

(2001) 04 AHC CK 0111
In the Allahabad High Court
Case No : Criminal M.W.P. No. 2040 of 2001

Ashwani Kumar Jain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(2)
Constitution of India, 1950 — Article 21

Citation : (2001) 2 ACR 1118

Hon'ble Judges : Onkareshwar Bhatt, J;M. Katju, J

Bench : Division Bench

Advocate : A.D. Giri and Shashank Shekhar Giri, for the Appellant; Sanjay Kumar Singh, for the Respondent

Judgement

M. Katju and Onkareshwar Bhatt, JJ.—The Petitioner in this petition has challenged the impugned detention order dated 16.2.2001 (Annexure-1 to the petition) passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2. Heard Sri A. D. Giri, learned Senior Advocate, for the Petitioner and Sri Sanjay Kumar Singh for the Union of India at length and perused the petition and annexures thereto.

3. Learned Counsel for the Respondents is granted three weeks" time to file counter-affidavit. List immediately thereafter.

4. Sri A. D. Giri has prayed that the Petitioner should not be arrested during the pendency of this petition. On the otherhand, learned Counsel for the Respondents has relied upon a decision of the Supreme Court in Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, , and has submitted that unless the Petitioner surrenders, he cannot challenge the impugned detention order.

5. In our opinion, there cannot be any absolute proposition in law that a person challenging a detention order under the N.S.A. or COFEPOSA must in all cases surrender before he can file a petition. In our country, Article 21 of the Constitution guarantees the right to life and liberty and this is the most important of all fundamental rights provided in the Constitution. Hence, individual liberty is not to be lightly interfered with, and hence, there cannot be any absolute proposition that a detention order can never be challenged without first surrendering before the authorities. It all depends, on the facts of each case and no absolute proposition can be laid down in this connection.

6. Learned Counsel for the Respondents then submitted that a person sought to be detained has no right to get a copy of the grounds of detention before his arrest and detention. Since we have already observed that there cannot be any absolute legal proposition that a detention order can never be challenged without first surrendering before the authorities, it follows as a corollary that the ground for detention can be communicated by annexing the same in the counter-affidavit to be filed by the Government in such cases. Since copy of the counter-affidavit will be served on the learned Counsel for the Petitioner, this itself will tantamount to communication of the grounds to the detenu because the learned Counsel for the Petitioner can communicate these grounds annexed to the counter-affidavit, to the Petitioner.

7. On the facts and circumstances of the case, we direct that till the next date of listing the Petitioner shall not be arrested in pursuance of the impugned detention order dated 16.2.2001.