

Rakesh Kumar Alias Keshi Vs. the Joint Secretary to Govt. of India and ors.

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Court : Punjab and Haryana

Decided On : Feb-09-1999

Reported in : 1999(66)ECC611

Judge : K.K. Srivastava, J.

Appeal No. : CrI. W.P. No. 1088 of 1998

Appellant : Rakesh Kumar Alias Keshi

Respondent : The Joint Secretary to Govt. of India and ors.

Disposition : Petition allowed

Judgement :

ORDER

K.K. Srivastava, J.

1. Petitioner Rakesh Kumar @ Keshi prays for quashing the detention order dated 18.6.1998 (Annexure P1) and grounds of detention of the even date i.e. 18.6.1998 (Annexure P-1/A) passed by respondent No. 1 and further prays that he be released forthwith. The petitioner is challenging the order of his preventive detention which was passed in respect of the alleged activity taking place on 18.6.1997. The detention order was passed exactly a year after the alleged occurrence i.e. on 18.6.1998. The petitioner was served with the detention order and grounds of detention on 27.6.1998 and he was arrested and lodged in Central Jail, Jalandhar. The petitioner submitted a representation against his detention order which included 11 copies to the Superintendent, Central Jail, Jalandhar for onward submission to the Detaining Authority, Central Govt. and the Advisory Board.

The petitioner challenges the order of detention and grounds of detention on the grounds, inter alia, that the satisfaction of the Detaining Authority expressed in the detention order is not real and genuine but the same is mechanical and is a casual one. The purpose for which the petitioner was detained as a preventive measure, did not fall within the scope and ambit of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (for short to be referred as COFEPOSA Act). It has further been contended that there is no proximity between the alleged activity taking place on 18.6.1997 and the detention order dated 18.6.1998. The grievance of the petitioner is that the representation made by him after his detention was not promptly decided by the relevant authorities and undue delay occurred in the disposal of his representation. It has also been alleged that the representation made by the petitioner to the Union of India, the Central Govt. was not decided.

The brief facts leading to the filing of this petition may be noticed as under:

On 18.6.1997 Senior Superintendent of Police, Khanna in the State of Punjab sent an information to the Jalandhar Zonal Office of the Enforcement Directorate that the Punjab Police acting on a specific information

searched three bus passengers travelling from Delhi in a Punjab Roadways Bus No. PB-12B. 9018 which yielded the recovery of the following cash and items:

A sum of Rs. 11 lakhs and documents were seized from one Shri Bachan Pal Singh of Delhi. A cash amount of Rs. 1.9 lakhs was recovered from Shri Madan Lal of Adampur and a cash amount of Rs. 2 lakhs was recovered from Shri Piare Lal of VPO Tanda. The Senior Superintendent of Police informed that the money and documents, referred to above, pertain to Hawala transactions. The further enquiries made by a team of Officers of the Enforcement Directorate deputed to Khanna disclosed that while Shri Bachan Pal Singh was going to local parties in Punjab, on behalf of his brother who resided abroad, the other two persons Madan Lal and Piare Lal were relatives and working for the present petitioner Rakesh Kumar. It was also revealed that Rakesh Kumar petitioner was resident of Adampur, having a fruit shop near the bus stand. The aforesaid persons used to carry packets of foreign currencies to Delhi for sale by Rakesh Kumar to one Shri Muneesh Suneja @ Goldy, resident of 14A/76, WEA, Karol Bagh, New Delhi who was having a shop under the name of M/s Jagdamba Electronics at No. 4 Building No. 2288, Gurdwara Road, Karol Bagh, New Delhi. On the basis of the information received from the aforesaid persons from whom the documents and cash were seized, searches were conducted by the Officers of the Enforcement Department assisted by the Punjab Police on 19.6.1997 at the residential and business premises of Goldy in Delhi and also at the residential premises of the petitioner at Adampur. The searches resulted in seizure of highly incriminating documents. Apart from these documents, foreign currency, Indian currency and foreign marked gold were also recovered and seized from the residential premises of Goldy aforesaid. The grounds of detention thereafter furnish the details of the seizure made by the Officers of Enforcement Directorate. The statement of Goldy was recorded on 19-6-1997 wherein he is reported to have disclosed that he had been purchasing foreign currency from the petitioner and that foreign currency was being sent to Goldy by the petitioner from Adampur through his Carriers. It is alleged that the Detaining Authority felt satisfied about the involvement of the petitioner in the aforesaid activity which contravened the provisions of the COFEPOSA Act and the Detaining Authority was satisfied that it was necessary to order the preventive detention of petitioner Rakesh Kumar so that he may not indulge in future in any act and conduct prejudicial of the augmentation of foreign exchange. Resultantly, the following detention order was passed by the Joint Secretary to Government of India by Shri Somnath Pal:

F. No. 673/39/98-CUS.VIII

Government of India

Ministry of Finance

Department of Revenue.

6th Floor 'B' Wing,

Janpath Bhawan, Janpath,

New Delhi

Dated 18th June, 1998

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