

Jagprit Singh

v.

Union of India and Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE A. M. AHMADI HON'BLE MR. JUSTICE S.
RANGANATHAN

Criminal Appeal No. 23 Of 1990 | 28-03-1990

1. Leave granted

2. This is an appeal from the judgment of the Delhi High Court dismissing the writ petition filed by the petitioner who was detained under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the COFEPOSA"). It is not necessary to set out the facts at very great length because we propose to dispose of the appeal on a very short ground

3. Shri Harjinder Singh, counsel for the detenu raised two main contentions. His first contention was that, on the date when the detention order was passed, namely, 2-9-1988, the detenu was in judicial custody. He had been remanded to such custody till 14-9-1988. On 1-9-1988 he applied for bail. It is submitted that in the circumstances the detaining authority must have satisfied himself that there was an imminent possibility of release of the detenu and that on such release he was likely to indulge in the prejudicial activities which are sought to be prevented under the Act. Learned counsel relied upon several decisions of this Court in support of his contention that a detention order, in a case where the detenu is in custody, should disclose the awareness on the part of the detaining authority that the detenu was in custody and also disclose that the detaining authority was satisfied on the material disclosed in the grounds that the detenu was likely to be released on bail and likely to indulge in prejudicial activities after such release. In the absence of such a specific finding or statement in the order of detention, according to the learned counsel, the detention order cannot be upheld

4. The second point taken by Shri Harjinder Singh is that in this case declaration under Section 9 of the Act had been made on 4-10-1988. A copy of this declaration had been endorsed to the detenu. However, this declaration did not make the detenu aware of his rights of representation against the declaration. According to the learned counsel the declaration order itself or some communication contemporaneously issued must have informed the detenu that he had a right to make the representation against the declaration to the declaring authority, the Central Government and the Advisory Board constituted under the Act. Learned counsel submits that this not having been done, at least his continued detention beyond the original period of one year from the date of detention is unjustified

5. Taking up the second contention first, it is not denied on behalf of the respondents that the detenu has a right of representation against the detention order. There is some controversy before us as to whether the detenu has a right to make a representation to the declaring authority or not but we express no opinion on this point for the purposes of this case. But it is undeniable that in the facts and circumstances of this case, the detenu has not been made aware, either in the order of declaration or within a reasonable time thereafter, that he had a right to make a representation against the declaration to the appropriate authorities. From the papers placed on record, it was not until the detenu wrote to the declaring authority on 10-11-1988 seeking clarification as to whether he had a right of representation against the declaration and, if so, to which authority that a clarification on this matter was furnished to him on 17-11-1988. In other words, there has been a delay of about a month and 13 days before the detenu was made aware of his rights under the Constitution to make an effective representation against the declaration. This delay, in our opinion, is quite unreasonable and inconsistent with the provisions of Article 22(5) of the Constitution of India. The detention of the detenu beyond the original period of one year, in the circumstances, was unjustified. We, therefore, set aside the detention of the detenu beyond September 1989 and direct that he be set at liberty at once unless there are other justifiable circumstances to hold him back in custody

6. In the view we have taken, we express no opinion on the first contention in regard to which elaborate contentions have been urged before us

7. The appeal is accordingly disposed of. There will be no order as to costs.