

(1985) 04 MAD CK 0019
In the Madras High Court
Case No : Writ Petition No. 12713 of 1984

Inderchand Jain

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-04-1985

Acts Referred:

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

Citation : (1987) 11 ECC 220

Hon'ble Judges : V. Ramaswami, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : Natarajan, for the Appellant; Public Prosecutor, for the Respondent

Judgement

V. Ramaswami, J.—Two grounds are raised in this writ petition for the issue of a writ habeas corpus with reference to the detention of a

person by name Dhanmal Jain under Ss. 3(1)(ii) and 3(1)(iii), Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974

(for short COFEPOSA Act). The writ petitioner is brother of the detenu. On the basis of certain information on 19-10-1983, the detenu was

intercepted in Arakonam railway station and he was found to be in possession of gold bars with foreign markings valued at Rs. 3,41,000/-. He is

said to be a carrier. On 23-8-1984 an order of detention was made under the COFEPOSA Act. However, since the detenu was absconding he

could not be detained immediately. He was arrested and detained under the COFEPOSA Act on 23-11-1984.

2. The learned counsel for the petitioner contended firstly that the grounds of detention included among the documents the show cause notice

issued by the Customs authorities under the provisions of the Customs Act. That

was in English. He further contended that the detenu does not know English and since the show cause notice was in a language not known to the detenu, he was deprived of the valuable guarantee of making an effective representation to the Government under Art. 22(5) of the Constitution. It is true that at the time when the grounds of detention were served though all the other documents were in Tamil the show cause notice issued by the Collector of Customs was in English. But, however, when he wrote a letter on 15-12-1984 by way of representation and made a complaint that the show cause notice was in English and that he knew only Tamil, immediately the Government supplied a translated copy of the show cause notice on 27-12-1984. In the circumstances, therefore, actually there is no basis for the contention that he was not supplied with the Tamil translation of the show cause notice and he was in any manner deprived of the effective opportunity of putting forward his representation. It may be mentioned that all the material documents in this case were in Tamil even at the time when the grounds of detention were served on his arrest on 23-11-1984. The mere fact that one of the documents is in English by itself will not invalidate the order. If the Government had not furnished him even after he informed that he did not know English, then that might invalidate. But in this case, the moment he pointed out that he did not know English, a copy of the show cause notice had been furnished to him in Tamil and that too without any further loss of time. In the circumstances, there is no substance in this contention. We may also point out as part of this contention, the learned counsel also contended that his bail application had not been furnished to him in Tamil. But as rightly pointed out in the counter-affidavit the bail application was filed by him in English in the Court and therefore the Government was not duty bound to furnish the same having it translated. It is his own document. Further, factually even that bail application was translated and given to him when he wanted it in Tamil.

3. The next contention of the learned counsel for the petitioner was that though he was alleged to be a carrier of the gold bars on 18-10-1983, the detention order itself was made only on 23-8-1984, after about ten months from the date of occurrence and that, therefore, it is not possible to contend that there was any proximity of the grounds of detention to the order of detention itself. We are unable to agree with this contention. The

counter-affidavit points out that the matter was under investigation and they could not come to the conclusion immediately as to whether action was warranted under the preventive detention. After investigation had reached a particular stage, the investigating officer has forwarded the matter to the detaining authority on 17-6-1984, for action under the COFEPOSA Act. The detaining authority having considered the material placed before him came to the conclusion that action was called for and made the order on 23-8-1984. Since the detenu was absconding he could not be detained till 23-11-1984. This is not a case like action under the National Security Act, because under the National Security Act, with reference to an incitement made in a public meeting unless prompt action is taken the effectiveness of the incitement itself will lose its significance and therefore if there is any delay in taking action that may be considered as vitiating the order. But in a matter dealing with COFEPOSA Act further investigation is involved in order to consider whether the person is involved in the offence and what action is to be taken i.e. whether the normal proceedings under the Customs Act is not enough and any preventive proceedings is to be taken. All these materials could not be considered immediately and it needs collection of some particulars. In the circumstances, therefore, we could not say that the order is vitiated by any delay in making the order with reference to the date of seizure of the gold bars from the detenu. No other ground is raised in the writ petition. For the foregoing reasons, the writ petition fails and is dismissed.

4. Petition dismissed.