
(1989) 07 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No. 456 of 1989

Hargundas Dayaldas Chugh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-07-1989

Acts Referred:

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

Citation : (1989) 25 ECR 51

Hon'ble Judges : Kurdukar, J; Ashok Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kurdukar, J.—The Petitioner is the father of one Rojal Hargundas Chugh, the Detenu, who came to be detained u/s 3(I) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities, Act, 1974, pursuant to the order dated October 14, 1988, issued by the Joint Secretary to the Government of India. The impugned order of detention is sought to be challenged mainly on the ground of delay in issuing the same.

2. The incident, which led to the proceedings under the Customs Act, took place on April 5, 1988, and according to the grounds of detention the detenu has brought into India a substantial quantity of gold from Singapore, which is liable to confiscation under the Customs Act. The investigation was completed on April 6, 1988. Show Cause Notice under the Customs Act was issued on September 13, 1988. The impugned detention order came to be passed on October 14, 1988. Relying upon these few dates Mr. Barday, the learned Counsel for the petitioner, draw our attention to ground taken in the petition at the forefront. [See ground IV (i)] Mr. Bardey contends that there is enormous and unexplained delay in issuing the order of detention and this delay has virtually and in fact snapped the live link and if this be so, the purpose of detention is totally frustrated and, therefore, taking the shelter of the preventive detention law, on

the face of it, is mala fide and must be quashed and set aside.

3. Mr. K. L. Verma, the then Joint Secretary to the Government of India, in the concerned Ministry, filed the return and the reading of the said return makes a very interesting explanation sought to be offered on oath. It is stated therein:

Thus, it is stated that though the incident took place on 3.4.1988, investigation continued thereafter till the issuance of the show cause notice on 13.9.1988. It is stated that thereafter the proposal for detention had to be drafted and placed before the Screening Committee. It is stated that the Screening Committee after scrutinising the said proposal, cleared the same. The proposal was thereafter put up to the Detaining Authority. It is stated that the Detaining Authority after carefully considering the facts and circumstances of the case reached the subjective satisfaction to issue the detention order and the said order was therefore issued on 14.10.1988. Thus, it is submitted that the allegation of the petitioner in this respect is without any substance and has to be rejected.

This return, less said the better, is as vague as it could be. Time and again this Court as well as the Supreme Court insisted that the Detaining Authority must explain the delay in a satisfactory manner and in the absence of such explanation the Detention Orders are liable to be quashed. Despite such decisions of the Courts, it is unfortunate that the Detaining Authorities are exhibiting total lack of responsibility in not following the said decisions and not properly explaining the delay. As a result of such cavalier approach in the detention matters, the Court has no option but to quash and set aside the order of detention. The impugned order of detention is unsustainable and consequently the same is quashed and set aside on the ground of delay in issuing the same.

4. In the result, the writ petition succeeds. Rule is made absolute. The Detenu is ordered to be released forthwith if not required in any other case. No order as to costs.