

## N.K. Aggarwal Vs The State of Punjab

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** April 9, 1991

**Acts Referred:** Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 " Section 3, 3(1)  
Constitution of India, 1950 " Article 226, 32  
Customs Act, 1962 " Section 11, 110, 77  
Foreign Exchange Regulation Act, 1973 " Section 13(1)  
Imports and Exports (Control) Act, 1947 " Section 3(1)

**Citation:** (1992) 1 ILR (P&H) 281 : (1992) 1 RCR(Criminal) 67

**Hon'ble Judges:** Jai Singh Sekhon, J

**Bench:** Single Bench

**Advocate:** R.S. Ghai and Bipin Ghai, for the Appellant; G.S. Cheema, A.A.G., for the Respondent

### Judgement

Jai Singh Sekhon, J.

The Petitioner, through this petition filed under Article 226 of the Constitution of India seeks the quashment of the

order of detention, dated 6th March, 1990, passed by the State Government u/s 3(1) of the conservation of Foreign Exchange and Prevention of

Smuggling Activities Act, 1947 (for short "COFEPOSA") besides seeking a direction that this order should not be executed. inter alia, on the

ground that it is inherently illegal.

2. The brief resume of facts relevant for the disposal of this petition is, that while posted as inspector in the Customs Division, Amritsar, on 27th

October, 1989, the Petitioner abetted the smuggling of articles fully described in para 3 of the Grounds of Detention of the value of Rs. 1,00,760

by arranging the entry of these articles illegally into India by the Customs Preventive Staff, Amritsar, by intercepting white coloured Maruti Van

bearing Registration No. JKS 5464 at 1-35 p.m. on that day on the G.T. Road opposite to the Customs Preventive Station, Attari i.e., near the

Indo-Pakistan Border. Chand Beg of Delhi was one of the occupants of this car besides the taxi driver Parveen Kumar. On interrogation Chand

Beg disclosed that these goods belonged to two passengers who were following them in another car. In the meanwhile, the other taxi also arrived

there. Two persons who gave their identity as Mohd. Yusuf of Ajmeri Gate, Delhi and his wife Hamsari Begum came out of that car. On

interrogation, Chand Beg disclosed that he had arrived at the Wagah Border to receive these persons who were coming from Pakistan and on the

basis of prior arrangement the clearance of the goods was made through one Paramjit Singh alias Pamma coolie, who had hired the above-referred

Maruti Van and took the same to Customs Area towards Indo-Pakistan border and after 10--15 minutes, the Maruti Van came from the Customs

area loaded with the goods. He further disclosed that for sending passengers to Pakistan he used to pay Rs. 2,500 per passenger to Pamma coolie

and Rs. 3,000 per passenger on return of such person from Pakistan. Chand Beg also admitted having sent Altaf Ali and others from Delhi to

Pakistan about 15 days earlier. Mhd. Yusuf also disclosed on interrogation that his trip to Pakistan was financed by Chand Beg but his wife was

not taken into confidence in this regard. He further confirmed having brought these articles from; Pakistan for Chand Beg. Paramjit Singh coolie on

interrogation in his statement recorded on 30th and 31st October, 1989, stated that at about 1 O" clock on 27th October, 1989, the Petitioner

had asked him to bring one taxi as two passengers of Chand Beg were coming on that day. He hired a taxi i.e., Maruti Van No. JKS-5464 and

under the directions of N.K. Aggarwal. Petitioner, took this van upto the Customs Post where the above-referred articles were loaded under

the/supervision of N.K. Aggarwal and thereafter Mr. Aggarwal escorted the van out of the customs area on his scooter. Sarvshri Satish Kumar

and Baljit Singh Sepoys posted on the said post of the Customs Area stated having seen Pamma coolie loading goods in the Maruti Van under the

supervision of N.K. Aggarwal. They further stated that on enquiry N.K. Aggarwal represented that the goods were of his guests. They also

supported the version of Paramjit Singh coolie about N.K. Aggarwal having escorted the van on his scooter out of the customs area. Sarvshri

Amar Singh and Surinder Kumar constables posted on the last gate of the Customs area also supported the above-referred version of the

Petitioner having escorted the van beyond that area. Parveen Kumar driver of the van also supported the above-referred version.

3. Inspector N.K. Aggarwal in his statement, dated 8th November 1989, tendered before the Superintendent Customs (Preventive) Amritsar

denied the above-referred allegations. Thus, under these circumstances the above referred order of detention was passed by the State Government

in order to prevent the Petitioner from abetting the smuggling of goods from Pakistan. The above-referred order of detention has not been served

upon the Petitioner so far.

4. The Petitioner in this writ petition, inter alia, challenges the legality of detention order on the ground that the same having been passed about

more than 4 months of the alleged prejudicial activity, there was no nexus between the prejudicial activity and the detention order, especially when

during this period no prejudicial activity is attributed to the Petitioner. The other ground urged is that a single prejudicial activity is not sufficient to

pass the detention order. Retraction of confessional statements by Chand Beg, Mohd. Yusuf, Paramjit Singh coolie and Parveen Kumar was also

stressed. The non-execution of the detention order till the filing of the writ petition was also averred in support of the conclusion that the detaining

authority was not satisfied that the Petitioner will indulge in such prejudicial activity again and had passed the order mechanically without application

of mind. It was also maintained that the Petitioner being under suspension could not indulge in such like prejudicial activity and thus passing of the

detention order was not justifiable. The non-disposal of the representation, dated 26th July, 1990 filed by the Petitioner seeking revocation of the

detention order was also stressed.

5. This petition was resisted by the detaining authority on the ground of its being not maintainable as the detention order has not been served upon

the Petitioner due to his absconding. It was further averred that the detention order was passed after full application of mind by the detaining

authority and that the delay in passing the detention order from the last prejudicial activity had not resulted in snapping the nexus between the two

as the concerned authorities continued processing the matter at different levels. It was further maintained that keeping in view the nature of the

prejudicial activity of the Petitioner, the detaining authority was subjectively satisfied of the necessity to pass the detention order as a preventive

measure u/s 3 of the Cofeposa. It was further explained that the detention order was not served upon the Petitioner as the latter has resorted to

absconding. The affidavit of Shri Sanjeev Gupta, Senior Superintendent of Police, Amritsar along-with the statement of O.P. Aggarwal, father of

the detenu and the report of the Assistant Superintendent of Police (Headquarters), Amritsar and S.H.O., Civil Lines, Amritsar, were filed in

support of the contention that the detenu has resorted to absconding.

6. I have heard the learned Counsel for the parties besides perusing the record.

7. Regarding the maintainability of the writ petition before the service of the detention order upon the Petitioner, it transpires that the Apex Court in

Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, , in paragraph 12 of the judgment has

held as under:

This is not to say that the jurisdiction of the High Court and the Supreme Court under Articles 226 and 32 respectively has no role to play once the

detention --punitive or preventive is shown to have been made under the law so made for the purpose. This is to point out the limitations which the

High Court and the Supreme Court have to observe while exercising their respective jurisdiction in such cases. These limitations are normal and

well-known, and are self-imposed as a matter of prudence, propriety, policy and practice and are observed while dealing with cases under all

laws. Though the Constitution does not place any restriction on these powers, the judicial decisions have evolved them over a period of years

taking into consideration the nature of the right infringed or threatened to be infringed, the scope and object of the legislation or of the order or

decision complained of. the need to balance the rights and interests of the individual as against those of the society, the circumstances under which

and the persons by whom the jurisdiction is invoked, the nature of relief sought etc. To illustrate these limitations:--(i) in the exercise of their

discretionary jurisdiction the High Court and the Supreme Court do not. as Courts of Appeal or Revision, correct mere errors of law or of fact, (ii)

the resort to the said jurisdiction is not permitted as an alternative remedy for relief which may be obtained by suit or other mode prescribed by

statute. Where it is open to the aggrieved person to move another Tribunal or even itself in another jurisdiction for obtaining redress in the manner

provided in the statute, the Court does not, by exercising the writ-jurisdiction permit the machinery created by the statute to be by-passed; (iii) it

does not generally enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce

which, the writ is claimed; (iv) it does not interfere on the merits with the determination of the issues made by the authority invested with statutory

power particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such

as, where the determination is mala fide or is prompted by extraneous considerations or is made in contravention of the principles of natural justice

or any constitutional provision; (v) the Court may also intervene where (a) the authority acting under the concerned law does not have the requisite

authority or the order which is purported to have been passed under the law is not warranted (emphasis supplied) or is in breach of the provisions

of the concerned law or the person against whom the action is taken is not the person against whom the order is directed; or (b) where the

authority has exceeded its powers or jurisdiction or has failed or refused to exercise jurisdiction vested in it; or (c) where the authority has not

applied its mind at all or has exercised its power dishonestly or for an improper purpose; (vi) where the Court cannot grant a final relief, the Court

does not entertain petition only for giving interim relief. If the Court is of opinion that there is no other convenient or efficacious remedy open to the

Petitioner, it will proceed to investigate the case on its merits and if the Court finds that there is an infringement of the Petitioner's legal rights, it will

grant final relief but will not dispose of the petition only by granting, interim relief; (vii) where the satisfaction of the authority is subjective, the Court

intervenes where the authority has acted under the dictates of another body or when the conclusion is arrived at by the application of a wrong test

or misconstruction of a statute or it is not based on material which is of a rationally probative value and relevant to the subject matter in respect of

which the authority is to satisfy itself. If again the satisfaction is arrived at by taking into consideration material which the authority properly could

not, or by omitting to consider matters which it sought to have, per cases the Court also intervenes when some legal or fundamental right of the

individual is seriously threatened, the Court interferes with the resultant order; (viii) in pro-though not actually invaded.

8. A bare glance through the above-referred observations leaves no doubt that although the Constitution does not place any restrictions on the

powers of the High Court under Article 226 of the Constitution, yet all the same the judicial decisions have over a period of years evolved

restraints for interfering in such like matters by taking into consideration the nature of the right infringed or threatened to be infringed, the scope and

object of the legislation etc. It has been further elaborated that the Court may also intervene where the order which is purported to have been

passed under the law is not warranted etc., etc. In other words, it can be well-said that the Court under Article 226 of the Constitution can

examine the legality of the detention order even if it has not been served upon the detainee.

9. In the case in hand, it transpires that the Petitioner was allegedly abetting the smuggling of goods from Pakistan to India and was in a position to

do so while posted as Customs Inspector in Customs Division at Wagah Border. He was admittedly apprehended for violation of the provisions of

Section 110 of the Customs Act, 1962, Imports Control Order No. 17/55 (as amended) issued u/s 3(1) of the Imports and Exports (Control)

Act, 1967 read with Sections 11 and 77 of the Customs Act, 1962 and Section 13(1) of the Foreign Exchange Regulation Act, 1973. It is not

disputed that the Petitioner is under suspension. Thus, under these circumstances the Petitioner could have been easily prevented by removal from

service or by his transfer to some other station away from the borders of India. There is no indication from the grounds of detention or from the

return filed by the Respondents that the Petitioner had developed contacts with some Pakistan Nationals and there is no escape but to detain him

u/s 3 of the Cofeposa Act in order to prevent him from abetting the smuggling activities or to conserve the foreign exchange. On the other hand, it

is averred that he used to help Chand Beg, a resident of Delhi, in smuggling certain goods from India to Pakistan and vice versa. Thus, under these

circumstances, it can be well-said that the impugned order of detention, if served upon the Petitioner, would be punitive in nature rather than the

preventive one. If that is so, then it is liable to be set aside being per se illegal, it is so ordered by accepting this petition.