

## Babu Khan and Others Vs State of U.P.and Others

**Court:** Allahabad High Court (Lucknow Bench)

**Date of Decision:** April 13, 1998

**Acts Referred:** Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 " Section 3(1)(i), 3(1)(iii)

**Hon'ble Judges:** A.N.Gupta, J and R.P.Nigam, J

**Final Decision:** Disposed Of

### Judgement

1. Six separate detention orders each dated 30th July, 1997 were passed under the provisions of Conservation of Foreign Exchange and

Prevention of Smuggling Activities Act, 1974 (in short "the COFEPOSA Act)" by the State Government on identical grounds. Out of whom two

petitioners, namely. Babu Khan alias Babu Ahmad Siddiqui petitioner of W.P. No. 655 (H.C.) of 1997 and Vikas Gupta petitioner of Writ

Petition No. 719 (H.C.) of 1997 are before us. So far as detention orders passed against Tahir Ali the alleged partner of Babu Khan, Mohd.

Shafiq Driver of the truck, Iqrar Ahmad, Cleaner of the truck and Chhuttan an alleged servant of Babu Khan, are concerned, they were revoked

by the State Government probably on the basis of the opinion received from the Advisory Board.

2. The records of these six detenus maintained by the State Government in the Secretariat were called by us from which it is clear that all the six

were detained on identical reasons and grounds. In fact, the detention orders passed against all these six persons are verbatim true copy of each

other from top to bottom. All the six detention orders were passed under Section 3 (i) and (iii) of the COFEPOSA Act in order to prevent the

deteuns from smuggling the goods or engaging in transporting or concealing and keeping the smuggled goods.

3. The detention orders were passed on a single ground, according to which on 17111996 a Custom Preventive Party constituted by Assistant

Commissioner (Custom) on the basis of a secret information, was waiting with a Gypsy on BareillyBudaun Road. At about 12.30 p.m. a Tata407

Truck bearing Registration No. UP256824 fitted with a speaker, was seen approaching. When it was signalled to stop, it tried to speed away

which was chased by the Preventive Party with Gypsy, Ultimately, the said Truck was over taken but before that the Truck dashed the Gypsy but

because of the swift action of the driver of the Gypsy it did not overturn. The Preventive Party had to fire on the Truck in order to stop it.

Ultimately, the Truck had to stop and immediately thereafter five persons were seen running away by firing at the Gypsy. On the crossfiring made

by the Preventive Party two persons lied on the ground and three of them succeeded in running away through sugarcane fields. Those two persons

were arrested who disclosed their names as Mohd. Shafiq driver of the Truck and Iqrar Ahmad cleaner of the Truck. The ground further goes on

to mention that when the Truck was searched immediately thereafter it was found that it had ricebran Power packed in bags. When search was

made underneath the bags, smuggled bearing and Video Cassettes of National Panasonic were recovered. The bearings were valued at Rs.

46,08,000/ and Vidio Cassettes were valued at Rs. 60,000/and as such, the smuggled goods recovered from the Truck were valued at Rs.

46,68,000/. The arrested persons could not give any documents and, therefore, believing that these were smuggled goods, were seized under the

Customs Act. The Truck was also seized including the ricebran as they were used for smuggling the goods. The statements of Driver and Cleaner

who were arrested on the spot, were recorded under Sections 107 and 108 of the Customs Act in which Mohd. Shafiq driver disclosed that

Vikas Gupta the petitioner of Writ Petition No. 719 (H.C.) of 1997 was the owner of the Truck and he had asked him to transport the truck to

Ghaziabad. The person who fired at the Preventive Party immediately after getting down from the Truck, was none else but Babu Khan the

petitioner of Writ Petition No. 655 (H.C.) of 1997 who was the owner of the goods. He further stated that the goods loaded in the Truck

belonged to Babu Khan who is owner of India Rice Mill and Babu Khan had given Rs. 8.000/ as transportation charges to the truck owner and

Babu Khan had himself piloted that truck for some distance and thereafter, he went back stating that the route ahead was clear. The cleaner of the

truck also gave same statement under Section 107 of the Customs Act. Under Section 108 of the Customs Act Mohd. Shafiq Driver of the Truck

further stated that at the time of occurrence that Truck was being driven by Vikas Gupta alias Kalloo and Vikas Gupta had also succeeded in

running away after the Truck was brought to a halt by firing by the Custom Preventive Party. Chhuttan Khan was also sitting in the Thick. Prior to

that Mohd. Shafiq Driver had also earlier gone on a similar faciency. The driver further stated that Dr. Tahir is a man of Babu Khan and he is doing

the business in partnership with Babu Khan at present, r. Tahir Ali is also Chairman of Nawabganj Nagar Palika and the driver that the truck

contained smuggled goods. Almost statement was given under Section 108 of the Customs Act by the cleaner of the Truck. Later on it was

discovered that Tahir Ali is not the Chairman of the Nawabganj Nagar Palika and his second wife is the Chairman. It is further mentioned in the

detention order that the gang of Babu Khan is engaged in smuggling activities for quite sometime. In February 1996 in a matter relating to smuggled

goods valued at Rs; 25 Lacs Babu Khan absconded after threatening the police regarding which a case had been registered.

4. After hearing learned Counsel for the petitioners, Standing Counsel for Union of India and learned Government Advocate, we find that the two

detention orders in question cannot be sustained. So far as the case of Vikas Gupta is concerned, his case is identical with case of Mohd. Shafiq

and Iqrar Ahmad. It may be reported here that Mohd. Shafiq and Iqrar Ahmad were driver and cleaner of the truck and had been arrested on the

spot. It may again be repeated that the Driver of the truck namely, Mohd. Shafiq in his statement under Section 108 of the Customs Act had

admitted that he knew that the Truck contained the smuggled goods. The State Government revoked the detention order passed against Mohd.

Shafiq as well as Iqrar Ahmad whereas had confirmed it against Vikas Gupta. The role assigned to all the three of them is similar and the ground of

detention against all the 3 persons is identical, as a matter of fact, word for word. If it is true that Vikas Gupta is the owner of the Truck, but it is

also true that Mohd. Shafiq and Iqrar Ahmad had been arrested on the spot whereas Vikas Gupta had not been arrested. All the three of them, it

at all, were engaged in smuggling the goods and engaged in transporting and concealing and keeping the smuggled goods. In view of this, if the

State Government revoked the detention orders passed against Mohd. Shafiq and Iqrar Ahmad, there was no justification for confirming the same

against Vikas Gupta. Apart from violation of Article 14 of the Constitution, it is mechanical exercise of power on the part of the State. In view of

this, the detention order passed against Vikas Gupta had to be quashed.

5. So far as Babu Khan petitioner of Writ Petition No. 655 (HC) of 1997 is concerned, it has been mentioned in the grounds of detention that his

gang was engaged in smuggling activities for quite some time and in a case of smuggling of goods valued at Rs. 25 Lacs Babu Khan absconded

after threatening the Police in the year 1996 regarding which a case was registered, in Paragraph 8 of the petition it had been mentioned that in that

case investigation was closed because in spite of the fact that several persons by the name of Babu Khan were questioned in Nawabganj but none

was found involved in any case of smuggling activities. Thus, it is clear that the detaining authority while passing the detention order against Babu

Khan took into consideration the extraneous material and the relevant material that Babu Khan was not found involved in any previous smuggling

activities, was not placed before the State Government. In view of this, the detention order passed against Babu Khan is also vitiated. Apart from

the above, both the detention orders have to fall yet on another ground. As mentioned above, the detention orders passed against all the six

persons including the two petitioners are verbatim true copies of each other from beginning to end in spite of the fact that all the six of them had

different roles assigned to them in the smuggling activities according to the detaining authority. It shows a mechanical exercise of power in issuing

cyclostyled identical detention orders without shifting material applicable to each of the detenu.

6. Learned Counsel for the petitioners urged other grounds also but we need not adjudicate upon them as the petitions have been disposed of

otherwise.

7. In the result, both the petitions succeed and are allowed. The detention orders passed against petitioners of both the petitions are quashed. Both

the petitioners shall be set at liberty unless wanted in some other case. However, it is made clear that any observations made in this judgment shall

not influence the authorities deciding or adjudicating any matter regarding smuggled goods and they shall be free to draw their own conclusions.