
(1989) 02 DEL CK 0010

In the Delhi High Court

Case No : Criminal Writ Appeal No. 403 of 1988

Hiralal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

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

Citation : (1990) 67 CompCas 428 : (1989) ILR Delhi 359

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

Bench : Single Bench

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

Judgement

P.K. Bahri, J.

(1) This petition has been brought under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, seeking quashing of 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 (for short Cofeposa Act") and declaration dated February 4, 1988, issued u/s 9(1) of Cofeposa Act.

(2) On October 15, 1987 the petitioner was arrested Along with other co-detenu and a 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 S/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 on which the detention order was made. However, 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) The learned counsel for the petitioner has, however, made reference to Criminal Writ No. 294/88, *Ravinder Kumar Bhandari v. Union of India & Others*, decided on November 30, 1988 (1), 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. The learned counsel for the petitioner has made reference to Criminal Writ No. 244/85, *Shivdev Singh v. Delhi Admn.*, decided on December 6, 1985 (2), 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 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 co-detent served "as a precedent for quashing the detention of the other detenu in which the similar point was raised and it was held that the authorities cannot be now permitted to refer to any other facts to justify the delay.

(5) The 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 to prove from the facts and the record that in 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 annexures 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 Cofeposa Act. The speaking order is

undated. Be that as it may, it is evident from the record that the cases of petitioner and his co-detents were dealt with in the same file and under one proposal, so it cannot be held that case of each detenu was put up separately in a separate file. The ratio laid down by the Division Bench of this Court in the case of Shivdev Singh (supra) 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 different facts from what had been held in the case of 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.