is the contention that from the screen shot, the contents of the whatsapp chat cannot be understood and unless the chats in electronic form is provided, an effective representation cannot be made. Thus, the whatsapp chat in electronic form which was to be given on a pen drive or such other media to facilitate them to hear them and understand the content and offer the explanation has been deprived offending the right under Article 22(5) of the Constitution of India."

10. On recording of the said submissions, the Coordinate Division Bench of the same High Court observed thus:

> "17. On a consideration of the rival submission on this aspect, we notice that there has been reliance made in the detention order regarding the documents mentioned above which might have forced the detaining authority to reach the conclusion about the previous smuggling activities and which necessitated the present order of detention. In spite of a specific request, as seen from Ext. P12 in the above cases, we find copies were not given. In as much as the contents of the above being relied upon and they have not been given despite asking for them, we feel there has been infraction of the right of the detenus to make an effective representation seeking release.
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> 18. The learned counsel for the petitioner is right in stating that the detaining authority ought to have furnished the said materials as their right to make an effective representation has been impaired. It is relevant to note in the decision of the Supreme Court in **Atma Ram**

Vaidya v. State of Bombay [AIR 1951 SC 157]. The Hon'ble Supreme Court held that:

Para 10. “To put, it in other words, the detaining authority has made its decision and passed its order. The detained person is then given an opportunity to urge his objections which in cases of preventive detention comes always at a later stage. The grounds may have been considered sufficient by the Government to pass its judgment. But to enable the detained person to make his representation against the order, further details may be furnished to him. In our opinion, this appears to be the true measure of the procedural rights of the detained person under Article 22 (5).”

Para 12. “The conferment of the right to make a representation necessarily carries with it the obligation on the part of the detaining authority to furnish the grounds, i.e., materials on which the detention order was made. In our opinion, it is therefore clear that while there is a connection between the obligation on the part of the detaining authority to furnish grounds and the right given to the detained person to have an earliest opportunity to make the representation, the test to be applied in respect of the contents of the grounds for the two purposes is quite different. As already pointed out, for the first, the test is whether it is sufficient to satisfy the authority. For the second, the test is, whether it is sufficient to enable the detained person to make the representation at the earliest opportunity”.

Para 13 “But when grounds which have a rational connection with the ends mentioned in section a of the Act are supplied, the first condition is satisfied. If the grounds are not

sufficient to enable the detenue to make a representation, the detenue can rely on his second right and if he likes may ask for particulars which will enable him to make the representation. On an infringement of either of these two rights the detained person has a right to approach the court and complain that there has been an infringement of his fundamental right and even if the infringement of the second part of the right under Article 22 (5) is established he is bound to be released by the court".

19. In the light of the above, we cannot accept the contention of the learned counsel for the respondents that there was no duty to supply the documents mentioned above to the detenus. The decisions relied on by the learned counsel for the respondent for the proposition that the documents sought for in the instant cases need not be granted cannot be accepted as the same are rendered on different sets of facts. In as much as the documents sought has been relied upon in the detention orders, the same ought to have been furnished to the detenus when they requested for the same. The learned counsel for the petitioners is also right in relying on the following judgments for canvassing the same position that the relevant electronic info to be provided in the same format:

1. 2016 (3) KHC – **Reshmi v. Union of India**
2. 2019 KHC 914 – **Hajira N.K. v. Union of India**
3. 2020 KHC 167 – **Beevikunju v. Union of India**
4. 2021 KHC 303 - **Waheeda Ashraf v. Union of India**

> In the light of the discussion above, we are convinced that the non-supply has vitally affected the right of the detnus under Article 22(5) of the Constitution of India. We, accordingly, hold that the detention order is bad for the non-supply of these documents sought for in Ext. P12."

11. After observing the aforesaid, the Coordinate Division Bench of the same High Court held that non-supply of the documents had vitally affected the right of the detenus to make an effective representation and the detention order came to be quashed on the said ground.

12. In the present case also, the detenue had sought the copies of the said WhatsApp chats. However, the Division Bench of the High Court in the present case, while rejecting the case of the detenue, observed that the detaining authority had arrived at a subjective satisfaction on the basis of various documents and that non-supply of the WhatsApp chats would not vitiate the detention order. It, therefore, held that the findings of the Coordinate Bench of the same High Court in the cases of ***Nushath Koyamu*** (supra) and other connected matters in respect of other detenus could not be followed in the present case.

13. We may gainfully refer to the following observations of this Court in the case of ***Official Liquidator vs. Dayanand and others***[2]:

> "**90**. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.
>
> **91**. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have

[2] (2008) 10 SCC 1

> been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law."

14. The aforesaid observations of this Court aptly apply to the facts of the present case.

15. When the Coordinate Bench of the same High Court based on same grounds of detention and on the basis of the same material, which was relied on by the detaining authority, had come to a considered conclusion that non-supply of certain documents had vitiated the right to make an effective representation of the detenus, another Coordinate Bench could not have ignored the same.

16. No doubt that, the second Division Bench has sought to justify its decision by holding that the findings in the cases of ***Nushath Koyamu*** (supra) and other connected matters would not be applicable to it since the detaining authority had also taken into consideration the other material while arriving at its subjective satisfaction. However, it is to be noted that if that was so in the case of present detenue, that was also so in the cases of other detenus.

17. We are of the considered opinion that the Division Bench of the High Court while passing the impugned judgment and order should have followed the view taken by another Division Bench of the same High Court specifically when the grounds of detention and the grounds of challenge were identical in both the cases. In the event, the Division Bench of the High Court was of the view that the earlier decision of the Coordinate Bench of the same High Court was not correct in law, the only option available to it was to refer the matter to a larger Bench.

18. In that view of the matter, the present appeal deserves to be allowed on this short ground. We accordingly pass the following order.

(i) The appeal is allowed.

(ii) Order of detention dated 24th August 2021 passed by the Central Economic Intelligence Bureau, COFEPOSA Wing is quashed and set aside.

(iii) Order of confirmation of detention order dated 24th May 2022 passed by the Central Economic Intelligence Bureau, COFEPOSA Wing is quashed and set aside.

.....J
(B.R. GAVAI)

.....J
(PRASHANT KUMAR MISHRA)

.....J
(K.V. VISWANATHAN)

NEW DELHI;
AUGUST 20, 2024.