

PETITIONER:
UNION OF INDIA AND ANOTHER

Vs.

RESPONDENT:
VASANBHARTHI AND OTHERS

DATE OF JUDGMENT 01/03/1990

BENCH:
PANDIAN, S.R. (J)
BENCH:
PANDIAN, S.R. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1990 AIR 1216 1990 SCR (1) 742
1990 SCC (2) 275 JT 1990 (2) 36
1990 SCALE (1) 426

ACT:
Conservation of Foreign Exchange and Prevention of
Smuggling Activities Act, 1974: s. 3(1)--Detention
order--Detenu's relatives should be informed of the order of
detention and place of detention.

HEADNOTE:

The respondent was taken into custody in exercise of the powers under sub-s. (1) of s. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing him from engaging in transporting smuggled goods. In the special criminal application preferred by him the High Court held that the detenu's relatives were not informed about the detention order or about the place where the detenu was detained. Consequently, the order of detention was quashed and the detenu was directed to be set at liberty.

In this appeal by special leave, it was contended for the Union of India that the detenu was already an undertrial prisoner and his relatives had visited him at the jail within two days and, therefore, the non-communication of a written intimation about the fact of passing of the order of detention and of the place of detention in pursuance of the detention order had no significance, and as such the order cannot be said to be invalidated on that ground. Allowing the appeal, the Court,

HELD: 1. The family members of the detenu should not be kept in darkness by withholding the information about the passing of the order of detention and the place of detention thereby preventing them from having any access and from rendering any help or assistance to the detenu and similarly the detenu should not be deprived of the privilege of meeting their relations and getting any help or assistance.
[745C-D]

A.K. Roy v. Union of India, [1982] 1 SCC 271, followed.
In the instant case, however, the family members of the detenu
743

had sufficient knowledge about his detention by virtue of the mittimus issued as well the place of detention. The High Court was, therefore, not justified in setting aside the

order. [745D-E]

2. The matter is remitted to the High Court for consideration of the other contentions raised by the detenu. He shall not be taken into custody to serve the unexpired period of detention till the matter is finally disposed of. [745F-G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 750 of 1989.

From the Judgment and Order dated 11.4.1988 of the Gujarat High Court in Spl. Application No. 733 of 1987.

Kapil Sibal, Additional Solicitor General, A. Subba Rao and P. Parmeshwaran for the Appellants.

Vineet Kumar and M.N. Shroff for the Respondents.

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J. This criminal appeal preferred by the appellants, namely, Union of India and the Additional Secretary to the Government of India is against the judgment of the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 733 of 1987 dated 11.4. 1988 quashing the order of detention dated 19.6. 1987 passed by the second appellant in exercise of the powers under subsection (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing the first respondent, Vasanthbharthi Jivanbharthi from engaging in transporting smuggled goods. It seems that the first respondent (detenu) has challenged the detention on numerous grounds, one of which being that none of the members of his household had been informed of the passing of the impugned order of detention and of the fact that the detenu had been taken into custody and also of the place where the detenu was detained. This ground was only subsequently added by an amendment with the permission of the Court. The High Court holding that the detenu's relatives were not informed about the detention order or about the place where the detenu was detained in compliance with the observation by this Court in A.K. Roy v. Union of India, [1982] 1 SCC 271, concluded that the order has been vitiated by such non-compliance. Further, the High Court has rejected the plea of

744

the appellants that the relatives of the detenu knew about the detention order as well the place of detention and stated as follows:

"Hence if the relatives of the detenu have not been informed and even if from the record, it is found that the relatives had come to know about it from some source, the order of detention would most certainly be invalidated."

In the result, the order of detention was quashed and the detenu was directed to be set at liberty.

Mr. Kapil Sibal, the learned Additional Solicitor General has assailed the finding of the High Court stating that the respondent No. 1 (detenu) was already an undertrial prisoner and his relatives inclusive of his maternal uncle had visited him at the jail within two days and, therefore, that the non-communication of a written intimation about the fact of passing of the order of detention and of the place of detention in pursuance of the detention order have no significance, and as such the observation made in A.K. Roy's case can hardly be availed of by the detenu and the order cannot be invalidated on that ground. This plea is taken specifically in paragraph 21 and in Grounds I & II in

paragraph 23 of the Special Leave Petition. Besides the above stand taken in the SLP, the appellants have reiterated the same in paragraph 9 of the application for ex-parte stay of the Order of the High Court, the relevant portion of which reads thus:

"The affidavit in opposition was filed on behalf of the Union of India that the detenu was already under trial prisoner and his relatives in fact knew that and also that the maternal uncle had immediately, within two days, visited him at the jail. Therefore, it was not necessary to inform the relatives of his detention and place of detention, as contemplated in the decision of the Supreme Court reported in A.I.R. 1982 SC 710 (A. K. Roy's case)."

No counter is filed by the first respondent (detenu) in opposition to the above plea of the appellants.

In the above background, we shall now examine whether the High Court is justified in setting aside the Order for the reasons mentioned supra on the basis of the decision in A.K. Roy's case

The relevant portion of the observation in A.K. Roy's case reads thus:

745

"In order that the procedure attendant upon detentions should conform to the mandate of Article 21 in the matter of fairness, justness and reasonableness, we consider it imperative that immediately after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody. Intimation must also be given as to the place of detention, including the place where the detenu is transferred from time to time.

The object and purpose of the above observation, in our view, seem to be that the family members of the detenu should not be kept in darkness by withholding the information about the passing of the order of detention and the place of detention thereby preventing them from having any access and from rendering any help or assistance to the detenu and similarly the detenu should not be deprived of the privilege of meeting their relations and getting any help or assistance.

Coming to the present case, we are satisfied that the family members had sufficient knowledge about the detention of the detenu by virtue of the mittimus issued as well the place of detention. Therefore, no legitimate grievance can be made that there is contravention to the observation in A.K. Roy's case.

Hence for the reasons mentioned above, we are unable to agree with the view taken by the High Court and accordingly we set aside the impugned Judgment and remit the matter to the High Court of Gujarat for consideration of the other contentions raised by the detenu challenging the order of detention and to dispose of the case on its merit. We hope that the High Court will give priority to this matter and dispose of the same expeditiously.

Taking into consideration of the fact that the detenu is now enlarged consequent upon the judgment of the High Court which we have set aside, the detenu shall not be taken into custody to serve the unexpired period of detention till the matter is finally disposed of by the High Court.

The Criminal Appeal is disposed of accordingly.

P.S.S.

Appeal

allowed.

746

JUDIS