

Qayamuddin Vs. Union of India and ors.

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Court : Delhi

Decided On : Sep-23-1991

Reported in : 46(1992)DLT258

Judge : V.B. Bansal, J.

Acts : [Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3(1); [Constitution of India](#) - Article 22(5)

Appeal No. : Criminal Miscellaneous Appeal Nos. 19, 143 and 234 of 1991

Appellant : Qayamuddin

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Sangeeta Nanchaha,; K.K. Manan and; Kamal Nijhawan, Adv

Judgement :

V.B. Bansal, J.

(1) Qayamuddin has filed this writ petition under Articles 226 and 227 of the [Constitution of India](#), read with Section 482 of the Code of Criminal Procedure, thereby praying that the order dated 22nd January, 1991, detaining him may be set aside and he be ordered to be released forthwith.

(2) On 22nd January, 1991, Shri Mohinder Prasad, Joint Secretary to the Govt. of India, especially empowered officer, exercising powers under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as the Act) ordered for the detention of the petitioner with a view to preventing him from smuggling goods. This order of detention was served upon the petitioner on 12th February, 1991 and the grounds of detention Along with the documents relied upon in support of the detention order were also served upon the petitioner.

(3) Briefly stated the facts leading to the filing of this petition are that on 14th September, 1990 the petitioner was intercepted in the Departure Hall of I.G.I. Airport, New Delhi, when he was going to Dubai by Emirates Flight No. EK.-703. The petitioner was going for security checks after completion of other formalities including those of the customs when an enquiry was made from him as to whether he was carrying any contraband like foreign currency. The reply of the petitioner was in the negative. Two independent witnesses were called and in their presence also when asked as to whether the petitioner was carrying any foreign currency, his reply was in the negative. He was., however, searched when 55 notes of 100 Us \$, one note of 1000 Swiss Franks, 500 Qatar Riyal, 2,000 Uae Dihram and 1,000 Indian rupees, total value of Rs. 1,20,050.00 were recovered. The petitioner was not in a position to give any evidence, documentary or otherwise for his lawful possession and so the currency was seized in terms of Section 110 of the Customs Act on the reasonable belief that the same was liable for confiscation. Statement of the petitioner was recorded under Section 108 of the Customs Act, in which he admitted about the recovery of the aforesaid currency and not giving any valid Explanationn about his lawful possession.

(4) I have heard the learned Counsel for the parties, In the petition, as also in the application for taking additional grounds, the petitioner has taken a number of grounds challenging the order of detention. Learned Counsel for the petitioner has, however, restricted her arguments only to one submission that there is an unexplained delay in consideration of the representation dated 28th May, 1991, submitted by the petitioner through his father.

(5) It has been pleaded by the learned Counsel for the petitioner that his father had made representation dated 28th May, 1991 in Urdu, challenging the detention of the petitioner in which besides asking for certain information a prayer was also made for supply of documents. The same has not been disposed of till the filing of the writ petition or even till the filing of the application for additional grounds. It has, thus, been submitted that the petitioner has been deprived of his fundamental right of getting his representation disposed of. The continued detention of the petitioner cannot be sustained.

(6) Learned Counsel for the respondent has referred to the affidavit of Shri R.P. Kapur, Under Secretary, to the Government of India, Ministry of Finance, Department of Revenue sworn on 23rd August, 1991 in which it has been stated that the detenu's representation dated 29th May, 1991, addressed to the President of India was received in the Unit through President Office on 17th June, 1991. It has also been clarified in this affidavit as to how this representation was dealt with asking for comments from the Sponsoring Authority and that this representation was rejected. Thereafter, a Memorandum was issued to the petitioner conveying the rejection of the said representation. However, during the arguments it has been submitted by the learned Counsel for the respondent that there has been a typographical mistake in the aforesaid affidavit of Shri R.P. Kapur, and that in fact the representation of the petitioner, sent through his father is of 28th May, 1991 and that it was rejected on 3rd July, 1991, the date on which the information regarding the rejection was also dispatched.

(7) A specific question has been put to the learned Counsel for the respondent as to whether there is any explanation for the delay in dealing with this representation prior to 17th June, 1991. The only reply of the learned Counsel for the respondent has been that immediate and urgent steps have been taken by the concerned Section to deal with this application after its receipt. He has not been able to explain the reasons for this representation being not dealt or how it was handled prior to 17th June, 1991.

(8) In these circumstances, the only conclusion which can be arrived at is that there is an unexplained and undue delay in consideration of the representation

dated 28th May. 1991 of the petitioner up till 17.6.91. This ground alone, thus, is sufficient to hold that the fundamental right of the petitioner to have his representation disposed of expeditiously, been violated. I find support to this view from the case of N.A.Hyderabad. U.O.I, &Ors, : 44(1991)DLT428 .

(9) In view of my aforesaid observations, the writ petition is allowed. Continued detention of the petitioner in pursuance of order dated 22.1.91, is held to be not sustainable on account of delay in the disposal of the representation of the petitioner. The petitioner is ordered to be released forthwith, if not required in any other case. Petition allowed

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