

(1989) 02 DEL CK 0006

In the Delhi High Court

Case No : Criminal Writ Appeal No. 157 of 1988

Nallattu Thodika Hamza

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-1989

Acts Referred:

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

Citation : (1989) 38 DLT 35 : (1989) 1 ILR Delhi 410 : (1989) 1 RCR(Criminal)
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Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : S.R. Setia, Sat Pal, G. Prakash and T.T.K. Kannan, for the Appellant;

Judgement

Bahri, J.

(1) This petition has been brought under Article 226 of the Constitution of India read with Section 482, Cr. P.C. seeking quashing of the detention order dated 28th May, 1987 issued u/s 3(I)(i) and 3(I)(iii) of the Cofeposa Act and declaration dated 16th July, 1987 issued u/s 9 of the Act.

(2) I need not refer to various grounds, taken in the writ petition challenging the impugned orders because the petition is liable to succeed on a very short ground. It is averred in the petition that the petitioner had applied for bail in respect of the offence committed by him on the basis of which the impugned orders are made and the bail order was passed on 20th April, 1987 but neither the application seeking bail nor the order granting bail were placed before the detaining authority before the detention order was passed. This fact is not disputed in the counter filed on behalf of respondents 2 and 3. The contention raised on behalf of respondents 2 and 3 is that the said documents were not material documents and even if they have not been placed before the detaining authority the detention order is not vitiated because the detention order is based on sufficient material implicating the petitioner. This contention cannot be

accepted in view of the law laid down by this Court in Harbhajan Singh versus Union of India; 1989(1) DL 118(1). The copy of the bail application and the copy of the order granting bail are definitely material documents which could sway the mind of the detaining authority in considering whether the detention order should or should not be made. The non-placement of material documents before the detaining authority have an effect of vitiating the impugned orders on account of non-application of mind to the material facts. The learned counsel for the respondent has made reference to Hari Dass Amar Chand Shah versus K. L. Verma: 1988(4) J.T. Sc 632(2). However, I have gone through this judgment and find that it is based on different facts. It is clear from this judgment that the initial order granting bail was placed before the detaining authority but the subsequent order by which the bail order was varied was not placed before the detaining authority and the Supreme Court held that the order of detention does not stand vitiated for non-placement of order by which the bail order has been varied. The Supreme Court was not seized of the point in that case as to whether the initial order granting bail is a material document or not which was required to be placed before the detaining authority. So, I hold that in the present case as admittedly the aforesaid documents and the facts were not brought to the notice of the detaining authority and those were material "and vital facts which could have influenced the mind of the detaining authority in deciding the question whether the detention order should be made or not and thus the impugned orders stand vitiated on account of non-application of mind to the aforesaid material and vital facts.

(3) I allow the writ petition and quash the impugned orders and direct the petitioner be set at liberty forthwith if not required to be detained in any other case. Parties are left to bear their own costs.