
(1989) 07 BOM CK 0009

In the Bombay High Court

Case No : Criminal Writ Petition No. 80 of 1989

Siraj Ahmed Mohamed Mehta

APPELLANT

Vs

L. Hmingliana and Others

RESPONDENT

Date of Decision : 19-07-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1989) 25 ECR 45

Hon'ble Judges : Kurdukar, J; Ashok Agarwal, J

Bench : Division Bench

Judgement

1. The first Respondent, the Detaining Authority, having been subjectively satisfied in connection with the activities of the Petitioner-Detenu, which are prejudicial under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, on the 9th of December, 1988, issued an order of detention under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (hereinafter referred to as the Act) with a view to preventing the Petitioner-Detenu from smuggling goods. The detention order is at Exhibit "A". Grounds of detention are at Exhibit "C". There is no dispute as regards service of the order of detention and the grounds of detention. It is this order of detention which is the subject-matter of various challenges in this Writ Petition.

2. Suffice it to say that the incident, which led to the seizure of certain contraband articles, took place on the 24th of October 1987 and pursuant thereto the sponsoring authority sent the proposal to the Detaining Authority for issuing necessary orders under the Act.

3. Mr. Gupte, learned Counsel appearing in support of this Petition, took us through the grounds of detention and the relevant material and at the forefront urged that there is unreasonable and unexplained delay in passing the detention order. The investigation was completed on the 18th of Dec. 1987 and the

impugned order of detention was passed on the 9th of December 1988 Because of this delay in issuing the detention order, the live link is snapped and there was no justification whatsoever to issue the detention order.

4. In order to demonstrate this vital point, it would be necessary to refer to few dates:

The incident of seizure took place on 24th October 1987.

The last statement recorded during investigation under the Customs Act is dated 18th December 1987.

The Sponsoring Authority completed the requirements of proposal on the 23rd of May 1988.

The proposal was placed before the Screening Committee on the 21st of June 1988 and the Screening Committee cleared the proposal on the same day.

The proposal was then forwarded to the Detaining Authority on the 5th of August 1988.

The detaining Authority asked for additional information from the Sponsoring Authority, vide their letter dated the 22nd of August 1988.

Draft grounds were prepared by the Detaining Authority on the 8th of September 1988.

The translation of the documents relied upon by the Detaining Authority were received on the 2nd of November 1988.

The grounds were finalised by the Detaining Authority on the 9th of December 1988 and on the same day the impugned order came to be issued.

5. The challenge as regards the delay has been squarely taken by the Petitioner-Detenu in paragraph 7, ground (j). The first Respondent-Detaining Authority filed its return and in answer to this ground the Detaining Authority states as follows:

16. With reference to para 7(j) of the Petition, I deny that there was any delay in issuing the Order of Detention. I say that the seizure took place on 24.10.1987. Investigation of the case was in progress upto 18.12.1987. Show cause notice was issued on 6.4.1988. Preparation of the proposal was completed by the customs on 23.5.1988 and the same was placed before the Screening Committee on 21.6.1988. The Screening Committee cleared the same on 21.6.1988. Further course of events has been narrated by me in para 14 hereinabove. It is clear therefore that there is no delay in issuing the Order of Detention.

We are not at all satisfied with the explanation sought to be given by the Detaining Authority in the said paragraph. We may only "state that at every stage there is a delay and this delay is not at all explained by the Detaining Authority satisfactorily. From the dates indicated earlier, we have no manner of doubt that there is unexplained delay on the part of the Detaining Authority and as a result

thereof it must follow that the live link is snapped and there was no material before the Detaining Authority to come to the conclusion that the Detenu is likely to be engaged in similar activities and with a view to preventing him from the said activities it is necessary to issue the detention order under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. On this ground alone the impugned order of detention is liable to be quashed and struck down and it is accordingly quashed and struck down.

6. Rule is made absolute. The Detenu be set at liberty forthwith if not required in any other criminal case.