

(1989) 02 MAD CK 0048

In the Madras High Court

Case No : Writ Petition No. 9252 of 1988

R. Geetha

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-02-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)(iv)
Constitution of India, 1950 — Article 22(5), 226

Citation : (1989) LW(Cri) 368

Hon'ble Judges : Janarthanam, J; David Annoussamy, J

Bench : Division Bench

Advocate : B. Kumar, for Mr. K. Venkatasubramanian, for the Appellant; G.R. Edmund, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

David Annoussamy, J.—This is a writ petition by the wife of the detenu under Article 226 of the Constitution for the issuance of a Writ of Habeas Corpus quashing the order of detention passed against him and setting him at liberty.

2. The order of detention was passed on 3.8.1988 by the State Government under S. 3(1)(iv) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974) with a view to preventing the detenu from dealing in smuggled goods.

3. The detenu is an Indian national, who is having a jewellery shop in Coimbatore. On inspection, the Officers concerned found gold bars having foreign markings "Union Bank of Switzerland, 10 Tolas, 999.0 and one gold bar was cut in one corner. All the three gold bars weighed to 349.750 gms. and was valued at Rs. 1,08,740. The detenu was not in a position to justify the possession of this primary gold.

4. The only ground urged by the learned Counsel for the Petitioner is that his

sole representation, which he addressed to the Advisory Board was not considered independently by the Government, which fact is accepted by the learned Additional Public Prosecutor. It is well-settled law now that when a representation sent by the detenu either to the Advisory Board or to any other agency, as soon as it reaches the Government, it is the duty of the Government to consider the representation independently in compliance with Article 22(5) of the Constitution. The non-consideration of the representation by the Government which passed the detention order is violative of the constitution and renders the order of detention as null.

5. In the result, the petition is allowed. The order of detention is set aside.