
(1988) 07 BOM CK 0043

Bombay High Court

Case No: Criminal Writ Petition No. 437 of 1988

Smt. Navalben
Mohanlal Sanghani

APPELLANT

Vs

Union of India and
others

RESPONDENT

Date of Decision: July 4, 1988

Acts Referred:

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

Citation: (1989) 39 ELT 400

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

Bench: Division Bench

Judgement

Pendse, J.

This joint Secretary to the Government of India by order dt. February 18, 1988 Passed in exercise of powers conferred by S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 directed detention of Vasantraai Mohanlal Sanghani with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. The order of detention was served on April 14, 1988 and the grounds of detention were furnished.

2. The grounds recite that one Smt. Girija Kuppaswamy of M/s. Marcopolo Travels, Bangalore, was leading a group of 120 pilgrims to United States and Europe. Mrs. Kuppaswamy was in need of foreign exchange as she had sought service of M/s Travel Corporation of India, Bombay and the travel Corporation agreed to render services abroad at a rate of United States \$ 1065 per passenger. Each of the passenger secured foreign exchange of United States \$ 980/- from the Reserve Bank and for the Balance Smt. Kuppaswamy requested the Travel Corporation to help her. The director of Travel Corporation one Dotiwala knew Vasant Sanghani as a person dealing in foreign

exchange. Dotiwala informed Sanghani of the need of Smt. Kuppaswamy and Sanghani supplied the requisite foreign exchange by charging Rs. 15.07 per dollar. After the arrest of Smt. Kuppaswamy and recording of statements of Smt. Kuppaswamy, Dotiwala, Gomes, Lalkaka, employees of Travel Corporation, the premises of Sanghani were searched and several documents were attached under panchanama dt. September 17, 1987. The Statement of Sanghani was recorded and on the basis of this material, Sanghani was prosecuted before the Additional Chief Metropolitan Magistrate, but was released on bail. On the strength of this material, the detaining authority came to the conclusion that it is necessary to detain Sanghani as he is likely to indulge in unauthorised purchase and sale of foreign exchange. The impugned order of detention is challenged by the wife of the detenu.

3. Shri Karmali, learned counsel appearing on behalf of the detenu, submitted with the reference to ground (vi) in the petition that the order of detention suffers from vice of non-application of mind. The learned counsel urged that out of the 14 documents attached under the panchanama from the house of detenu, documents at pages 5, 7 (reverse) and 8 bear certain Gujarati writings. The learned counsel urged that the detaining authority could not have read and understood what is written in Gujarati language, and if the detaining authority understands Gujarati then it should be disclosed on an affidavit. The alternate submission is that if the detaining authority does not understand Gujarati language, then the documents should have been translated and the translated copy should have been furnished to the detenu. The submission of the learned counsel is required to be upheld, because the detaining authority has not filed any return in answer to the petition. Shri Satpute, learned Assistant Government Pleader, sought adjournment to file the return and when we inquired as to what is the reason for not filling the return, the learned counsel very fairly stated that instructions have not been received from Delhi. We declined to adjourn the hearing of the petition as the petition was admitted on April 26, 1988 and more than two months had lapsed from the date of admission. In detention matters it is necessary for the detaining authority to file the return at once, because the detenu cannot be deprived of his liberty because the detaining authority has no time to file the return. In absence of return, we have no option but to accept the claim made in petition and set aside the order of detention.

4. Accordingly, petition succeeds and the order of detention is quashed. The detenu is directed to be released forthwith.

There will be no order to costs.

5. Petition allowed.