

06.10.2023
rpan/05

WPA (H) 68 of 2023
Sarfaraz Alam
– *Versus* –
Union of India & Others

Mr. Sandipan Ganguly,
Mr. Krishnendu Bhattacharya,
Mr. Ismail Zabiullah,
Mr. Priyankar Ganguly,
Ms. Neelanjana Ghorui
... for the Petitioner.

Mr. A. Mitra,
Mr. Pradyat Saha
... for the UoI.

Mr. Kaushik Dey,
Mr. Tapan Bhanja
... for the Respondent nos.3-5.

In invocation of the jurisdiction of this Court under Article 226 of the Constitution of India, the writ petitioner questions the sustainability of the detention order dated 5th September, 2023 issued by the respondent no.2 to detain one Sheikh Sirajul Haque *alias* Azad (in short, Sirajul), the brother-in-law of the writ petitioner.

Mr. Ganguly, learned senior advocate appearing for the writ petitioner submits that Sirajul was detained by virtue of an order dated 5th September, 2023 passed by the respondent no. 2 in exercise of the power conferred upon him under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short, COFEPOSA Act). Drawing our attention to sub-section (3) of Section 3 of the COFEPOSA Act and clause 5 of Article

22 of the Constitution of India, he contends that as per the legislative mandates incorporated in the aforesaid provisions, the respondents were required to communicate the ground of detention and provide the documents relied upon by the respondents to Sirajul as soon as may be after the detention, but ordinarily not later than five days and in exceptional case and for reasons to be recorded in writing, not later than fifteen days from the date of detention. He strenuously contends that although Sirajul was detained on 19th September, 2023 but no ground of detention was communicated nor have the documents relied upon been provided to Sirajul till date to afford him an earliest opportunity of making representation against the order of detention. He submits that the omission to comply with legislative mandates contained in the sub-section (3) of Section 3 of the COFEPOSA Act and clause (5) of Article 22 of the Constitution has rendered the order of detention and the detention itself illegal and hence, an appropriate direction may be given to produce the *corpus* of Sirajul and release him.

Mr. Dey, learned advocate appearing for the respondent nos.3-5 vehemently opposes the contentions canvassed by Mr. Ganguly. He submits that the writ petition has been filed suppressing the material facts. Drawing our attention of one 'Panchanama' dated 20.09.2023 prepared by one

Intelligence Officer, Directorate of Revenue Officer (in Short, DRI), Kolkata Zonal Unit, Kolkata and one letter dated 3.10.2023 addressed to the Superintendent, Presidency Correctional Home, Kolkata by Deputy Director, DRI, he contends that Sirajul was detained on 19th September, 2023 and on 20th September, 2023 Intelligence Officer had been to the correctional home to serve the grounds of detention and the documents relied upon by the respondent to justify such detention to Sirajul but he refused to accept those documents. He further submits that again on 3rd October, 2023, the Deputy Directorate of DRI made an attempt to serve those documents to Sirajul but again he refused to accept the same. The photocopies of the documents, as produced by Mr. Dey, is taken on record.

In reply, Mr. Ganguly submits that there might be any miscommunication in between the petitioner and the detenue. He submits that direction may be issued upon the respondents-authority to serve those documents to the wife of the detenue or to any of relatives of the detenue.

Heard the learned advocates and perused the materials placed before us.

From the documents, as produced, it is as clear as day that the respondents took attempt to communicate the grounds of the detention and the

documents relied upon by the respondents to justify the detention to Sirajul on two occasions and on both occasions, Sirajul refused to accept those documents. Thus, it cannot be held that the respondent-authority has acted in contravention of sub-section of Section 3 of Section 3 of the COFEPOSA Act and clause (5) of Section 22 of the Constitution of India. There is no material to lead us to infer that the detention of Sirajul is illegal owing to omission to comply with the legislative fiat incorporated in sub-section of Section 3 of Section 3 of the COFEPOSA Act and clause (5) of Section 22 of the Constitution of India. Consequently, there is no scope to issue any writ or and/or in nature of *habeas corpus* and any order or direction as prayed for by the writ petitioner.

In view thereof, the writ petition is, accordingly, dismissed, however, without any order as the costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)