

(1989) 03 DEL CK 0085

In the Delhi High Court

Case No : Criminal Writ Appeal No. 649 of 1988

Rajesh Jain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-03-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 8

Constitution of India, 1950 — Article 22(4)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 3(1)

Citation : (1989) 2 Crimes 462 : (1989) 38 DLT 247 : (1989) 17 DRJ 121

Hon'ble Judges : M. Sharief-ud-din, J; Charanjit Talwar, J

Bench : Division Bench

Advocate : O.P. Malviya and A.C. Jain, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) By this petition Rajesh Jain the petitioner seeks setting aside of the order dated the 26th August 1988 u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (for short the Ordinance) passed against him by Shri K. L. Verma, Joint Secretary to the Government of India. The order was passed with a view to preventing the petitioner (detenu) from abetting in the export from India of narcotic drugs. The detenu is further challenging the declaration u/s 10(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the Narcotic Drugs Act) dated 29th September 1988 made by Shri K. J. Raman Additional Secretary to the Government of India.

(2) At the outset, we may notice that the impugned order is successive order of detention. The first order was passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Cofeposa Act) on 24th May 1988 by Shri K L. Verma, with a view to preventing the petitioner from abetting the smuggling of goods. In pursuance of

that order of 24th May 1988 the petitioner was detained on 26 h May 1988. The case was referred to the Advisory Board for its opinion on 27th June 1988 by the Central Government. It is the admitted case of the parties that the Advisory Board did not submit its report, although the matter was listed before it on 25th August 1988 for consideration.

(3) The respondent's case is that as the Board did not submit its report in accordance with the provisions of Section 8(c) of the Cofeposa Act, they had no option but to revoke the earlier order of detention. The order of revocation and 25th August 1988 reads as follows : "Whereas an order F.No. 673/251/88-Cus. Viii dated 24.5.88 was passed by the Joint Secretary to the Government of India u/s 3(1) of the Conservation of foreign Exchange and Prevention of Smuggling Activities Act, 1974 for the detention of Shri Rajesh Jain and he was detained on 26-5-88 in pursuance of the above said order. 2. Whereas the case was referred to the Advisory Board on 27.6,88, but the Advisory Board has not submitted its report in accordance with the provisions of Section 8(c) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Now, Therefore, in exercise of the powers conferred by Section 11(1) of the aforesaid Act the Central Government hereby revokes the above said detention order."

(4) As noticed above, the impugned order was passed on 26th August 1988. It appears from the pleadings that the revocation order as well as the impugned order were served on the detainee on 27th August 1988 in Central Jail, Tihar, where he was lodged as an under-trial.

(5) Mr. Malviya, learned counsel for the petitioner, submits that the impugned order has been passed in a manner which has made the protection tinder Article 22(4) of the Constitution ineffective. For his contention he relies on Gurbax Bhiryani v. Union of India and others, (Criminal Writ No. -491/98) decided by this court on 7th February 1989. The judgment is reported in 1989(1) DL 269. In the said case we had held that a successive order of detention cannot be made in a manner as to render the protection of Article 22(4) of the Constitution ineffective. We have followed the law had down by the Supreme Court in Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another, . Mr. Jain, learned counsel for the respondents, agrees that the present case is covered by the said judgment.

(6) The petition is allowed. We set aside the impugned detention order and also the impugned declaration and make the rule absolute. We direct that that the petitioner be set at liberty forthwith unless required to be detained under any other valid order passed by the court or any other competent authority.