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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 202 OF 2022

Gulabidevi K. Choudhary
(Wife of Detenue)

... Petitioner

Karnaram Lumbaji Choudhary

... Detenue

V/s.

1. The Union of India,
through the Director General
Central Economic Intelligence Bureau

2. P.V Subba Rao,
The Joint Secretary (COFOPOSA)

3. The Directorate of Revenue
Intelligence

4. The State of Maharashtra,
through the Superintendent of Mumbai

5. The Superintendent of Taloja
Central Prison, Taloja, Navi Mumbai

... Respondents

Mr Farook M. Razack, Senior Advocate, Mr Kshitij Kumar,
Mr.A.M.Z. Ansari, Ms Nasreen Ayubi, Mr Faisal Farook and Mr
Shubail Farook i/b Ms Aisha Ansari for the Petitioner/Applicant.

Mr D.P. Singh for Respondent Nos.1 and 2.

Ms A.S. Pai, PP a/w. Ms M.H. Mahtre, APP for the
Respondent/State.

CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.
DATE : 28 JULY 2022.

ORAL JUDGMENT (*PER NITIN JAMDAR, J.*).

By this writ petition, the Petitioner - wife of detenue has filed this petition challenging the order of detention dated 8 March 2018, placing the detenue Karnaram L. Choudhary under detention. The order of detention was issued by Respondent No.2- Joint Secretary, Government of India, Ministry of Finance under Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act").

2. On 8 March 2018, a communication issued by Respondent No.2-Joint Secretary containing the grounds of detention and documents were served on the detenue. The detenue filed the writ petition to challenge the order of detention in the High Court at Delhi, and on 23 July 2018 stay was granted to the execution of the impugned order of detention. The stay was continued till 10 October 2019. Thereafter, detenue approached this court by filing Criminal Writ Petition No. 1623 of 2021, which was dismissed by this court on 19 June 2021. After that, the detenue surrendered on 10 January 2022, and the Petitioner challenged the detention order. Notice/Rule was issued on 23 February 2022.

3. The grounds on which the detention order was passed state that on 21 September 2017, a container that arrived from Thailand was scanned, and it found that it contained two woven bags, which contained bathroom slippers were abnormally heavy. When the soles of slippers were cut, gold bars were found. The statements were recorded, and material was collected. Based on it, the detaining authority concluded that the detainee played a vital role in abetting smuggling goods from Thailand, and he was a key operator. The detaining authority recorded satisfaction that the detainee has shown continued propensity and inclination to indulge in acts of smuggling in an organized manner and that the detainee ought to be detained under Section 3(1) of the COFEPOSA Act to prevent him from abetting in smuggling goods and dealing in smuggled goods in terms of Section 3(1) of the COFEPOSA Act.

4. Reply affidavits are filed by the Deputy Superintendent, Mumbai Central Prison, Mumbai and on behalf of Respondents Nos.1 and 2.

5. We have heard Mr Farook M. Razack, the learned senior advocate for the Petitioner and Ms A.S. Pai, learned PP for the Respondent/State.

6. The learned senior advocate for the Petitioner has pressed the ground of delay in deciding the representation and consequent

infringement of detainee's right under Article 22(5) of the Constitution of India. The learned senior advocate submitted that the delay has occurred at the inception with the jail authorities who have not forwarded the representation in time, consequently, delay in decision on representation leading to infringement under Article 22(5) of the Constitution of India. The learned senior advocate has relied upon the decision in the case of *Aslam Ahmed Zahire Ahmed Shaikh vs Union of India and ors.*¹ in support of his proposition.

7. In the petition, the Petitioner has asserted that the representation dated 20 January 2022 prepared on behalf of the detainee by his advocate with seven copies of the said representation to be sent to the authorities concerned was received by the jail authorities on 21 January 2022.

8. The reply affidavit filed by Dilipsingh Daberao, Deputy Superintendent, Mumbai Central Prison, Mumbai, stating that the representation of the detainee was in the name of Superintendent of Mumbai Central Prison, Arthur Road, Mumbai, was received on 27 January 2022. This affidavit was filed on 28 April 2022. The Petitioner has amended the petition and has asserted that the acknowledgment of speed post and tracking record placed on the record show that the representation was received about 21 January 2022. Amendment was carried out on 11 July 2022. To this

¹ (1989) 3 SCC 277

amended petition, an additional affidavit in reply was filed by Dilip Daberao on 18 July 2022. In this reply, the deponent has accepted that on 21 January 2022, the representation was received in the Jail Registry; however, the same was not forwarded, and the enquiry is going on as to why it was not so forwarded, and the same is pending. It is then stated that on 27 January 2022, seven more copies of the representation were received, which were forwarded on 21 January 2022. It is stated that in the letter forwarded to the Chairman, COFEPOSA Advisory Board, New Delhi, there is a reference to the receipt of representation on 27 January 2022.

9. Therefore, there is an evident change of stand by the jail authorities. Firstly, it was stated that the representation was received on 27 January 2022. When it was brought on record that the postal tracking report shows endorsement of representation received by the prison authorities on 21 January 2022, the jail authorities accepted the same. The only explanation given for not sending the representation is that enquiry regarding why it was not sent is pending. Therefore, there is no explanation for the delay of 7 days in forwarding the representation by the jail authorities.

10. In the case of *Aslam Shaikh (supra)*, the Hon'ble Supreme Court construed the identical fact situation of unexplained delay of 7 days on the part of the jail superintendent in transmitting the representation to the Central Government. The Hon'ble Supreme

Court observed that due to indifference and callous attitude on the part of the jail superintendent, the unreasonable delay occurred in transmitting the representation. The Hon'ble Supreme Court further observed that the jail authorities were merely an intermediary whose casual attitude caused undue delay in the disposal of the representation. The Respondents were not able to controvert this factual and legal position. In these circumstances, the detainee is entitled to succeed.

11. Writ Petition is allowed. The continued detention of the detainee being illegal is quashed and set aside, and he is set forth at liberty unless required in any other case.

12. Rule is made absolute in the above terms.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)