

(1986) 08 DEL CK 0003

In the Delhi High Court

Case No : Criminal Writ Appeal No. 138 of 1986

Kasim Ali

APPELLANT

Vs

M.L. Wadhawan and Another

RESPONDENT

Date of Decision : 18-08-1986

Acts Referred:

Citation : (1986) 3 Crimes 178 : (1986) 30 DLT 331

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : U.K. Sharma, Urmil Khanna and R.M. Bagai, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) This criminal writ has been filed by petitioner Kasim Ali father-in-law of detenu Abdul Aziz @ Chotu s/o Rahmatulla r/o 42, Khoza Colony, Chirag Ali Lane, Hyderabad, presently detained in Central Prison, Chanchalgurah, Hyderabad (hereinafter to be referred to as the "detenu") and is directed against the order of detention dated 31-12-1985 passed by Shri M L. Wadbawan, Additional Secretary to the Government of India in regard to the detenu with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange u/s 3(1) of the Conservation of Foreign Exchange and prevention of Smuggling Activities (COFEPOSA) Act, 1974 (as amended). Shri M.L. Wadhawan is an officer of the Central Government and is specially empowered u/s 3(1) of Cofeposa Act for this purpose. The Advisory Board constituted under the Cofeposa Act gave its opinion on 19-3-1986 in favor of the detention to the detenu.

(2) The contention raised by the learned counsel for the petitioner is that the detenu made a representation to the President of India on 21-4-1986 which was rejected by the Central Government on 11-6-1986 and this order of rejection was communicated to the Superintendent Central Prison, Hyderabad on 19-6-1986 who in turn communicated the same to the detenu on 20-6-1986, thus causing

an unnecessary delay of 59 days which remained unexplained by the Central Government and on account of that unreasonable delay the detenu was entitled to the quashing of the aforesaid order of detention and he has relied upon *Raghavendra Singh v. Superintendent District Jail, Kanpur and others*, 1986(2) Crimes 465 wherein there was an enormous delay of 75 days in the disposal of a detenu's representation by the Central Government for which reason alone his further detention was held as illegal and was directed to be set at liberty forthwith. That was a case under the provisions of the National Security Act, 1980 under the provisions of which the detention order had been passed and Section 14 whereof was in terms similar to Section 11 of the Cofeposa Act, in respect of the nature of the power of revocation conferred on the Central Government. Section 11 of the Cofeposa Act is reproduced below :

"Revocation of detention orders-(1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified- (a) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government ; (b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government. (2) The revocation of a detention order shall not bar the making of another detention order u/s 3 against the same person."

(3) In the case in hand the relevant provision is furnished by Section 11(1)(b) and according to it the detention order, as in the case in hand passed by an officer of the Central Government, may be revoked or modified by the Central Government. It was under this provision of law that the representation dated 21-4-1986 referred to above had been made by the detenu to the President of India which was rejected by the Central Government on 11-6-1986 and which order of rejection was communicated to the detenu in Central Prison, Hyderabad on 20-6-1986 after 59 days of the date of representation. This delay has remained unexplained by the respondent.

(4) It is pointed out in the additional counter-affidavit deposed to by Shri S.K. Chowdhry, Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi that earlier to the aforesaid representation, representations dated 5-2-86, 14-2-86 and 20-2-86 were made by a neighbour of the detenu, detenu's wife and Mrs. Naju and the detenu himself respectively against the detention order and those representations were considered and rejected after due application of mind. The learned counsel for the petitioner has contended that all those representations had been made to the detaining authority Shri M.L. Wadhawan who was an officer of the Central Government and whose order of detention could be revoked or modified by the Central Government u/s 11(1)(b) of the Cofeposa Act, and the representations to him are not the same thing as a representation to the Central Government under the aforesaid provision of law which is the ultimate safeguard under the Cofeposa Act for the detenu. It would be noted that the Advisory Board had admittedly heard

the parties on 19-3-1986 and the representations referred to in the additional affidavit and already adverted to above were all of the month of February 1986 prior to the hearing given by the Advisory Board and the Advisory Board would have sent its advice and report to the Central Government only after 19-3-1986 and the detenu had the right to make a representation to the Central Government even thereafter.

(5) In view of the above discussion the further detention of the detenu cannot be allowed and he is entitled to be set at liberty forthwith and it is ordered accordingly.