

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.05.2009

+ W.P.(CRL) 274/2009

BHAVNA MEHRA

..... Petitioner

- Versus -

UNION OF INDIA & ORS.

.....Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr Sidharth Luthra, Sr Advocate with
Ms Shyel Trehan, Ms Diya Kapur and
Mr Shri Singh

For the Respondents 1 & 2 : Mr K. K. Sharma

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The present writ petition is directed against the detention order dated 17.08.2001 passed by the respondent No. 2. The petition is also directed against the order dated 24.04.2007 whereby the petitioner's representation has been rejected.

2. After the passing of the detention order dated 17.08.2001, three representations had been moved on behalf of the petitioner on 14.12.2001, 31.01.2002 and 22.07.2002 before the detaining authority.

All the said representations were rejected. Although no rejection order had been sent to the petitioner. This fact is, however, clear from the counter-affidavit filed by the respondents.

3. Thereafter, the petitioner filed a writ petition being WP(Crl) 1451/2002 seeking the quashing of the detention order. By an order dated 29.10.2003 the said writ petition was disposed of. The operative portion of the said order reads as under:-

“In view of the judgments of the Hon'ble Supreme Court in Alka Subhash Gadia's case, Prem Singh's case & Subhash Muljimal Gandhi's case as interpreted and applied by the Full Bench of this Court in Manshuk Chhagan Lal Bhatt's case, we are afraid that the petitioner has failed to make out a case for challenge to the detention order at the pre-detention stage. We accordingly decline to grant the relief prayed for, that the order of detention be quashed.

A statement in the alternative was made by the learned counsel for the petitioner, in that, it was urged that under Section 11 of COFEPOSA a detenu had a right of making representation seeking revocation of the detention order before the same is executed and, therefore, in the alternative, directions be given to the detaining authority to consider the representations made by the petitioner on behalf of her husband and in particular to decide whether the order of detention is still justified in light of the events that have taken place since the order was passed, with specific reference to the quashing of the detention order or revocation of the detention order against 11 co-detenus.

This Court, in its judgment dated 2.11.1994 passed in Crl.W.No.222/1994 Manshuk Chhagan Lal Bhatt Vs.Union of India & Anr. held that if a representation is made to the detaining authority under Section 11, the detaining authority cannot say that as the detenu has not submitted himself to the detention order, it would not considered the representations. We accordingly direct that the detaining

authority should consider and dispose of the representation made by the petitioner on behalf of her husband against the detention order. However we may clarify that Hon'ble Supreme Court in its judgement reported as 1995(3) SCC 198 Hardhan Saha Vs. State of West Bengal held that an order under Section 11 which is communicated to the affected party need not contain the reasons for refusing to revoke the detention order. This position would hold good even in pre-detention cases. While deciding on the representations made by the petitioner, reasons for revoking or refusing to revoke the detention order need not be communicated. However, the detaining authority would record the reasons in its file.

The writ petition accordingly stands disposed of.”

4. Pursuant to the direction given by the then Division Bench, the petitioner filed a representation under Section 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) before the detaining authority for revocation of the detention order. As would be clear from the extracted portion of the order passed by the Division Bench, the detaining authority was to consider the said representation even prior to the execution of the detention order. The Division Bench clearly indicated that the detaining authority cannot say that as the detenu has not submitted himself to the detention order, it would not consider the said representation.

5. However, the said representation was rejected on 24.04.2007 as indicated by the memorandum of that date, which reads as under:-

“MEMORANDUM

With reference to her representation dated 3.3.2007 addressed to the Detaining Authority and the Central Government regarding the Detention Order made against her husband Shri Brij Mohan A. Mehra, COFEPOSA absconder. Smt. Bhavna B. Mehra is hereby informed that her representation has been carefully considered by the Special Secretary & D. G., CEIB, Deptt. Of Revenue, Ministry of Finance, New Delhi, but it is regretted that the same has been rejected. Shri Brij Mohan A. Mehra must first submit to the process of law in pursuance of the Detention Order issued against him and then seek remedies available to him under the Constitution of India & COFEPOSA Act, 1974.”

6. It appears from the said memorandum that one of the reasons for rejecting the representation was that the petitioner has not submitted to the process of law in pursuance of the detention order. The learned counsel for the respondent, however, submitted that the memorandum discloses that the representation was first rejected and the latter portion of the memorandum was only an advice to the petitioner. We do not agree with this submission. There was no occasion for the respondents to give unsolicited advice to the petitioner. The last sentence of the memorandum clearly indicates the state of mind of the authority rejecting the representation. That being the case, the rejection was on a ground which was not available to the respondents in view of the clear direction given by this Court by virtue of its order dated 29.10.2003. Consequently, we set aside the rejection order dated 24.04.2007 and direct the detaining authority to consider the representation of the petitioner afresh after taking into account the current state of law as

prevailing in India. As indicated by the learned counsel for the petitioner, the detaining authority, who considers the representation, ought to also examine the decisions of the Supreme Court in the case of **Deepak Bajaj v. State of Maharashtra & Anr.: 2008 (14) SCALE 62**, **Maqsood Yusuf Merchant v. Union of India & Anr: Crl. A. 1337/2008** and **Yusuf Razak Dhanani v. Union of India: WP (Crl) 132/2007** and a decision of this Court in **Gopa Manish Vohra v. Union of India: WP(Crl) 2444/2006** dated 10.02.2009, all of which have been rendered after the passing of the order dated 29.10.2003.

7. The petitioner is permitted to file a comprehensive representation within two weeks from today. The respondents are directed to take a decision on the said representation within eight weeks thereafter. Till the representation is decided, no coercive steps be taken.

The writ petition stands disposed of.

BADAR DURREZ AHMED, J

AJIT BHARIHOKE, J

MAY 25, 2009
SR