

(1989) 03 DEL CK 0058

In the Delhi High Court

Hira Lal

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-03-1989

Acts Referred:

Citation : (1970) LabIC 593(1)

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Harjinder Singh, for the Appellant; Kadambini Sharma and R. P. Lao, for the Respondent

Judgement

P.K. Bahri, J.—This petition has been brought under article 226 of the constitution of India read with section 482 of the code Criminal procedure, seeking quashing of the detention order dated january 19, 1988, passed by respondent No. 2 u/s 3(1) of the conservation of Foreign Exchange and prevention of Smuggling Activities Act, 1974, and declaration dated February 4, 1988, issued u/s 9(1) of the conservation of Foreign Exchange and prevention of Smuggling Activities Act, 1974.

2. On October 15, 1987, the petitioner was arrested along with another code ten and recovery of contraband gold biscuits of foreign origin weighing 25,663 Kgs. valued at Rs. 79 lakhs was effected from a Maruti car at the instance of the petitioner and the said contraband gold was seized. Detention orders have been made against Shri Sat Pal Bhandari, Ravinder Kumar Bhandari, Puran Singh and the present petitioner.

3. One of the grounds pleaded in challenging the impugned orders is that the detention order is dated January 19, 1988, whereas the grounds of detention are dated January 21, 1988, which makes the detention of the petitioner illegal. It has been pleaded on behalf of the petitioner that the grounds of detention have not been prepared and approved by the authority concerned on the date which the detention order was made. How ever, in the counter- affidavit filed by Shri A.

S. Dagar, Deputy secretary (Home), Delhi Administration, it has been pleaded that the draft detention order and the grounds of detention were prepared and approved by the detaining authority simultaneously and contemporaneously whereas the order of detention was issued on January 19, 1988, and the grounds of detention were supplied to the detenu on January 21, 1988, within the stipulated period.

4. Learned counsel for the petitioner has, however, made reference to Ravinder Kumar Bhandari v. Union of India (Criminal Writ No. 294 of 1988, decided on November 30, 1988), by H, C, Goel J. in respect of the writ petition brought by a co detent in which a similar point was raised and the detention of the co detent had been quashed on the ground that the grounds of detention have not been prepared and approved on the date the detention order had been made. Learned counsel for the petitioner has writ No. 244 of 1985, decided on December 6, 1985), wherein a Division bench of this court has laid down the law that if, on similar point, a detention order of a co detent stands quashed, the detention order of the other detenu also cannot be sustained. One of the points raised in the aforesaid case was regarding the delay made in passing the detention order which stood unexplained in the case of the co detent and the detention of the co detent stood quashed. It was held by the Division Bench that the judgment given in the case of the co detent served as precedent for quashing the detention of the other detenu in which a similar point was raised and it was held that the authorities cannot now be permitted to refer to any other facts, to justify the delay.

5. Learned counsel for the respondents, however, has vehemently contended that the mere fact that the detention of the co detent stood quashed on a similar ground would not bar the authorities from proving, from the facts and the record that, in the fact in the case of the present petitioner the grounds of detention were simultaneously and contemporaneously approved by the authority at the time of passing of the detention order. It has been urged that the files of the detenus were separately dealt with and, thus the decision given by the court in respect of the co detent cannot operate as a precedent for quashing the order of detention of the petitioner. There is no merit in this contention.

6. I have seen the record and I find that a combined proposal was put up before the then Lt. Governor in which it was mentioned that a proposal had been received from the Revenue Intelligence dated December 3, 1987, together with annexure documents for the detention of Sat Pal Bhandari, Ravinder Kumar Bhandari, Hira Lal and Puran Singh and the Lt. Governor had, on January 15, 1988, approved the said proposal and passed a speaking order directing the detention of all these persons u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The speaking order is undated. Be that as it may it is evident from the record that the case of the petitioner and his co detents were dealt with in the same file and under one proposal and so it a separate file. The ratio laid down by the Division Bench of this court in the case

of Shivdev Singh (Criminal writ No. 244 of 1985, decided on December 6, 1985), squarely applies to the facts of the present case. It is not for me now to independently examine the case of the respondents on this particular point as to whether the grounds of detention were or were not prepared contemporaneously on the date the detention order was approved. The respondents are now debarred from showing any facts different from What had been held in the case of the co detent. In view of the above discussion, I hold that the impugned orders are liable to be quashed.

7. I allow the writ petition, make the rule absolute and quash the impugned orders and direct that the petitioner be set at liberty if not required to be detained in any other case. The parties are left to bear their own costs.