

S. Gurdip Singh

Vs

Union of India and Others

Writ Petition (Criminal) No. 5288 of 1980

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

13.11.1980

JUDGMENT

S. MURTAZA FAZAL ALI, J. –

1. The petitioner has put forward several grounds of attack against his detention which was directed by an order dated December 11, 1979, passed by the Deputy Secretary, Home Department, Government of Punjab, under Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA). The petitioner claims to have been arrested on May 5, 1980 although according to the counsel for the State the date of his arrest was May 13, 1980. In the view that we take in this case the question as to when the petitioner was arrested is not relevant.

2. The grounds of detention were admittedly served on the petitioner on May 13, 1980 and a prayer for making available the copies of the documents forming the material in which the order of detention was based was made by the detenu on August 21, 1980. That prayer was however refused on September 12, 1980 when the petitioner was informed that the copies of the relevant document, could not be supplied. In our opinion, this case is clearly concluded by two recent Division Bench decisions of this Court; namely, *Ichu Devi Choraria v. Union of India* ((1980) 4 SCC 531 : 1980 SCC (Cri) 25) and *Shalini Soni v. Union of India* ((1980) 4 SCC 544 : 1980 SCC (Cri) 38). In both these cases, this Court has taken the view that on a proper construction of Article 22(5) of the Constitution, the service of the grounds of detention on the detenu can be complete only if they are accompanied by the documents or materials on which the order of detention is based; for then alone will the detenu be able to make an effective representation. In other words, if the documents which form the basis of the order of detention are not served on the detenu along with the grounds of detention, in the eye of law there will be no service of the grounds of detention and that circumstance would vitiate his detention and make it void ab initio.

3. In the instant case, it is not disputed that when the grounds of detention were served on the petitioner, on May 13, 1980, they were not accompanied by the documents forming the basis thereof. His case, therefore, falls within the four corners of the ratio laid down by the cases referred to above and his detention must be held to be without jurisdiction. The petition is therefore allowed and the petitioner is directed to be released forthwith.

</html