

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 571 OF 2021**

Fazila Sayyed (wife of late Sayyed Hussain)

Madar @ Chand

... Petitioner

V/s.

Union Of India & Ors.

... Respondents

Ms. Aisha Z. Ansari for Petitioner.

Ms. M.H. Mhatre, A.P.P. for Respondent-State.

Mr. Shreeram Shirsat a/w. Mr. Amandeep Singh Sra & Anna Oommen for Respondent Nos.1 to 3.

Ms. Ruju R. Thakker a/w. Ms.Pruna Thakkar for Respondent No.5.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 1st February 2023.

P.C. :

1. By the present Petition, the Petitioner has impugned Detention Order dated 2nd May 2005 bearing No. F. No.673/10/2005 – Cus. VIII, passed by Respondent No.2-Detaining Authority.

2. Perusal of record clearly indicates that, the same Order was challenged by the Petitioner by way of Writ Petition (Crl.) No. 2459 of 2006 before the Delhi High Court. It is observed in the said Order that, the grounds on which the counsel for the detenu sought to elaborate but since only six days were left for completion of detention period, it might not serve useful purpose for which the Petition was filed. The Delhi High Court has

dismissed the said Petition as withdrawn by its Order dated 16th August 2007, with liberty to the Petitioner to raise all issues and question the Detention Order, in case any proceeding under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short, “said Act”) is initiated by the Respondents.

In this precise background, present Petition is filed assailing the same Detention Order dated 2nd May 2005.

3. Learned Advocate for Petitioner submitted that, in view of Clause (2) of Article 226 of the Constitution of India, this Court will also have jurisdiction to test the legality of the said Detention Order, which was earlier questioned before the Delhi High Court in the earlier round of litigation. The proceedings under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 is initiated by Respondents, within the jurisdiction of this Court. She therefore submitted that, this Court should exercise jurisdiction under Article 226 of the Constitution of India to test legality of the said detention Order.

4. We are unable to accept the said contention of the learned Advocate for the Petitioner. As noted earlier it is a fact on record that, the Petitioner had earlier assailed the same Detention Order dated 2nd May 2005 issued by Respondent No.2 before the Delhi High Court by way of Writ Petition (Crl.) No.2459 of 2006 and it was dismissed as withdrawn with liberty as sought for by the Petitioner. According to us, the liberty which is

granted to the Petitioner by the Delhi High Court is to prefer fresh Petition, in case of a subsequent event, before the same High Court itself and not before any other High Court. According to us, the Order of Delhi High Court dated 16th August 2007 is self eloquent and needs no explanation. Petitioner herein is misinterpreting and misreading the said Order of the Delhi High Court, as per his convenience. It appears to us that, the Petitioner has erroneously filed present Petition before this Court, which is not in conformity with the liberty granted by the Delhi High Court by its Order dated 16th August 2007.

5. In view thereof, learned Advocate for Petitioner seeks leave to withdraw present Petition with liberty to approach the Delhi High Court to impugn the said Order dated 2nd May 2005.

Leave and liberty granted.

6. Petition is disposed off as withdrawn.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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