
(2001) 04 AHC CK 0005

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 8387 of 2001

Mukesh Kumar Gupta and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

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

Citation : (2001) CriLJ 3902 : (2001) 4 RCR(Criminal) 824

Hon'ble Judges : O. Bhatt, J;M. Katju, J

Bench : Division Bench

Advocate : A.D. Giri, Vijay Prakash and A. Samad, for the Appellant; A.G.A. and Sanjay Kumar Singh and S.N. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri A.D. Giri, learned Senior Advocate, Sri Vijay Prakash and Sri A. Samad, learned Counsels for the petitioners and Sri Sanjay Kumar Singh for the respondents.

2. The petitioner No. 1 has challenged the detention order dated 16-2-2001 Annexure 1 to the writ petition passed u/s 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 as amended. A counter-affidavit has been filed by the respondent and by means of an amendment application the petitioner has placed on record the grounds of detention.

3. Several arguments have been advanced by the learned Counsel for the petitioner but in our opinion the very first ground is sufficient to allow this petition. learned Counsel for the petitioner submitted that the allegation against the petitioner No. 1 who was Superintendent in Custom and Central Excise Department was that by misusing his office he was abetting smuggling activities. The petitioner No. 1 was suspended on 5-10-2000 while the detention, order is dated 16-2-2001. In our opinion when the petitioner No. 1 was suspended on

5-10-2000 obviously he could not continue to do the alleged activity of abetting smuggling because he was doing those activities by virtue of his office as Superintendent, Custom and Central Excise. learned Counsel for the petitioner has rightly submitted that since the petitioner has been suspended on 5-10-2000 obviously thereafter he could not continue the said activity because he was doing those activities by virtue of his office, and since he is now no longer functioning in that office there was no justification for passing the impugned detention order on 6-2-2001.

4. We are in the agreement with this submission of the learned Counsel for the petitioner and hence we are of the view that the impugned detention order is arbitrary and illegal. Hence we quash the impugned detention order dated 16-2-2001. However, in case the petitioner No. 1 is reinstated it will be open to the authorities to take appropriate action in accordance with law.

5. The petition is allowed. The petitioner No. 1 shall be released forthwith unless he is required in some other preventive detention or criminal case. No order as to costs.