
(1990) 02 DEL CK 0042

In the Delhi High Court

Case No : Criminal Writ Appeal No. 653 of 1989

N.K. Abdu Salam

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

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

Citation : (1990) 40 DLT 513

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : S.R. Setia, G. Prakash and L.K. Bhushan, for the Appellant;

Judgement

P.K. Bahri, J.

(1) Petitioner has been detained by virtue of an order dated December 9 1988 passed u/s 3(I)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act with a view to prevent- ing him from engaging in transporting smuggled gold. Various grounds have been taken in the petition in challenging the impugned order but it is not necessary to refer to them because this petition is liable to succeed on a necessary very short point.

(2) It has been pleaded in Ground No. (II) in the Writ Petition that Material relevant documents i.e. Bail Application dated April 8, 1988, bail order dated 13, 1988 and a petition sent to Collector of Customs by the petitioner after his release on bail, retracting his statement before the customs officials a show cause notice sent by the Collector of Customs and reply to the show cause notice given by the petitioner on October 5, 1988 have not been all placed before the defaming authority and thus the subjective readied by the defaming authority, ignoring the said vital documents which could have influenced the mind of the detaining authority in considering whether the detention order should or should not be made stands vitiated.

(3) In the counter-affidavit filed by Shri Rajasekharan Nair. Additional Secretary to the Government of Kerala it has not disputed that these particular documents were never placed before the detaining authority. It has been pleaded that the bail application and the bail order were not readily available and thus could not be considered by the detaining authority and whereas reply to the show cause notice and the show cause notice issued under the provisions of the Customs Act pertain, to independent proceedings and were not relied upon while passing the detention order.

(4) It is a settled law that all material facts and documents which could influence the mind of the detaining authority either way i.e. for passing the detention order or for not passing the detention order must be placed before the detaining authority and if any such material fact or document is suppressed for consideration from the detaining authority subjective satisfaction reached by the detaining authority in passing the detention order would stand vitiated In M. Ahamedkutty Vs. Union of India (UOI) and Another, , the Supreme Court has clearly laid down that the bail application and the bail orders made in respect of a detenu are very material documents and they have to be deemed to be relied upon documents for passing the detention order and copies of the same ought to be supplied pan pasu the grounds of detention.

(5) In Harbhajan Singh Vs. Union of India and Others, the facts was that an application for bail had not been placed before the declaring authority and it was held that it being a vital document which could have swayed the mind of the declaring authority, the non-placement of the same before the declaring authority vitiated the order of decimation .So, I hold that the impugned order stands vitiated on account of non application of mind by the detaining authority to the aforesaid material documents which could have swayed the mind of the detaining authority in either way.

(6) I allowed the writ petition, make the rule absolute and quash the impugned order and direct that the petitioner be set at liberty forthwith, if not required to be detained in any other case.