

Pawan Kumar Gupta Vs. Union of India (Uoi) and ors.

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Court : Allahabad

Decided On : Apr-10-2001

Reported in : 2001CriLJ2869

Judge : M. Katju and ;Onkareshwar Bhatt, JJ.

Acts : [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#); [Constitution of India](#) - Articlecle 21

Appeal No. : Criminal Misc. Writ Petition No. 2096 of 2001

Appellant : Pawan Kumar Gupta

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Sanjay Kumar Singh, Adv.

Advocate for Pet/Ap. : A.D. Giri and ;Shashank Shekhar Giri, Adv.

Judgement :

ORDER

1. The petitioner in this petition has challenged the impugned detention order dated 16-2-2001 passed under the [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#).

2. Heard Sri. A.D. Giri, learned Senior Advocate, for the petitioner and Sri Sanjay Kumar Singh for the Union of India at length and perused the petition and

annexures thereto.

3. Learned counsel for the respondents is granted three week time to file counter affidavit. Connect with Criminal Misc. Writ Petition No. 2040 of 2001, Ashwani Kumar Jain v. Union of India (and Ors.) and list immediately thereafter.

4. Sri. A.D. Giri has prayed that the petitioner should not be arrested during the pendency of this petition. On the other hand learned counsel for the respondents has relied upon a decision of the Supreme Court in Additional Sectionetary to the Government of India v. Smt. Alka Subhash Godia 1992 Supp. (1) SCC 496 and has submitted that unless the petitioner surrenders he cannot challenge the impugned detention order.

5. In our opinion there cannot be any absolute proposition in law that a person challenging a detention order under the N.S.A or COFEPOSA must in all cases surrender before he can file a petition. In our country Articlecle 21 of the Constitution guarantees the right to life and liberty and this is the most important of all fundamental rights provided in the Constitution. Hence, individual liberty is not to be lightly interfered with and hence, there cannot be any absolute proposition that a detention order can never be challenged without first surrendering before the authorities. It all depends on the facts of each case and no absolute proposition can be laid down in this connection.

6. Learned counsel for the respondents then submitted that a person sought to be detained has no right to get a copy of the grounds of detention before his arrest and detention. Since we have already observed that there cannot be any absolute legal proposition that a detention order can never be challenged without first surrendering before the authorities it follows as a corollary that the ground for detention can be communicated by annexing the same in the counter affidavit to be filed by the Government in such cases. Since copy of the counter affidavit will be served on the learned counsel for the petitioner this itself will tantamount to communication of the grounds to the detenu because the learned counsel for the petitioner can communicate these grounds annexed to the counter affidavit, to the petitioner.

7. On the facts and circumstances of the case we direct that till the next date of listing the petitioner shall not be arrested in pursuance of the impugned detention order dated 16-2-2001.

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