

PETITIONER:
AHAMED MOHAIDEEN ZABBAR

Vs.

RESPONDENT:
STATE OF TAMIL NADU AND ORS.

DATE OF JUDGMENT: 28/04/1999

BENCH:
G.T. NANAIVATI, M SRINIVASAN, & N. SANTOSH HEGDE.

JUDGMENT:

NANAIVATI, J.

This petition is filed under Article 32 of the Constitution of India challenging the order of detention passed by the Government of Tamil Nadu, on 23.11.98, under Section 3 of the Conservation of Foreign Exchange and Preservation of Smuggling Activities Act, 1974. Pursuant to this detention order, the detenu was detained on 28.1.99.

It is not necessary to state the facts in detail as this petition deserves to be allowed on the ground that there was undue delay in passing the detention order. The order of detention has been passed as the detenu was found to be smuggling 23 gold biscuits weighing 2679.5 grams into India on 8.12.97 itself and again on 19.12.97 when his further statement was recorded. The contention raised by the learned counsel for the petitioner is that even then, the order of detention came to be passed as late as on 23.11.98, that is, after 11 months and 15 days. It was further submitted by him that the satisfaction of the detaining authority regarding the need to immediately detain him with a view to prevent him from continuing the prejudicial activity was therefore not genuine. He further submitted that because of this defect, the order of detention stands vitiated and the continued detention of the detenu should be declared as illegal.

In reply to this contention, the State Government in its counter has stated that the show cause notice was issued to the detenu under the Customs Act on 4.5.98 and the adjudication proceedings were over on 9.1.98. The State Government, therefore, did not proceed with the proposal till then and took up the proposal for consideration only thereafter. The order of the Ministry of Law in that behalf was obtained on 2.11.98 and the grounds of detention were framed on 18.11.98 and the order of detention was passed on 23.11.98. No other explanation has been given by the State Government for not passing the detention order earlier. The State Government has not

explained why it thought it necessary to wait till the adjudication proceedings before the customs authorities were over since that was not necessary for exercising the power under the COFEPOSA Act. In absence of any satisfactory explanation as to why the State Government did not exercise the power earlier, it has to be held that delay in passing the order of detention was unreasonable. It will also have to be held that the explanation of the detaining authority as regards immediate need of detaining the detainee was not genuine.

The order of detention therefore stands vitiated and is quashed hereby. The Writ Petition is allowed accordingly. The detainee is ordered to be released immediately, if not required to be kept in prison in some other case.