(1988) 07 BOM CK 0045

In the Bombay High Court

Case No : Criminal Writ Petition No. 452 of 1988

Mohd. S.A.K. Shaikh APPELLANT

Vs

Secy., (Home) Govt. of Maharashtra RESPONDENT

Date of Decision : 11-07-1988

Acts Referred:

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

Citation : (1989) 39 ELT 397

Hon'ble Judges : V.P. Tipnis, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—The Secretary to the Government of Maharashtra, Home Department by order dated February 2, 1988 passed in exercise of powers under sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, directed detention of the petitioner with a view to preventing him from smuggling goods. The order of detention was served within a couple of days and so also the grounds of detention. The grounds of detention inter alia recites that on March 7, 1987 while the petitioner was proceeding to Dubai from Sahar Air Port his baggage was searched and in one brown suit case a false bottom was noticed. On removing the cloth lining, one carbon paper pasted underneath the cloth lining was seen. On tearing the carbon paper United States $ 13842 of different denominations packed in seven polythene bags were recovered. The statement of the detenu was recorded on March 7, 1987 and thereafter on March 23, 1987. The detenu was produced before the Magistrate, but was released on bail. In the statement the detenu claimed that one Abdul Rahiman Aboobacker who was known to him, had handed over the suit case for being taken to Dubai and to be given in custody of Abdul Rahiman''s brother. The detenu was to stay with the brother of Abdul Rahiman. The detaining authority on the strength of this material came to the conclusion that the activities of the petitioner are detrimental to the argumentation of foreign exchange and thereupon passed the impugned order of detention, which is under challenge.

2. Shri Patel, learned counsel appearing on behalf of the detenu, raised two contentions to challenge the legality of the order. The first submission of the learned counsel is that the impugned order was passed after considerable delay and there is no explanation for such unusual delay. The second submission of the learned counsel is that vital and material document was not placed before the detaining authority. Both the submissions are correct and deserve acceptance. As regards the first submission, the incident occurred on March 7, 1987 while the impugned order was passed on February 12, 1988. In paragraph 6 of the return filed by the detaining authority, it is claimed that the statement of one Abdul Rahiman was recorded on June 10, 1987 and show cause notice by the adjudicating authority was issued on July 31, 1987. The meeting of the screening committee was held on November 10, 1987 and the proposal was forwarded on December 30, 1987, and thereafter the order was passed on February 12, 1988. By perusal of this paragraph of the return, it is clear that there is no explanation whatsoever for the exorbitant delay. There is no reason why the proposal forwarded on December 30, 1987 should have been kept idle on the table of the detaining authority for about two months. The detention is directed with a view to prevent prejudicial activities, but such prejudicial activities must be in immediate future. The order of detention is require to be struck down on the ground of delay.

3. The second ground urged by Shri Patel is equally strong. The grounds of detention exhaustively recite the fact of issue of show cause notice by the adjudication authority. Shri Patel complains that the detailed reply filed by the detenu was not placed before the detaining authority. If the show cause notice is relevant, then the reply cannot be said to be irrelevant. In our judgment, the order of detention must fail on both the grounds.

4. Accordingly, petition is made absolute and the impugned order of detention is quashed and the detenu is directed to be released forthwith. There will be no order as to costs.