

(1990) 03 DEL CK 0045

In the Delhi High Court

Case No : Criminal Writ No"s. 755 and 756 of 1989

Defee Marek

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-03-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1990) 28 ECR 459

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Judgement

Y.K. Sabharwal, J.—This judgment will dispose of Cr. W. 755/89 and Cr. W. 756/89. The orders of detention in both the cases are dated November 2, 1989. In Cr. W. 755/89 the petitioner is one Defect Mark and in Cr. W. 756/89 the petitioner is Osmola Kazimierz, both Polish Nationals. The impugned orders have been made in exercise of powers u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view of preventing the petitioners from smuggling goods.

2. Various grounds of challenge have been taken in the writ petitions. It is admitted that the petitioners were in custody when the orders of detention were made. The judicial remand of both the petitioners had been extended till 23rd November, 1989. One of the grounds on which the impugned orders are challenged is that there is no cogent material depicted in the grounds of detention from where the subjective satisfaction could be reached by the detaining authority that the detenus are likely to be released from judicial custody in the near future.

3. On 2nd November, 1989, it appears that the detention order in respect of one Ms. Cierpka Iwona was also made along with the petitioners. Admittedly Ms. Iwona is one of the co-detenus. The grounds on which the petitioners have been ordered to be detained are similar to the grounds on which Ms. Iwona was

detained. Her writ petition (Crl. W. 20/90) was allowed by P.K. Bahri, J. on 1st March, 1990, and the detention order was quashed. Justice Bahri relied upon the judgment of the Supreme Court in Dharmendra Suganchand Chelawat and another Vs. Union of India and others, in coming to the conclusion that from grounds of detention cogent material must appear which should show that the detaining authority was satisfied that a particular detenu, who is in custody, is likely to be released from the custody in the near future and as such material was absent, the order of detention in respect of Ms. Iwona was quashed. Admittedly the facts of the present case are similar to the case of Ms. Iwona

4. Learned Counsel for the respondents have, however, made a feeble attempt to distinguish Chelawat's case by referring to para 23 of the said judgment. It was, inter alia, contended that in Chelawat's case, unlike the present case, bail application had been rejected by the Sessions Judge a few days prior to the passing of the detention order. However it is apparent from the perusal of Chelawat's case that one of the main grounds on which the order of detention was quashed was that the grounds of detention did not show that the detaining authority apprehended that further remand may not be extended by the Magistrate. The position in the present case is also the same. The grounds of detention do not show any such apprehension. In my opinion there is no point to distinguish. The legal position has been summarised in Lata Devi (Mali) Vs. Haru Rajwar, . The legal position was reiterated in Chelawat's case. I am in complete agreement with the opinion expressed by Bahri J. in Iwona's case and accordingly hold that the subjective satisfaction of the detaining authority stands vitiated for want of cogent material having been mentioned in the grounds of detention from which the detaining authority could come to the conclusion that the petitioners are likely to be released on bail in near future. Thus the orders of detention stand vitiated.

5. The writ petitions are accordingly allowed and the impugned orders of detention are quashed and rule in both these petitions is made absolute. It is, however, clarified that in case the detenus are released in the criminal cases in which they are in custody, the question of their preventive detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on the same material may be reconsidered by the detaining authority in accordance with the law and this judgment shall not be construed as an impediment for that purpose. With these observations the writ petitions are disposed of.