
(1990) 07 DEL CK 0005
In the Delhi High Court
Case No : Criminal Writ No. 58 of 1990

M.A. Pocker Haji

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)(i), 3(1)(iii), 9(1)
Constitution of India, 1950 — Article 22(5), 226

Citation : (1990) 31 ECR 708

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Judgement

M.K. Chawla, J.—In this writ petition under Article 226 of the Constitution of India, the petitioner M.A. Pocker Haji is seeking the issuance of a writ of habeas corpus or any other writ, order or direction against the order of his detention dated 20.7.1989 u/s 3(1)(i) and 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the COFEPOSA Act), with a view to preventing him from smuggling as well as transporting, concealing and keeping smuggled goods.

2. In pursuance of the said order, the petitioner was detained on 31.7.1989 though the grounds of detention were served on 3.8.1989. This preceded an incident when the petitioner after having landed at Bombay was traveling in bus No. MMS 5001 of Amar Tour, plying from Bombay to Tirur. The bus was intercepted on 12.2.1989 by the Special Customs Preventive Unit, Connors, and the petitioner was allegedly found in possession of 37 gold biscuits weighing 3906.100 grams concealed in two mathematical instrument boxes and dry battery cells. The petitioner was arrested on 13.2.1989 and was produced before the A.C.J.M., Arunakulam, who remanded him to judicial custody till 28.2.1989. In the meantime, the petitioner moved an application for his release on bail and in fact was granted bail on 23.2.1989 on a bond of Rs. 75000A with two sureties of the like amount. On 20.7.1989, as stated earlier, Shri M. Mohan Kumar,

Commissioner and Secretary to the Government of India, Trivandrum (Kerala) passed the order of his detention. Shri A.C. Sardanah, Addl. Secretary to the Government of India issued the declaration u/s 9(1) of the COFEPOSA Act on 31.8.1989, which was served on the petitioner the same day. Finally, the order of detention and his continued detention for a period of two years from 31.7.1989 was confirmed by the Secretary (Home Department) State of Kerala.

3. The petitioner has challenged the order of his detention and continued detention on numerous grounds, but during the course of hearing arguments, learned Counsel for the petitioner confined to only one of them, namely, that the declaring authority issuing the declaration u/s 9(1) of the COFEPOSA Act has not cared to inform the detenu that he has a right to make a representation against the said declaration. The petitioner being an illiterate person is not supposed to know the intricacies of the law on this aspect and the non-furnishing of this information has deprived him of his constitutional right of making a representation.

4. Respondent No. 1, Union of India, responsible for issuing the declaration has not cared to file reply in spite of the service of notice on the concerned department. Respondent No. 2, the State of Kerala has no comments to offer on this ground except to say that by order dated 20.12.1989, the detention of the petitioner was confirmed for a period of 2 years from 31.7.1989.

5. In fact it is a case of no return and the provisions of Rule 10 Chapter 4F(A) of the High Court Rules and Orders in respect of the issuance of a writ of habeas corpus under Article 226 of the Constitution of India can rightly be invoked and the detention order can be quashed.

6. By that as it may, the petitioner has even otherwise a good case for the quashing of the order of his detention for a period of 2 years from 31.7.1989. Learned Counsel for the petitioner has placed reliance on a Judgment of the Supreme Court in Jagpreet Singh v. Union of India CrI. A. 23/90, decided on March 23, 1990 wherein the order of declaration was set aside by the Supreme Court on the short ground that there was a delay of about a month and 13 days before the detenu was made aware of his rights under the Constitution to make an effective representation against the declaration. The delay in that case was considered to be unreasonable and inconsistent with the provisions of Article 22(5) of the Constitution. This very ratio has been followed by this Court in series of Judgments including the case of Vimal Kumar v. U.O.I. CrI. Writ No. 799/89 decided on 15.9.1989, and Manish Bhai Nageen Bhai Patel v. U.O.I. CrI. W. 611/89 decided on 15.5.1990, and CrI. W.91/90. Puran Singh v. Union of India decided on July 26, 1990, and Shiv Shankar Gupta v. U.O.I. 1990 (3) D L 93 : 1990 (30) ECR 169, and the orders of detention and continued detention have been quashed.

7. As there is no rebuttal to this argument, I am left with no other option but to hold that the detenu has been deprived of his constitutional right to make a

representation against the declaration and, Therefore, the declaration is violative of the provisions of Article 22(5) of the Constitution.

8. Once the declaration u/s 9(1) of the COFEPOSA Act dated 31.8.1989 is held bad, the order of confirmation dated 20.10.1989 for a period of two years from 31.7.1989 ipso facto becomes invalid, inasmuch as the continued detention of the petitioner was made consequent upon the order of declaration.

9. Accordingly, the order of detention dated 20.7.1989 and the continued detention of the petitioner is quashed. The Rule is made absolute. The petitioner is directed to be set at liberty forthwith if not required to be detained in any other case.