

**(1988) 08 DEL CK 0047**

**In the Delhi High Court**

**Case No :** Criminal Writ Appeal No. 206 of 1988

Naeem Ahmad Khan

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 05-08-1988

**Acts Referred:**

**Citation :** (1989) CriLJ 262 : (1988) ILR Delhi 191

**Hon'ble Judges :** M. Sharief-ud-din, J

**Bench :** Single Bench

**Advocate :** R.M. Bagai, Rajinder Dutt and S. Kohli, for the Appellant;

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## **Judgement**

Malik Sharief-ud-Din, J.

(1) The petitioner has challenged the detention order dated 8th March. 1988 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) by Joint Secretary to Government of India. The detention order was passed with view to preventing the petitioner from smuggling goods

(2) The detention order followed an incident dated 8th January. 1988 when while clearance of the outgoing passengers bound for Karachi and Dubai of Pakistan International Airlines Flight No. PK-291, the Customs Officers found a suit case which intimately according to them was found to be belonging to the petitioner. This suit case was found containing foreign currency and Indian currency collectively equivalent to worth Rs. 29.35,795.60. The petitioner failed to show any legal permission from the Reserve Bank of India and according to the respondents the petitioner was trying to smuggle out this currency from the country.

(3) The petitioner has challenged his detention on a number of grounds. But since I am of the view that this petition will have to be allowed on the ground of the detention being punitive rather preventive, it is not necessary for me to go in to the merits of other grounds.

(4) One of the grounds taken by the petitioner, is that immediately after this incident his passport was impounded by the Customs Authorities thus making it impossible for him to go abroad and having seized his passport Customs Authorities had made it impossible for the petitioner to indulge in any prejudicial activity. Reliance in this regard is placed on Ashok Kumar Jaggi Vs. Union of India Civil Writ No. 598/87 of this court decided on 18th April, 1988 reported in Crimes 1988 (Vol. 2) 11(1).

(5) The ratio of the aforesaid judgment is that in case where the detention is only with a view to prevent a detainee from smuggling and while in such cases the passport of the detainee is impounded the detention would be bad for the simple reason that the detainee by the seizure of the passport has been disabled from "going abroad and, Therefore, could not be said to be in a position to indulge in smuggling. Mr. Rajinder Dutt has invited my attention to the case of Poonam Lata Vs. M.L. Wadhawan and Others, and has in particular invited my attention to para 12 of the judgment. I have carefully considered the submissions of Mr. Rajinder Dutt and have gone through the case supra. This case is distinguishable, In as much as. in that case there were associates of the detainee who were actively engaged with him in the act of smuggling. It was in these circumstances, that the Supreme Court observed that in order to break the link between the persons so engaged and the source of such activity and from his Associates engaged.

(6) In that activity and to break the continuity of such prejudicial activity so that it would become difficult for not impossible, for him to resume the activity. Mr. Rajinder Dutt states that in this case also the detainee has a link in as much as he had in his statement it stated that this suit case was handed over to him by can Aziz who was owning a farm in Dubai Indeed, this fact finds mention in the grounds of detention it is nowhere suggested that any action has also been taken against Aziz (Reverting to the counter affidavit filed by the respondent the reply given to ground (d) is that even if the passport of the petitioner has been seized that fact was taken into consideration by the Detaining Authority at the time of passing of detention order.

(7) In keeping with my consistent view that where detention is merely with a view to prevent the petitioner from Smuggling goods and while by seizing the passport the likely prejudicial activity sufficiently stands defeated and where it is made impossible for the detainee to proceed abroad the detention order would be deemed to have been passed without proper application of mind. It would be rather punitive in nature. In the present case, I find by the seizure of passport detainee had been sufficiently prevented from indulging in the alleged activity and the order of detention in that view is vitiated. With these observations the petition is allowed the detention order is quashed. It is directed at the detainee shall be released forthwith unless required in Some other Case.