

**(1996) 05 DEL CK 0073**

**In the Delhi High Court**

**Case No :** Criminal Writ Appeal No. 555 of 1995

Samiullaha @ Haji

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision :** 14-05-1996

**Acts Referred:**

Constitution of India, 1950 — Article 22(5)

**Citation :** (1996) 64 DLT 112 : (1996) 38 DRJ 661

**Hon'ble Judges :** M. Jagannadha Rao, J; Dalveer Bhandari, J

**Bench :** Division Bench

**Advocate :** A.K. Sharma, Sanjeev Kumar, A.K. Vali and S.K. Agarwal, for the Appellant;

## Judgement

M. Jagannadha Rao, J.

(1) The petitioner is detained under the Cofeposa pursuant to an order of detention dated 31.7.1995. The order was executed on the same day. This writ petition has been filed on 2nd September, 1995. Various points have been raised on behalf of the detenu. One of the points is that the detenu, through his lawyer, has sent 7 copies of representation to the jail authorities on 21.8.1995. The representations were unsigned and addresses to which the copies were to be sent were no doubt not mentioned. Thereafter, the Superintendent, Tihar Jail, wrote a letter on 24.8.1995, to the petitioner's Advocate stating that the unsigned letter of the Advocate with 7 copies of the unsigned representation were received and that the Advocate was requested to specify the names of authorities to whom the representations were to be forwarded. All the 7 copies were Therefore returned to the counsel to do the needful. Thereafter, the counsel addressed a letter dated 24.8.1995 to the Superintendent, Jail no. 1, Central Jail, as follows:

"IN reference to the above mentioned letter, it is requested that the enclosed representation (of which seven copies are annexed herewith) be forwarded to detaining authority, Central Govt. and Central Advisory Board after getting them

signed by detenu Samiullaha @ Haji."

(2) Thereafter, the Superintendent, Jail sent a letter dated 30.8.1995 to the petitioner's counsel stating that they have received the 7 copies of the representation, and that after getting them signed by detenu, three copies of representation have been forwarded to Advisory Board and one copy has been forwarded to Detaining Authority, Central Government and one copy has been kept in record as office copy. Rest of the two copies were sent back along with that letter.

(3) A point has been raised on behalf of the petitioner that when 7 copies were there, and three were forwarded to the Advisory Board and one to the detaining authority and one kept in office of the Tihar jail, there was no reason why two copies should have been sent back to the petitioner. At least from the two copies, one should have been forwarded to the Central Government. The point also is raised that even though the representation sent to the detaining authority was disposed of by the Joint Secretary on 4.10.1995, and the file was sent to the Central Government, the Central Government rejected the same on 16.10.1995, which did not meet the requirements of Article 22(5) of the Constitution read with Cofeposa Act. According to the petitioner, a copy not having been sent to the Central Government directly vitiated the entire proceedings. There are at least three authorities of the Supreme Court *B.Alamelu v. State of T.N. and others* 1995 Scc (cr) 224, *United India Insurance Co. Ltd. vs. Narendra Pandurang Kadam and others* 1995 Scc (Cr) 228, and *Jaiparkash v. District Magistrate, Bulandshahar, Up and others* 1993 Scc (Cr) 121, where the detenus sent the representations to the jail authorities for forwarding the same to the various authorities.

(4) In the present case, the question arises as to whether there is any violation of the rights of the petitioner to make his representation to the Central Government. Learned counsel for the State government i.e. jail authorities has submitted that in the peculiar facts of this case, when Advocate has forwarded copies of the representation to the jail authorities on 21.8.95, he could have mentioned the names of the authorities to whom the representations had to be forwarded. Learned counsel for the State Government also submits that even after the jail authorities wrote back to the Advocate on 24.8.95 to specify the names, the Advocate merely mentioned detaining authority, Central Government and the Central Advisory Board instead of giving addresses. Learned counsel submits that it is not the duty of the jail authorities to find out the addresses and that in fact the jail authorities were not having the copy of the grounds of detention order so that they could find out what is the address of the Central Government.

(5) Learned counsel also mentions that in the letter dated 30.8.1995, the jail authorities mentioned the Detaining authority Central Government and that the Superintendent Jail perhaps thought that that was sufficient compliance as required. We are rather surprised that Deputy Superintendent, Jail no.I, Tihar

who wrote the letter dated 30.8.95 to the petitioner's counsel vide No.SCJ-I/2876 was unaware of the legal position that a copy had to be directly forwarded to the Central Government. We are rather surprised that out of the 7 copies he used only 5 copies, sending three out of them to the Advisory Board and one to the detaining authority and retaining one for his office, and returning two copies to the petitioner's counsel. Day in and day out, the jail authorities have been dealing with Cofeposa matters and it is impossible for us to believe prima facie that a Deputy Superintendent, who wrote the letter on 30.8.95 did not know or was unaware that a copy had to be sent to the Central Government apart from the detaining authority. It is also impossible prima facie to believe that the Dy. Superintendent did not know the address of the Central Government so far as Cofeposa detentions are concerned. A verification of the various registers of the Tihar jail No.1 during the period preceding August, 1995 would in our opinion disclose that several such representations would have been forwarded in Cofeposa matters. It would, Therefore, be a matter for enquiry by the Home Secretary, Delhi Admn. to find out whether the Deputy Superintendent, Jail No.1 who sent the letter dated 30.8.95 had not committed any lapse in not sending one copy of the representation to the Central Government and also to find out whether he did not know the address of the Central Government so far as Cofeposa cases are concerned.

(6) Be that as it may, the fact remains that a copy was not directly sent to the Central Government by the jail authorities. We Therefore have no choice but to release the petitioner. The petitioner's continued detention is illegal inasmuch as his right to represent to the Central Government read with the provisions of the Cofeposa Act has been violated.

(7) The petitioner will be released forthwith, if not required in any other case. A copy of the order be dispatched to Home Secretary, Delhi Administration for conducting an Inquiry, and filing the report within a period of six weeks in this court.