

(1990) 04 BOM CK 0032

In the Bombay High Court

Case No : Criminal Writ Petition No. 176 of 1990

Babykumari Mohanlal Soni

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-04-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3

Foreign Exchange Regulation Act, 1973 — Section 40

Citation : (1991) 55 ELT 172

Hon'ble Judges : M.L. Pendse, J;D.J. Moharir, J

Bench : Division Bench

Advocate : Shri M.G. Karmali and Smt. A.M.Z. Ansari, for the Appellant; Shri J.C. Satpute, Shri A.S. Khan and Shri Y.V. Patil, Public Prosecutor, for the Respondent

Judgement

Pendse, J.—The Joint Secretary to the Government of India passed Order dated August 31, 1989, in exercise of powers conferred by Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, directing detention of Mohanlal S. Soni with a view to prevent him from acting in any manner prejudicial to the argumentation of foreign exchange. The order of detention was served on January 29, 1990 and the Grounds of detention were furnished.

The grounds of detention, inter alia, recite that on receipt of the information, the Enforcement Directorate raided the residential and business premises of the detenu on July 10, 1989. From the residential premises, large foreign currency was recovered, while from the business premises, Indian currency of Rs. 20,000/- was recovered. The statement of the detenu was recorded u/s 40 of Foreign Exchange Regulation Act and the detenu admitted that he was carrying on business of unauthorised purchase and sale of foreign exchange on a large scale. The detenu was arrested on July 11, 1989 and was produced before the Metropolitan Magistrate but was released on bail on the same date. On this

material, the Detaining Authority came to the conclusion that it is necessary to pass order of detention with a view to prevent the detenu from indulging in activity prejudicial to the augmentation of country's foreign exchange resources. The order of detention is challenged by the wife of the detenu.

2. Mr. Karmali, learned Counsel appearing on behalf of the detenu, submitted that the order of detention was served on the detenu after considerable length of time from the date of passing of the order. The learned Counsel urged that the delay in execution of the order is fatal to the maintainability of the order. We find considerable merit in the submission of the learned counsel. The order was passed on August 31, 1989 and was served on January 29, 1990. In answer to the petition, Mahendra Prasad, Joint Secretary to the Government of India, has filed return affirmed on March 21, 1990 and in paragraph 2 of the return, it is claimed that several attempts were made to apprehend the detenu but he was absconding. It is further claimed that number of reports from the officers were received by the Sponsoring Authority pointing out that the detenu could not be traced. It is claimed that only after the steps were taken to get the bail order cancelled that the detenu submitted to the order. It is not possible to accept the claim made in paragraph 2 of the return. In the first instances, no material is produced to substantiate the claim that though efforts were made to serve the Order of detention, the detenu was not available and was absconding. Secondly, Mr. Karmali very rightly invited our attention to the application made on October 18, 1989 and December 14, 1989 by the Customs Authorities before Metropolitan Magistrate, Bombay. By the first application, the customs authorities requested that since the investigation is not over, the bail period of the detenu should be extended till December 14, 1989. By the second application, the bail period was sought to be extended upto February 14, 1990. It is interesting to note that on both these occasions, the detenu was not present in court and in spite of that fact, it is the Customs Authorities, who were to execute the Order of detention, applied for extension of the bail. Mr. Karmali is, therefore, right in contending that the claim made in the return that efforts were made to serve the detention order is not correct. In our judgment, as the Order of detention was not served for a considerable length of time, the efficacy of the order is totally lost. The Order of detention is issued with a view to prevent prejudicial activity in the near future and it is not permissible to execute the order after a considerable length of time. In these circumstances, the Order of detention cannot be sustained.

3. Accordingly, petition succeeds and the order of detention is quashed and the detenu is directed to be released forthwith.