

CASE NO.:
Appeal (crl.) 340 of 2008

PETITIONER:
Principal Secretary to Govt. of A.P. & Anr

RESPONDENT:
N.Fairoz Khan & Another

DATE OF JUDGMENT: 19/02/2008

BENCH:
ASHOK BHAN & J.M.PANCHAL

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO.340 OF 2008
(Arising out of SLP(Crl.) No.1273/2006)

Leave granted.

Bhathurusaman Sheik, the detenu and brother in law of respondent No.1, was arrested on 30th October, 2004 at the airport on the ground that he was indulging in the smuggling activities. An order of detention was passed on 22nd November, 2004 by the Principal Secretary to the Government of Andhra Pradesh in exercise of the powers conferred by Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974(as amended), (for short 'the Act') for a period of one year (the maximum period provided under the Act) from the date of passing of the said order.

In a Habeas Corpus Petition filed by the brother in law of the detenu, the High Court, relying upon a judgment of this Court in the case of Rajesh Gulati v. Government of NCT of Delhi & Another, reported in (2002) 7 SCC 129, has held that since the passport of the detenu had been seized
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by the detaining authority, it is unlikely that the detenu could carry on with the smuggling activities. Accordingly, the High Court allowed the writ petition and quashed the detention order. It is also not disputed by the counsel for the appellants that the detenu had already remained under detention for a period of nine and half months approximately out of the maximum period of one year, as provided under the Act.

Respondent No.1 is not present despite service.

Keeping in view the facts and circumstances of the case and the judgment of this Court in the case of Rajesh Gulati (supra), we are of the opinion that a case for interference is not made out. However, we make it clear that the impugned order of the High Court is confined to the facts of the present case and this shall not be taken as a precedent in future.

The Appeal is dismissed accordingly.