

Tara Chand

Vs

State of Rajasthan and Others

Writ Petition (Criminal) No. 1639 of 1979

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

13.02.1980

JUDGMENT

FAZAL ALI, J. -

1. This writ petition by Tara Chand, a brother of the detenu, Hira Nand, has been filed against and order of detention dated June 30, 1979 passed by the Government of Rajasthan under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter called the COFEPOSA). The detenu was arrested on July 19, 1979 and on the same day he was served with the grounds of detention in which there was no indication, although there should have been that the detenu was entitled to make a representation to the detaining authority. However, Smt. Nita, the wife of the detenu, made two representations dated July 26, 1979 and July 31, 1979 to the State Government but the same were rejected on or before August 30, 1979. The counsel appearing for the petitioner has not made any grievance regarding the rejection of these two representations by the State Government. It appears, however, that on December 6, 1979 another representation was sent by Smt. Nita to the Home Minister of Rajasthan, the President of India, the Prime Minister of India and the Finance Minister of the Union Government praying that the order of detention should be revoked. From a letter sent to the detenu from the President's Secretariat on October 9, 1979, it appears that the President had received his representation before October 9, 1979 and the same had been forwarded to the Finance Ministry of the Union Government for necessary action. It is common ground that neither the representation was considered by the Union of India nor was any order passed by it. A general plea was taken by Mr. Abdul Khadar that probably the Union of India did not receive his representation at all which, however, is clearly falsified by the letter sent by the President of India, which we have referred to above. In the counter-affidavit filed by the Government of India also a very vague and evasive stand appears to have been taken. It is not said that any orders were passed on the representation or that it was considered but it is said that it was to abide by any stand taken by the State Government. Section 11(1) of the COFEPOSA Act clearly enjoins that the Central Government may revoke or modify an order passed by the State Government. Mr. Abdul Khadar fairly conceded that the Central Government has a discretion under Section 11 of the COFEPOSA Act to revoke the order of detention. Thus when once a representation is made to the Central Government, it is duty-bound to consider the same in order to exercise its discretion either in rejecting or accepting it. If there is inordinate delay in considering the representation that would clearly amount to violation of the provisions of Article 22(5) so as to render the detention unconstitutional and void. We, therefore, allow the petition and direct that the detenu be released forthwith.

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