

(1988) 07 BOM CK 0038

Bombay High Court

Case No: Criminal Writ Petition No. 513 of 1988

Reyon Roldon

APPELLANT

Vs

Secretary to the Govt.
of Maharashtra

RESPONDENT

Date of Decision: July 7, 1988

Acts Referred:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 3(1)

Citation: (1989) 39 ELT 399

Hon'ble Judges: V.P. Tipnis, J; M.L. Pendse, J

Bench: Division Bench

Judgement

Pendse, J.

The Secretary (II) to the Government of Maharashtra, Home Department, by order dated November 11, 1987, passed in exercise of the powers under sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the Act") directed detention of the petitioner with a view to preventing him from smuggling goods. The order of detention was served on December 5, 1987 and the grounds of detention were furnished.

2. The grounds inter alia recite that on May 22, 1987, the detenu arrived at Sahar Airport by Cathay Pacific flight and made a declaration that foreign goods of the value of Rs. 4,200/- and which was liable to duty, was imported. The officers did not believe the statement and on search of the suit-case recovered three gold bars of ten tolas each, two gold bars of 100 grams and one gold bar of 50 grams totally valued at Rs. 1,66,444/-. The statement of the detenu was recorded and the detenu claimed that he had a job as a seaman in Dubai and after his services were terminated, he received 30,000 Dhiraams as compensation and out of that amount, he purchased the gold bars and tried to surreptitiously bring it into the country with a view to sell it. The Detaining Authority, on

the strength of these material, came to the conclusion that the detention of the petitioner is necessary. The order of detention is under challenge.

3. Mr. Irani, learned counsel appearing on behalf of the detenu, submitted that the impugned order is required to be set aside as neither the order nor the grounds were served on the detenu when he was put under arrest on November 26, 1987. The grounds of detention as well as the order of detention were served only on December 5, 1987. The contention raised by the learned counsel goes to the root of the matter and if correct, then the order of detention cannot be sustained. The Detaining Authority has filed return and in para 17 it is claimed that the detenu was arrested on November 26, 1987 by Trivandrum police and was produced before the Magistrate at Trivandrum and remanded to judicial custody till December 12, 1987. A telex dated November 30, 1987 was by the Asstt. Collector, Trivendrum, to the Bombay office and, thereafter, police party left Bombay for Trivandrum to fetch the detenu. The detenu was taken into custody on December 5, 1987 and at that time the order of detention and the grounds were furnished. The return does not dispute the claim of the detenu that Trivendrum police took the detenu into custody only because of the impugned order dated November 11, 1987. It is, therefore, obvious that the detenu, when arrested on November 26, 1987, was not furnished with the order of detention and the grounds of detention. The detention, therefore, was clearly illegal and the order of detention cannot be sustained.

4. Accordingly, the petition succeeds, rule is made absolute and the impugned order of detention dated November 11, 1987, is quashed and set aside. The detenu is directed to be released forthwith.