
(1988) 08 DEL CK 0010

In the Delhi High Court

Case No : Criminal Writ Appeal No. 114 of 1988

Francis Charles

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-08-1988

Acts Referred:

Citation : (1988) 36 DLT 1(1) : (1988) ILR Delhi 188

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : Harjinder Singh, Rohit Kochhar, P. Dayal and G. Prakash, for the Appellant;

Judgement

Malik, J.

(1) The -petitioner has challenged the validity of the detention order dated 15th May 1987 and the declaration u/s 9(1). dated 17th June 1987 of the Conservation Foreign Exchange and prevention of Smuggling Activities Act by which his period of detention was extended by another year. The detention order has been passed by the Government of Kerala u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities, Act, 1974 (as amended) and is with a view to preventing the petitioner from smuggling goods. This followed an incident dated 16th of April 1987 when the petitioner is alleged to have come from Male in Ic flight 564 and landed at Trivandrum Airport. He was found carrying 9 gold biscuits of foreign made. The petitioner along with three others was remanded to judicial custody on 18th of April 1987 by Additional Chief Judicial Magistrate, Economic Offences, Ernakulam. He preferred a bail application on 11th May 1987 which was finally declined on 19th May 1987. Meanwhile, on 15th of May 1987 a proposal to detain the petitioner was floated. The order of detention was served upon the petitioner on 22nd May 1987 along with grounds and it was on 7th July 1987 that the detention order was confirmed.

(2) The main contention of Mr. Herjinder Singh, learned counsel for the petitioner, is that the detenu was deprived of his constitutional right of making an effective and purposeful representation to the Advisory Board on the basis of which the detention stands vitiated. To understand his contention certain dated assume importance. It is a common case of the parties that the detention order was confirmed on 7th July 1987. The declaration u/s 9(1) of the Cofeposa Act was passed on 17th of June 1987, admittedly, when the case was referred to the Advisory Board on 18th June 1987 by the Government of Kerala in the belief that there is no declaration u/s 9(1) of the Cofeposa Act. This is so stated in para 5 of the counter affidavit of the Government of Kerala. I have, however, been taken through the opinion of the Advisory Board which, it seems, was aware of the declaration u/s 9(1) on the date when it recorded its opinion, The admitted case of the parties is that the petitioner detenu was informed of the declaration u/s 9(1) of the Cofeposa Act on 10th of July 1987, that was almost 3 days after the detention order was confirmed after receiving a O.K. from the Advisory Board. This would clearly show that when the matter was heard by the Advisory Board, the detenu-petitioner was not aware of the existence of the declaration u/s 9(1). He Therefore, could not have made any representation to the Advisory Board about the same. It is a clear case where the detenu was kept unaware of a very important development and thereby was deprived of making an effective and purposeful representation to the Advisory Board. it does not Therefore lic in the month of the- Union of India to say that his right of representation was not affected in any way. Declaration u/s 9(1) has a grave effect of enlarging the period of detention by one more year and the constitutional safeguards do mandate that the detenu whose liberty is put to jeopardy has a right to make an effective and purposeful representation and if the State by its inaction or lapse deprives him of doing so, the detention order will become invalid. On this ground alone, Therefore, this petition is allowed and the continued detention of the petitioner is quashed. It is directed that. the detenu shall be released forthwith lineless otherwise required.