

Smt. Kalawati Gupta

Vs

Union of India and Others

Writ Petition (Criminal) No. 1467 of 1979

(P. S. Kailasam, A. D. Koshal, Syed M. Fazal Ali JJ)

29.01.1980

JUDGMENT

FAZAL ALI, J. –

1. This petition by the wife of the detenu is directed against an order of detention dated June 28, 1979 passed by the Additional Secretary to the Government of India under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA) on June 27, 1979. The grounds of detention dated June 28, 1979 were supplied to the detenu on June 30, 1979. We have gone through them and have heard counsel for the parties at great length. We are satisfied that if the detaining authority had considered the grounds carefully it would have itself been convinced that there was no material to justify the detention.

2. On a perusal of the grounds of detention it is manifest that there is no allegation of the detenu's direct or indirect participation in or connection with the recovery of the smuggled goods. It appears that the detenu was arrested as far back as February 13, 1979 and was produced before the Chief Judicial Magistrate on February 14, 1979 when he was released on bail. The prosecution wanted to file a complaint against the detenu under the Customs Act. Time was allowed and was extended right up to November 15, 1979 when the complaint was filed. Before, however, the complaint could be filed the detenu received a summons from a Custom's Officer Incharge of Prevention to appear before him on July 2, 1979. It is rather interesting that even before the date of his appearance before the Custom's Officer, the detenu was arrested on June 30, 1979 and the grounds of detention were served on him. A bare perusal of the grounds of detention would show that a house at 12, Rajab Ail Lane, Calcutta was searched and certain articles in the nature of synthetic fabrics of foreign make, fountain pens and other articles were recovered, therefrom. The godown was in the occupation of Shri Dayaram Gupta who was a sub-tenant of the detenu who himself had taken the premises on rent from the real owner. Another allegation contained in the grounds of detention is that the smuggled goods were recovered from the godown at 27, Rajab Ail Lane, Calcutta which belonged to the detenu and others. It was however clearly mentioned in para 12 of the grounds of detention that Dayaram Gupta had built the godown and was in occupation and control of the same. Even from the para it appears that the detenu was not at all in occupation or control of the godown. Similarly all the grounds served on the detenu did not contain an iota of evidence to show that the detenu had any connection with the recovery of the smuggled goods. Even Mr. Senghi who appeared on behalf of Union of India fairly conceded that the grounds alleged do not appear to have made out any case of detention. At the most, Mr. Sanghi contended, the grounds merely disclosed that the detenu might have been joint owner of some of the premises along with other co-owners but that by itself is not sufficient to show possession or his connection with the recovery of the smuggled goods. In these circumstances the grounds taken ex facie did not disclose any allegation

which may bring the case of the detenu within the four corners of the COFEPOSA. We are either surprised that in view of the self-destructive nature of the grounds even the Advisory Board did not consider it fit to recommend the release of the detenu. There the detaining authority should have at least applied his mind to the grounds which he had himself set forth in support of the detention and should have further satisfied regarding the existence of some material in deciding that the detenu was engaged in keeping smuggled goods and that his detention was therefore necessary to prevent him from indulging in such activity. For these reasons, we allow this petition, set aside the order of detention and direct that the detenu be released forthwith.

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