
(1998) 02 DEL CK 0045
In the Delhi High Court
Case No : Criminal W.P. No. 581/97

C.P. Abdul Latheef

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 22(4), 226

Citation : (1998) 3 AD 76 : (1998) CriLJ 2805 : (1998) 45 DRJ 242

Hon'ble Judges : A.K. Srivastava, J

Bench : Single Bench

Advocate : Mr. Harjinder Singh, for the Appellant; Mr. G. Prakash, Ms. Beena Prakesh and Mr. P.P. Veenith, for the Respondent

Judgement

1. This writ petition for habeas corpus under Article 226 of the Constitution of India has been moved by C.P. Abdul Latheef for issuance of writ/order or direction calling upon the respondent UOI and others to forthwith set the petitioner at liberty. It has further been prayed that the detention order dated 9.1.1997 passed u/s 3(1)(i) of the COFEPOSA and the declaration dated 11.2.1997 u/s 9(1) of the said Act be quashed and set aside. The facts of the case appearing from the petition and not disputed are that the impugned detention order u/s 3(1) of the COFEPOSA was passed against the petitioner by respondent No. 3 namely, State of Kerala through Shri M. Mohankumar, Additional Chief Secretary, Home and declaration u/s 9(1)(i) of the COFEPOSA was passed on 11.2.1997 by respondent No. 2 namely, Shri S.D. Mohile, Additional Secretary to the Government of India Ministry of Finance.

2. Besides other grounds taken by the petitioner to challenge the aforesaid detention order, one ground is that before the detention order passed the petitioner was granted bail on 7.1.1997 with imposition of strict conditions but the bail application and the bail order were not placed before the detaining authority and as such non-consideration of those most material documents for

subjective satisfaction of the detaining authority amounted to non-application of mind on his part and no supply of the copies of application for bail and the bail order amounted to violation of the rights of detenu as enshrined in Article 22(5) of the Constitution of India.

3. In the counter affidavit filed on behalf of respondent No. 3 (the State of Kerala), in parts 26 and 27, there is categorical admission that the bail application dated 31.12.1996 and bail order dated 7.1.1997 were not documents relied upon though the detaining authority was aware of the fact that the petitioner had been granted bail. It has also been categorically admitted therein that copy of bail application and bail order 7.1.1997 were subsequently placed before the detaining authority. In para 28 of this very counter, it has further been admitted that the detaining authority was aware that the petitioner was released on bail at the time of issuance of detention order. From these admissions, it is clear that the copy of the bail application and the bail order were not placed before the detaining authority prior to the date of issuance of the detention order.

4. Learned counsel for the petitioner relies on 1987(32) E.L.T. 307 (Delhi) Dinabandhu Mondal Vs . Union of India and others, Abdul Sathar Ibrahim Manik Vs. Union of India and others, , Abdul Sathar Ibrahim Manik Vs. Union of India and others, to substantial his aforesaid contention. In P.U. Abdul Rahiman's case (Supra) it is to be found that the principle stated in the case of M. Ahamedkutty Vs. Union of India (UOI) and Another, were found to have squarely covered the case in consideration. Paragraph 27 of that judgment had summarized relevant decision on the point that the bail application and the bail order were vital materials for consideration and if those were not considered the satisfaction of the detaining authority itself would have been impaired, and if those had gone considered, they be documents relied on by the detaining authority and those ought to have formed part of the document supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete and on the basis of that principle their Lordships held that non-consideration of bail application and the bail order amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India. In Dinabandhu Mondal's case (supra) this very High Court held that detention order was vitiated if all the existing relevant circumstances had not been consideration by the detaining authority and, Therefore, non-consideration of bail application and the bail order which were most material document for subjective satisfaction of the detaining authority amounted to non-application of mind on his part rendering the detention order invalid. In Abdul Sathar Ibrahim's case (Supra) their Lordship found it appropriate to set down their conclusions and one of the conclusions in sub-para 6 at page 227 was that in a case where detenu is released bail and is at liberty at the time of passing the order of detention then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention and in such a case the bail application and the order granting bail should necessarily be placed before the authority and the copy should also be supplied

to the detaining authority.

5. Learned counsel for the respondent could not cite any ruling of the Supreme Court of counter the aforesaid proposition of law laid down by the Supreme Court and followed thereafter. In this view of the matter, the detention is rendered invalid.

6. Learned counsel for respondent No. 3 tried to make out a case that this Court had no jurisdiction relying on 44 (1991) DLT, Member Valiyattu Kammu Vs. UOI & Ors. On the other hand learned counsel for the petitioner relied on a judgment in Criminal writ No. 37/1975 Smt. Rama Devi Vs. K.N. Kapoor decided on 26.9.1975 by this very High Court. It is a Divisions Bench decision.

7. I have carefully considered both the judgments and I am of the view that the petitioner should not be denied the relief at this stage on the grounds of jurisdiction especially when the petitioner has challenged the order of detention u/s 9(1) of the COFEPOSA passed by respondent No. 2 an Officer of the Union of India.

8. In view of above discussion, the petition is allowed. The detention order u/s 3(1) of the said Act is hereby quashed. In consequence the declaration order u/s 9(1) also goes. It is directed that the petitioner be set at liberty forward, if not required in any other case.