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**(1996) 04 DEL CK 0026**

**In the Delhi High Court**

**Case No : Criminal Writ Petition No. 621 of 1995**

Jamila Begum

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 12-04-1996

**Acts Referred:**

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —  
Section 3(1)  
Constitution of India, 1950 — Article 22(5)

**Citation :** (1996) 62 DLT 395 : (1996) 37 DRJ 512

**Hon'ble Judges :** M. Jagannadha Rao, C.J; Dr. M.K. Sharma, J

**Bench :** Division Bench

**Advocate :** S. bhayana, B. Babbar, S.K. Agarwal and L.R. Luthra, for the Appellant;

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## **Judgement**

M. Jagannadha Rao, C.J.

(1) This Judgment was not pronounced on 25.3.1996 as indicated in our earlier order but is being pronounced now.

(2) This is a writ petition for the issue of a Writ of Habeas Corpus. The detention order was passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities, 1974 (hereinafter called the COFEPOSA). The detention order was passed after three tea packages concealed in the baggage revealed Indian and foreign currency of Rs. 11,39,862 etc. The petitioner was going to Dubai. " The petitioner stated in her statement u/s 108 of the Customs Act, 1962 that she was a graduate.

(3) Though the detention order was passed on 4.12.1992, the detention could be effected only on 27.9.1995. The delay, however, is not questioned before us.

(4) The point now pressed is the following. It relates to the delay in the disposal of representation dated 6.10.1995 to the 1st respondent (Union of India) and 2nd respondent (Lt. Governor, N.C.T). According to the respondents, the

representation is dated 9.10.1995. The argument is that in regard to the representation addressed to the Lt. Governor, there is delay between 9.10.1995 when it was forwarded from the Jail and when it was received on 19.10.1995 in the Cofeposa Branch of the Home Department through the Superintendent of Jail. This argument was based on what was stated in the affidavit dated 5.1.1996 of the Deputy Secretary, Home, N.C.T. Government of Delhi. By an order dated 1.2.1996, we directed the State Government to explain this delay. The Superintendent of Jail filed an affidavit dated 15.2.1996 stating that the representation was dispatched on 9.10.1995 from the Jail. A reply affidavit dated 11.3.1996 was filed stating that, at the relevant time, Sri Parimal Rai was working as Joint Secretary to the Lt. Governor and that he was holding concurrently charges of Project Administrator (CATS), Osd, Ndmc, in addition to his functions and duties as Joint Secretary to the Lt. Governor and he was also working as Private Secretary to the Minister of State for Urban Development, Government of India and had to spend more time in the Office of the Lt. Governor, Delhi. It was also stated that on an average 150 communications are received in the Office of the Lt. Governor daily and they have to be segregated. Further, during the period, the Hon'ble Lt. Governor was indisposed all urgent papers, used to be put up at his residence and some of the papers had to be carried to him at a time convenient to him. (The Lt. Governor had a heart surgery during this period.)

(5) Learned counsel for the petitioner has relied upon *Kundanbhai Dulabhai Shaikh vs. Distt. Magistrate, Ahmedabad & Ors* JT 1996 (2) S.C. 532 to say that such delays affect the liberty of the petitioner under Article 22(5). There it was held that delay occurring because the representations were in a queue and were being taken up one by one, chronologically, was not a proper Explanation. In the present case before us, there is no question of the matter being taken up chronologically. In *Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others*, there was delay from 18.6.1992 to 13.7.1992, and no Explanation was given. It was held that delay is not fatal, if there is an Explanation. "A short delay cannot be given undue importance having regard to administrative actions". In *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, and *Madan Lal Anand Vs. Union of India and others*, it was held that the time imperative can never be absolute or obsessive. In *Mohd. Sathar vs. State of Gujarat*, when Government took 6 days to consider the representation, it was held to be not undue. There the Supreme Court said the certain observations in earlier cases that every day's delay must be explained in dealing with representation were meant to emphasise the expedition needed and it is not a magic formula, the slightest breach of which must result in the release of the detenu.

(6) The delay in this case been explained and particularly, the sudden illness of the Lt. Governor, competent authority. We do not, therefore, think that there is any unexplained delay in the case. This plea is rejected.

(7) Learned counsel for the petitioner wants to move an application for urging

additional grounds. She is permitted to do so.