

Harmohan Singh Vs. Union of India

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Court : Delhi

Decided On : Aug-03-1988

Reported in : 1988RLR538

Judge : Malik Sharief-ud-Din, J.

Acts : [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3(1)

Appeal No. : Criminal Writ Appeal No. 210 of 1988

Appellant : Harmohan Singh

Respondent : Union of India

Advocate for Pet/Ap. : R.M. Bagai and; Prahlad Dyal, Advs

Judgement :

Malik Sharief-ud-Din, J.

(1) The petitioner has challenged the validity of a detention order dt. 8.3.88 pursuant to which he was detained. The detention order was passed by the Joint Secretary to the Govt of India u/s 3(1) of the Cofeposa Act, 1974 (as amended) and it was passed with a view to preventing the petitioner from smuggling goods.

(2) The detention order followed an incident dt. 26.11.87 when the petitioner who was traveling in an Air India flight from Bombay to Dubai was found by the customs authorities in possession of foreign exchange equivalent to Rs. 6,03,917.50 and was trying to smuggle it outside the country. The petitioner failed to produce any permission from the Reserve Bank of India to satisfy the authorities that he was validly exporting the foreign exchange.

(3) The validity of the detention is being challenged on a number of grounds but it is not necessary for me to refer to all the grounds as I am in full agreement with Mr. R.M. Bagai, learned counsel for the petitioner, that this case is covered by my judgment in Ashok Kumar Jaggi vs. U.O.I. & others, Cr. W. 598/87 decided on 18.4.88 (1988(11) Crimes 11). The ratio of that judgment is that if the passport of the detenu has been seized it is impossible for the detenu to go abroad much less to smuggle goods and that the assumption of the detaining authority that the detenu might try to go abroad and smuggle goods by some other method cannot be treated as a material worth consideration. In the present case, the petitioner has specifically taken this ground wherein he has submitted that his detention is the result of total non-application of mind as the purpose to detain him was only to prevent him from smuggling goods this purpose was thoroughly achieved by the seizure of his passport on 26.11.87 itself which made it impossible for him to leave the country. In the present case it is quite apparent that the detention has been ordered only with a view to preventing the petitioner from smuggling goods. It is not a detention which has been ordered for any other purpose like dealing in smuggled goods, abetting in smuggling of goods or transportation of smuggled goods. The limited purpose for which the detention has been ordered is achieved by the seizure of the passport making it impossible for the petitioner to proceed abroad much less to smuggle goods. It is in these circumstances that (he respondent has not been able to counter this ground properly. In fact, the reply to this ground is very vague. It is stated in the counter affidavit that it was not impossible for the petitioner to go out of the country despite seizure of passport. I have not been able to appreciate this stand of the respondent. The fact of the matter is that in the absence of the passport which stands seized the purpose for which the detenu was sought to be detained was sufficiently achieved by the seizure of the passport. That goes to show that there has been total non-

application of mind by the detaining authority to the facts of the case and the detention on the facts and circumstances of the present case is unwarranted. The petition is allowed and the detention order is quashed. The detenu shall be released forthwith unless required in some other case.

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