

**(1988) 09 CAL CK 0001**

**Calcutta High Court**

**Case No:** Criminal Misc. No. 953 of 1988

Srikanta Haldar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

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**Date of Decision:** Sept. 15, 1988

**Acts Referred:**

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 3(1)
- Constitution of India, 1950 - Article 226

**Citation:** 93 CWN 511

**Hon'ble Judges:** Monoj Kumar Mukherjee, J; Haridas Das, J

**Bench:** Division Bench

**Advocate:** J.N. Ram and S.L. Hazra, Sarojesh Mukherjee and Tapas Kumar Middya, for the Appellant; Promode Ranjan Roy and Amit Talukdar, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Monoj Kumar Mukherjee, J.

Pursuant to an order dated January 28, 1988 passed by Sri K. L. Verma, Joint Secretary to the Government of India in exercise of his powers u/s 3(1) of the conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), Srikanta Haldar, the petitioner herein, has been detained in the Presidency Jail, Calcutta since February 25, 1988. Against the said order he made a representation which was rejected by the Advisory Board and the order of detention was confirmed by the Government of India. Aggrieved thereby, he has preferred this application under Article 226 of the Constitution of India seeking a writ of habeas corpus and obtained the present Rule Nisi. The order of detention has been passed against the petitioner with a view to preventing him from engaging in dealing in smuggling goods otherwise than by engaging in transporting or concealing or keeping smuggled goods; and the facts and circumstances constituting the grounds of detention served upon him, concisely stated, are as

under.

2. On August 3, 1987 the officers of the border Security Force intercepted a truck bearing registration No. WBQ 1626 on Lalgola-Berhampore Road near Bhagwangoia Railway Station. The driver and the cleaner of the truck fled away at the point of interperception but the other two occupants of the truck, namely, Shyamal Kumar Halder and Subodh Halder were apprehended. On search of the truck readymade garments and synthetic fabrics, all of foreign origin, were recovered. In absence of any valid document and/or challans for the said goods the BSF personnel handed over the goods along with the truck and the two apprehended occupants to the Officer-in Charge of Berhampore Customs Preventive Unit. The goods were examined by the Customs Officers and found to contain 12750 pieces of readymade garments of foreign with markings "Taiwan", "England", "Japan" etc. and 627 mtrs, of synthetic fabrics with mark "made in Japan". As Shyamal Kumar Halder and Subodh Halder could not produce any evidence, documentary or otherwise, as to the licit possession /acquisition/and/or importation of the said goods of foreign origin the Customs Officers seized the same. Thereafter they interrogated Shyamal Kumar Hadar and Subodh Halder and recorded their statements. From their statements it could be gathered that the petitioner and one Chinu engaged them at a remuneration of Rs.30/- each to carry the seized goods, which belonged to the petitioner and Chinu, from their respective houses to the brick-field of one Mannan. Accordingly, they took the goods to Mannan's brick field and lifted them in Truck No. WGQ 1626 under the directions of the petitioner and the said Chinu for being carried to Calcutta. It was arranged that the petitioner and Chinu would meet them on the way at Krishnanagore and from there they would go in the truck. However, they were apprehended at Bhagawangola. They further stated that the petitioner and Chinu were engaged in dealing with illegal goods for the last three years and they often observed that the petitioner and Chinu used to despatch and transport the smuggled goods by truck or private car.

3. The next incident referred to in the grounds of detention relates to interception of truck No. WGQ 1544 on 18.10.87 by the officers of Krishnanagore Customs Division near Dhubulia on National Highway No. 34. In the grounds it has been stated that at the time of interception four persons, namely, Dilip Halder, Abul Kashem, Nazir Hossein and Manglu Sheikh were found on board the truck which contained synthetic fabrics and yarns of foreign origin covered by broken bricks. As none of them could produce any evidence, documentary or otherwise, regarding possession/acquisition/transportation and/or importation of the goods the same were seized. The four occupants of the truck were then interrogated and it could be gathered that the petitioner was the owner of all those smuggled goods. One of the occupants, namely, Abul Kashem stated that on 14.10.87 the petitioner came to his residence for hiring his vehicle to carry some bricks and skins from Lalgola to Calcutta, that he later came to know from some persons that the petitioner was hiring his vehicle for carrying goods of foreign origin and that he (the petitioner)

was linked with smuggling activities all along. Abdul Eashern further stated that while he was in the vehicle he learnt from the conversation that was going on, that the goods were loaded in the vehicle under the supervision of the petitioner.

4. The grounds further indicate that Shyamal Halder who was apprehended in Truck No. WGQ 1626 on 3.8.87 made a further statement / before the Customs authorities that he (Shyamal Halder) was apprehended once earlier while he was carrying some synthetic fabrics of foreign origin owned by the petitioner in truck No. WGQ 1626 and that on October 17, 1987 the petitioner loaded another vehicle with foreign goods namely, synthetic Fabrics and yarns of foreign origin from the brick field of Md. Mannan at Lalgola and covered the said goods with broken bricks. The grounds also indicate that enquiry was conducted at Mannan's brick field at Lalgola and Mannan, the owner of the brick field, stated, inter alia, that some persons of Halder para led by the petitioner had been engaged in smuggling fabrics of foreign origin and that the petitioner very often loaded trucks with synthetic fabrics of foreign origin in the midnight under cover of broken bricks stolen from his (Mannan's) brick field.

5. According to the detaining authority, from the facts and circumstances appearing in the grounds of detention he obtained the satisfaction that the detention of the petitioner was necessary to prevent him from engaging in dealing in smuggled goods otherwise than, by engaging in transporting (emphasis supplied) or concealing or keeping smuggled goods.

Having considered the facts and circumstances constituting the grounds of detention we are constrained to say that the order of detention is patently bad. The grounds of detention clearly indicate that one of the modes in which the petitioner was dealing in smuggled goods was by transporting the same by trucks and private cars from the brick field of Mannan. The activities of the petitioner therefore, if the grounds of detention are to be believed, prove that he was actively engaged in transporting smuggled goods. Surprisingly, however, the order of detention specifically excludes such mode of dealing in smuggled goods by the petitioner. It must therefore be held that the detaining authority did not apply his mind at all while passing the impugned order. We therefore allow this application and make this Rule absolute.

Let the detenu be released forthwith and appropriate writ for the purpose issue.

Monoj Kumar Mukherjee, J.

I agree.