
(1988) 08 BOM CK 0013

In the Bombay High Court

Case No : Criminal Writ Petition No. 625 of 1988

Sushila Krishanalal Jain

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-08-1988

Acts Referred:

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

Citation : (1989) 39 ELT 198

Hon'ble Judges : V.P. Tipnis, J; M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—The Joint Secretary to the Government of India by order dated April 28, 1988 passed in exercise of powers conferred by sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, directed detention of Kishanalal Nemichandji Jain with a view to preventing him from acting in any manner prejudicial to the argumentation of foreign exchange. The order of detention was served on June 2, 1988 and the grounds of detention were furnished.

2. The grounds, inter alia, recite that information was received by the office of the Enforcement Directorate that the detenu is regularly dealing in sale and purchase of foreign currency from his residential premises at Sharda Chambers, "B" Wing, 5th Floor, Narsi Natha Street, Bombay, and that on November 22, 1987 two persons, viz. Kishinchand and Bharat were to deliver huge amount of foreign exchange to the detenu. Based on the information, the Enforcement Directorate raided and searched the residential premises of the detenu, but nothing incriminating was found. While the search was carried out, Kishinchand and Bharat came to the residential premises and on their person substantial foreign exchange was found. Kishinchand had with him 11,420 United States Dollars 874 Kuwait Dinars, 3000 United Arab Dhirs and Rs. 1600/- in Indian currency, while Bharat with him 150 Bahrain Dinars, 100 United States Dollars, 500 Qatar Riyals and 7450 United Arab Emirates Dhirs. The statements of the

detenu and Kishinchand and Bharat were recorded. The detenu denied that he knew Kishinchand or Bharat, while Kishinchand and Bharat implicated the detenu. The three arrested and prosecuted, but the Magistrate released them on bail pending the trial. On this material, the detaining authority came to the conclusion that the detenu is indulging in unauthorised purchase and sale of foreign exchange in violation of provisions of the Foreign Exchange Regulation Act and his activities affect the foreign exchange resources of the country adversely. On the strength of this finding, the impugned order of detention came to be passed, and it is under challenge at the instance of detenu's wife.

3. Shri Karmali, learned counsel appearing on behalf of the petitioner, submitted that a very vital and relevant factor was placed before the detaining authority and that has vitiated the exercise of powers under the Act. The learned counsel also urged that the representation made by the detenu to the Central Government and the detaining authority was not disposed of expeditiously. In our judgment, the first submission of the learned counsel is correct and deserves acceptance, and therefore, it is not necessary to examine whether the representation was considered expeditiously or otherwise. Shri Karmali submitted that the detaining authority came to the conclusion that the detenu was indulging in sale and purchase of foreign currency only on the basis of statements made by Kishinchand and Bharat. The learned counsel pointed out that on November 23, 1987, when the detenu, Kishinchand and Bharat were produced before the Magistrate, the statements of Kishinchand and Bharat were retracted. Now, this important fact of retraction of statements of Kishinchand and Bharat was not brought to the attention of the detaining authority. In answer to the petition, it is claimed by the detaining authority that the fact of retraction was not known. The submission is clearly incorrect, because the detenu had made interim bail application before the Magistrate and in that application it was specifically stated that Kishinchand and Bharat retracted their statements. Indeed the statement retracting the statements recorded by the Enforcement Directorate was filed in open Court and it is futile for the Enforcement authority to claim that they were not aware of the same. The fact that statements were retracted, is extremely crucial as the order of detention is passed only on the strength of statements. Failure to bring this vital and material circumstance to the attention of the detaining authority has vitiated the order.

4. Accordingly, rule is made absolute, the impugned order of detention is quashed and the detenu is directed to be released.