

Poly Saha Vs Uoi and anr.

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Court : Delhi

Decided On : Aug-05-2010

Judge : Mr. Badar Durrez Ahdmed ; Mr. V.K. Jain. J J

Appeal No. : WP(CRL) 956/2010

Appellant : Poly Saha

Respondent : Uoi and anr.

Advocate for Def. : Mr Atul Nanda, Adv.

Advocate for Pet/Ap. : Mr Pradeep Jain , Mr A. Samad, Mr S. Bhattacharyya, Mr Shubhankar Jha, Mr Vishal Thakur , Mr Abhas Mishra. Advs.

Judgement :

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest

ORDER

1. This writ petition has been filed challenging the order of detention bearing F. No. 673/05/2010-CUS VIII dated 05.04.2010 passed against the detenu (Sanjay Saha @ Sona Bhai), who is the petitioners husband, under Section 3(1)(iii) of the

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the COFEPOSA Act).

2. The detention order, which was made on 05.04.2010, was served on the detenu on 09.04.2010. Thereafter, the Advisory Board submitted its report after hearing the counsel for the detenu as well as the representatives of the Central Government. Subsequent thereto, by an order dated 14.06.2010 issued by the Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, Government of India, the Central Government, in exercise of power conferred under Section 8(f) of the COFEPOSA Act, confirmed the aforesaid detention order and further directed under Section 10 thereof that the detenu (Sanjay Saha @ Sona Bhai) be detained for a period of one year from the date of his detention, that is, from 09.04.2010.

3. The only point urged by the learned counsel for the petitioner before us was that the detention has become illegal on account of non- supply of relied upon documents within the stipulated period of five days, as indicated by the provisions of Article 22(5) of the Constitution of India read with Section 3(3) of the COFEPOSA Act. He submitted that Bengali translations of the two relied upon documents were supplied to the detenu only on 01.06.2010, that is, after a period of one month and twenty one days from the date of the detention. The two documents which he referred to were:-

(a) Bengali translation of the statement of Raj Kishore Yadav dated 14.10.2009, shown at serial No. 4 of the relied upon documents;

(b) Bengali translation of the statement of Anil Yadav dated 18.12.2009, shown at serial No. 20 of the relied upon documents.

4. The learned counsel for the petitioner drew our attention to the counter-affidavit filed on behalf of the respondents and in particular to the portion which dealt with the reply to ground B taken by the petitioner. In the counter-affidavit it is admitted as under:- "On scrutiny it was found that Bengali translations of only two statements i.e statement of Rajkishore Yadav dated 14.10.2009 and statement of Anil Yadav dated 18.12.2009 were left out inadvertently which were supplied to the

detenu on 01.06.2010 as admitted by the detenu in his representation."

5. We may also point out that in ground B of the petition the petitioner had categorically stated that the detenu can understand Bengali language only. It was also pointed out that the detenu cannot read or write or understand the English language. This fact has not been specifically controverted in the counter-affidavit while replying to ground B. It is, therefore, clear that the Bengali translations of the above mentioned relied upon documents were not supplied to the detenu within the stipulated period of five days nor were they supplied during the extended period of 15 days, which is permitted under exceptional circumstances, to be recorded in writing. In any event, it is not the case of either party that the said two documents were even supplied within 15 days.

6. The learned counsel for the petitioner placed reliance on the decisions of the Supreme Court in *Ibrahim Ahmad Batti v. State of Gujarat*: (1982) 3 SCC 440 and *Thahira Haris v. Government of Karnataka*: (2009) 11 SCC 438 to submit that the non-supply of relied upon documents along with the grounds of detention within the period stipulated in Section 3(3) of the COFEPOSA Act would be fatal to the detention and the detention order would be liable to be quashed on the ground of its having become illegal.

7. In *Ibrahim Ahmad Batti* (supra) the Supreme Court observed as follows:-

"10. Two propositions having a bearing on the points at issue in the case before us, clearly merge from the aforesaid resume of decided cases:

(a) all documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention and

(b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of

the two duties cast on the detaining authority under Article 22(5) of the Constitution .." This is reinforced in Thahira Haris (supra), where the Supreme Court held as under:-

"29. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detenu becomes illegal and the detention order has to be quashed on that ground alone.

30. Our Constitution provides adequate safeguards under Clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention.

31. On proper construction of Clause (5) of Article 22 read with Section 3(3) of the COFEPOSA Act, it is imperative for valid continuance of detention that the detenu must be supplied with all documents, statements and other materials relied upon in the grounds of detention."

8. The only plea taken by the learned counsel for the respondent was that this grievance was not made before the Advisory Board, which submitted its report on 02.06.2010. We do not see how that would make any difference because the Supreme Court decisions on the above point are clear and categorical that unless and until all the documents, which are relied upon, are supplied to the detenu within the stipulated period, it would obstruct the detenus right to make an effective representation and when there is such an obstruction, the detention itself become illegal.

9. For the aforesaid reasons, the writ petition is allowed. The detention order is quashed and the detenu is liable to be released forthwith, provided he is not in custody in any other case. The detenu is presently lodged at Presidency

Correctional Home, Kolkata, West Bengal.

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