

STATE OF U.P.

A

v.

SHAKEEL AHMED

NOVEMBER 28, 1995

[K. RAMASWAMY AND S.B. MAJMUDAR, JJ.]

B

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 : Section 3(1)(iii).

Detention Order—Sponsoring authority—Report of—Not supplied to detenu—Material relied in support of detention order furnished to detenu—Setting aside of detention order—Held not valid—Delay of one month in disposal of detenue's representation held not fatal on the facts and circumstances of the case.

C

A detention order passed against the respondent under section 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 was set aside by the High Court on the grounds that (i) there was delay in disposal of the *detenue's* representation; and (ii) non-supply of report of the sponsoring authority to detenu was violative or article 22(5) of the Constitution.

D

Allowing the State's appeal, this Court

E

HELD : It is not mandatory that the report of the sponsoring authority should be supplied to the detenu under Article 22(5) of the Constitution. It is only a material furnished to the detaining authority. In this case all the material on which reliance was placed for order of detention was admittedly supplied to the detenu. In the circumstances the delay in disposal of the representation of about 23 days also is not fatal. Therefore, the order of the High Court setting aside the detention order is clearly illegal. [738-D-F]

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G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1577 of 1995.

From the Judgment and Order dated 25.7.90 of the Allahabad High Court in W.P. No. 2029 of 1990 (H.C.).

H

A A.S. Pundir for the appellant.

The following Order of the Court was delivered :

Though the respondent has been served, he does not appear either in person or through counsel. Notice is sufficient.

B Leave granted.

C The respondent was detained on July 31, 1989 under Section 3 (1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. When he challenged the order of detention, the High Court in the impugned order dated July 25, 1990 made in W.P. No. 2029 of 1990 set aside the order of detention on the ground that the delay in non-consideration of the representation for one month, i.e., from February 20, 1990 to March 15, 1990, was not explained and also on the ground that copy of the report of the sponsoring authority had not been supplied to the *detenu* which violates Article 22 (5) of the Constitution. We are of the opinion that the High Court was not right in setting aside the order of detention on these grounds. It is not mandatory that the report of the sponsoring authority should be supplied to the *detenu* under Article 22 (5) of the Constitution. It is only a material furnished to the detaining authority. All the material on which reliance was placed for order of detention was admittedly supplied to the *detenu*. In the facts and circumstances of this case, the delay in disposal of the representation of about 23 days also is not fatal.

F Under these circumstances, the order of the High Court setting aside the detention order is clearly illegal. However, since the period has already expired, we do not think that it is a case warranting further detention of the respondent.

The appeal is accordingly disposed of.

T.N.A.

Appeal disposed of.