

(1993) 03 BOM CK 0045

In the Bombay High Court

Case No : Criminal Writ Petition No. 1224 of 1992

Sunil Kantilal Shah

APPELLANT

Vs

D.B.S. Sohal and others

RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

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

Citation : (1993) CriLJ 3873

Hon'ble Judges : M.G. Chaudhari, J; H.H. Kantharia, J

Bench : Division Bench

Advocate : T.V. Muzumdar, for the Appellant; Smt. R.P. Desai, Assistant Public Prosecutor and R.M. Agarwal, for the Respondent

Judgement

H.H. Kantharia, J.—The petitioner herein is the brother of one Atul Kantilal Shah (hereinafter referred to as "the detenu") has challenged in this petition under Article 226 of the Constitution the detention order dated 27th April, 1992 passed u/s 3(1) of the COFEPOSA Act by the Secretary (Prevention Detention) to the Government of Maharashtra. Home Department and Detaining Authority with a view to preventing the detenu from engaging in concealing and keeping smuggled goods.

2. There are various contentions raised in the petition challenging the detention order. However, Mr. Muzumdar, learned Counsel appearing for the petitioner, urged only one point on which the petition should succeed and, therefore, there is no need of dealing with the other points. The submission of the learned Counsel is that the detenu had by a letter dated 7-10-1992 made a representation to the State Government which letter was received by the Superintendent of Nasik Road Central Prison on 10-10-1992. The signature of the detenu was obtained on the copy of the representation and the same was forwarded to the concerned authorities on 12-10-1992. The said representation was received in the Home Department of the State Government on 13-10-1992

and the same was forwarded to the Customs Department for remarks on 14-10-1992. On 30-10-1992 the Assistant Collector of Customs (P.), Bombay, forwarded his remarks on this representation. Mr. Muzumdar urged that the affidavit filed by G. J. Kulkarni, Desk Officer, Home Department (Special), Mantralaya, Bombay has dealt with, this contention raised in the petition in para 11 of his affidavit dated 6th January, 1993 and stated that the representation was received in the Home Department on 13-10-1992. The said representation was forwarded to the Customs Department with a request to send remarks on 14-10-92. The Assistant Collector of Customs (Preventive), Bombay by his letter dated 30-10-92 forwarded his remarks which was received in the Home Department on 3-11-92 and further submitted that the delay between 14-10-92 and 30-10-92 has not been explained in this affidavit. There are several other affidavits filed on behalf of the respondents but the submission of Mr. Muzumdar is that in none of those affidavits this delay has been explained. Mrs. Desai, learned Additional Public Prosecutor appearing on behalf of the respondents Nos. 1, 2, 4, 5 and 6, in her usual fairness, did not dispute the submission of Mr. Muzumdar. All said and done, the fact remains that the delay in considering the representation of the detenu from 14-10-1992 to 30-10-92 remains unexplained. The Supreme Court of India had, in the case of Mahesh Kumar Chauhan alias Banti Vs. Union of India and others, on identical facts, observed at page 1457 of AIR :

"We hasten to say in this connection that in spite of the fact that this Court in a series of decisions has repeatedly and consistently laid down the rule in precise and clear terms that all the procedural safeguards prescribed in under Article 22(5) of the Constitution of India should be scrupulously and strictly observed one of which as ingrained in our system of judicial interpretation, being that the detenu shall be afforded an earliest opportunity of making a representation against the validity of the order of detention clamped upon him and that representation should be considered and disposed of as expeditiously as possible."

The fact of the matter is that in the instant case the representation of the detenu was not considered and disposed of as expeditiously as possible and the delay for not doing so between 14-10-1992 to 30-10-1992 has not been explained. That being the position, there is total violation of the constitutional right enshrined in Article 22(5) of the Constitution in favour of the detenu, thus rendering the impugned order invalid.

3. In the premises aforesaid, the writ petition succeeds and the same is allowed. The impugned detention order is quashed and set aside. The detenu is ordered to be released forthwith if not required in some other case.

4. Rule is accordingly made absolute.

5. Petition allowed.