
(1987) 07 BOM CK 0029

In the Bombay High Court

Case No : Criminal Writ Petition No. 288 of 1987

Smt. Bharati Manoharlal Ahuja

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-07-1987

Acts Referred:

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

Citation : (1988) 17 ECC 257 : (1989) 39 ELT 395

Hon'ble Judges : S.M. Daud, J;D.N. Mehta, J

Bench : Division Bench

Judgement

Daud, J.—This petition takes exception to an order for detention passed against the petitioner on 12th February, 1987 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as the "COFEPOSA".

2. On 10th December, 1986 at 4.45 hours the Customs Air Intelligence Officers at Sahar International Airport, Bombay, sent for two ladies at act as panchas. They were introduced to the petitioner whereafter a search of the latter was taken. In the search of her person nothing incriminating was found. The use of a metal detector proved more effective. Gold bars were brought out from the petitioner's rectum and these were attached. Petitioner's statement was recorded and she was arrested. The next day, petitioner was produced before a Metropolitan Magistrate who on a request made on her behalf passed an order which read thus :

"Accused ordered to be released on bail in the sum of Rs. 50,000/- with one surety in the like amount. In default remanded to Jail Custody till 24.12.1986. Passport of the accused permitted to be detained by the Customs Department. Accused to attend Customs Department daily."

An officer of the Customs was present when the aforementioned order was

passed and he recorded the following for intimating his superiors :

"Mr. Thakkar opposes bail. Bail of Rs. 50,000/-. Passport permitted to be detained."

3. On 12th February, 1987 the detention order impugned in this petition came to be passed. The same, alongwith the grounds, were served upon the detenu on 18th February 1987. Since that date the petitioner is in detention. It may be pointed out here that she availed of bail and was at liberty from 11th December, 1986 until 17th February, 1987. There is no complaint of her not having complied with the condition of daily attendance imposed upon her by the Magistrate.

4. Mr. Gupte for the petitioner takes exception to the detention order on the ground that the authority passing the same was either not informed of or did not take into consideration, the condition imposed upon the petitioner by the Magistrate who granted her bail. In other words, the detaining authority was not made cognizant of the fact that the petitioner was required to attend the Customs Office every day and that she had complied with that condition. It is argued that a material factor bearing on the subjective satisfaction of the detaining authority not having been taken into consideration, the said order stands vitiated. In the affidavit-in-reply filed by the detaining authority, we get the following :

"I say that the petitioner has been served with the remand application bearing No. RA 601/86 and in the margin of the said remand application, it has been noted "R. N. Thakkar objected bail, Bail of Rs. 50,000/-. Passport permitted to be detained date 24.12.1986". I say that it is reflected in the said remand application that the petitioner was released on bail by the Learned Magistrate. In view of the above circumstances, it is clear that I was aware of the fact that the petitioner was released on bail by the Learned Magistrate at the time when I issued the order of detention against the Petitioner. I deny that my subjective satisfaction has been vitiated on account of the non-application of my mind. I say that all the documents on which reliance has been placed for formulation of the grounds have been furnished to the Petitioner and therefore, there is no violation of the right of the petitioner under Article 22(5) of the Constitution of India."

The foregoing, does not show any awareness on the part of the detaining authority as regards the condition of daily attendance imposed upon the petitioner. Nor does it appear that he was informed of the petitioner complying with the condition of daily attendance. These were matters of vital importance. The primary fact of the sex of the petitioner coupled with the imposition of the condition of daily attendance upon her, required the detaining authority to exercise great caution before passing an order for preventive detention. A fact of vital importance having been withheld from the detaining authority before it passed the order of detention, the said order cannot be sustained. On this short ground we allow the petition and quash the detention.

Rule made absolute. The petitioner is directed to be set at liberty forthwith

unless required in connection with some other case.