

(1989) 08 DEL CK 0053

In the Delhi High Court

Case No : Criminal Writ Appeal No. 4 of 1986

Abbosalah

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 11-08-1989

Acts Referred:

Citation : (1990) 1 Crimes 277 : (1989) 39 DLT 304 : (1990) 1 ILR Delhi 142

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : S.R. Setia and G. Prakash, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This criminal petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeks the quashing of an order of detention No. 16097ISS-A[88. Home dated 28th March, 1988, passed by the Secretary to Government of Kerala, Home (SS-A) Department, Trivandrum.

(2) The detention order was actually served on the petitioner on 7th September, 1988. He was allegedly found in possession of 193 gold coins and 150 Metres of textiles at Quality while traveling from Bombay to his native place Malapparlum in Kerala. He landed at Bombay Airport from Jeddah on the night of 25-S-87 after his Haj in Saudi Arabia,

(3) In this case the Union of India is impleaded as respondent No. 1 and State of Kerala as respondent No. 2. Service on the Union of India in this case was affected on 10-1-89 for 30-1-89. However, none put in appearance on behalf of the Union of India in this case till today. Counter affidavit has been filed on behalf of respondent No. 2.

(4) Learned counsel for the petitioner has not pressed any ground so far as the State of Kerala, respondent No. 2 is concerned. He has only argued on the ground that the petitioner made a representation to the Centre Government on

10th October, 1988 but the Central Government delayed the disposal of the representation and thus violated the constitutional safeguard provided to the petitioner under Article 22(5) of the Constitution of India. Learned Counsel for petitioner drew my attention to the Memorandum of rejection issued to the petitioner by the Central Government through the Ministry of Finance, of Revenue dated 21st October, 1988. It is Annexure "X" at page 83 of the file. This shows; that the representation dated 10th October, 1988 was carefully considered by the Central Government but his request for release from the detention was rejected. This Memorandum is dated 21st October, 1988. Learned counsel for the petitioner has argued that the Central Government is supposed to deal with this representation very expeditiously and if that was not done then the detention has to be quashed. He has drawn my attention to a case reported as Harish Pahwa Vs. State of U. P. and Others, in which the representation was made by the appellant on 3-6-80. The State Govt. received the representation on 4-6-80 but did not take any action for two days. On 6-6-80 comments were called from the Customs Authorities with regard to the allegations made in the representation which were received by the State Government on 13-6-80. On 17th June, 1980 the State Government referred the representation to its Law Department for its opinion which was furnished on 19th June 1980. The rejection of the representation was ordered on 24th June, 1980 and it was communicated to the jail authorities two days later. On the above facts, it was laid down as follows :

"In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned..... We would emphasise that it is the duty of the State to proceed to determine representations of the character abovementioned with the utmost expedition, which that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu."

(5) Therefore, it is quite clear from the above cited authority that it is the duty of the concerned Govt. in such matters to dispose of the representation of the detenu at the earliest possible time. Each day's delay has to be explained and

unless that is done the detention in such circumstances has to be declared illegal, in the present case it will be seen that none on behalf of the Union of India has cared to put in appearance and at least explained to the Court as to why Central Govt. took 11 days in disposing of the representations made by the petitioner. Thus in this case the delay is absolutely un-explained. In the case of Harish Pahwa (supra) it was even commented that it was not at all shown why it was necessary for the Govt. to seek for the commitments of the Law Department. But in this case there is no such Explanation offered by the Govt. to explain the delay. It may also be noted that there are Rules framed by Delhi High Court for the issue of writs of Habeas Corpus under Article 226 of the Constitution of India. Rule 10 under Chapter IV-F(A) of the High Court Rules, provides that "on the returnable date of such rule or on any day to which the hearing thereof may be adjourned, if no cause is shown or if cause is shown or disallowed, the Court shall pass an order that the person or persons, improperly detained shall be set at liberty."

(6) Therefore, in these circumstances and in view of the authority of the Supreme Court as well as the Rule framed by the High Court, there is no alternative except to hold that the delay in deciding the representation having remained unexplained, detention of the petitioner is illegal.

(7) No other point has been argued before me. In view of what has been stated above, the detention of the petitioner is hereby quashed. It is directed that he be set at liberty forthwith. If he is not required in any other case or not detained under any other valid order of detention.