
(1992) 07 RAJ CK 0004

In the Rajasthan High Court

Case No : Hobeas Corpus Petition No. 4277 of 1992

Hari Narain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 108

Citation : (1992) 2 RLW 355 : (1992) WLN 135

Hon'ble Judges : N.C. Kochhar, J;M.R. Calla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.C. Kochhar, J.—The petitioner, who has been detained in the Central Jail, Jaipur in pursuance of the order No. P. 5(3) Grah 9/91 Jaipur dated 28.1.1992 (Annexure-1) passed by the State of Rajasthan (respondent No. 1) in exercise of the powers vested in it u/s 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) has challenged his detention by filling this Habeas Corpus petition under Articles 226 and 227 of the Constitution of India. The brief are as under.

2. The petitioner had been employed with one KS Garg, who is carrying on the business of sale and purchase of gold and silver ornaments in Jaipur. On 2.7.1991, when the petitioner was going on his two-wheeler scooter, he was intercepted by the Customs Authorities, who, on checking, found 10 gold strips weighing 1166.500 grams lying with him. The Customs authorities recovered the said gold and recorded the statement of the petitioner u/s 108 of the Customs Act wherein he had stated that the gold belonged to his employer KS Garg and that he had taken it to the shop of one Pradeep Kumar for using his press to erase the foreign marking from the gold. Thereupon, the Customs authorities proceeded further and found that Ghanshyam, Satyanarain were also involved in

the matter and arrested them, but Mr. Garg obtained an order for anticipatory bail and could not be arrested. The petitioner, after his arrest, was released on bail under the orders of the Court and, subsequently, KS Garg, Satyanarain, Ghanshyam and the petitioner were detained u/s 3 of the COFEPOSA. KS Garg, Satyanarain and Ghanshyam besides the petitioner challenged their detention by filing Habeas Corpus petitions. The petitions of all the three others have already been allowed and they have been set at liberty under the orders of the Court.

3. We have heard the learned Counsel for the parties and have also perused the record of the case.

4. The main argument addressed at the Bar by the learned Counsel for the petitioner is that according to the admitted case of the detaining authority the petitioner has no antecedent and this was the first case in which he was arrested and further that he was only an employee of KS Garg, who has already been released by the Court, by allowing his Habeas corpus petition.

5. There cannot be any dispute that the mere fact that a person is found to be involved in a solitary incident is not sufficient to say that such a person cannot be detained under the COFEPOSA as has been held in case *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, but the detaining authority is of the subjective satisfaction on the basis of the material of COFEPOSA to prevent him from indulging in such activities the order of detention can be passed against him. It is not disputed before us that the petitioner was only an employee of KS Garg and it was the first time that he was found dealing in the smuggled gold by carrying it to a shop for erasing the foreign marking thereon and it cannot be disputed that it was for the purpose of KS Garg and under his instruction. No material has been placed before us which satisfied the detaining authority that even in such a case it was necessary to detain the petitioner to prevent him from indulging in smuggling of gold and that unless the petitioner was detained it was not possible to do so. We are conscious of the fact that this Court cannot sit in appeal and cannot go into the sufficiency of the material, but this Court has certainly the power to see that if there was any material relevant for the purpose of coming to the conclusion that such detention was necessary before the order of detention was passed by the detaining authority. In absence of any such material it cannot be said that it was necessary to detain the petitioner who was involved in a solitary incident and who was only an employee of KS Garg who has already been released by the court by allowing his Habeas Corpus petition under Article 226 of the Constitution of India.

6. On this short ground, in our view this Habeas Corpus Petition must be allowed and, consequently, while allowing this petition we quash the order of detention dated 28.1.1992 (Annexure-1) and direct that the petitioner should be released forthwith unless wanted to be detained in some other case.