

1986 (23) ELT 396 : 1986 (9) ECC 167

**GUJARAT HIGH COURT**

**Hon'ble Judges:D.C.Gheewala and N.H.Bhatt JJ.**

Ahmed Yusuf Katchi And Ors. Versus Add.Secretary To The Government Of India

Special Criminal Application No. 440 of 1984 ; 441 of 1984 ; 449 of 1984 ; 469 of 1984 ;  
\*J.Date :- JANUARY 18, 1985

- [CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974](#)

**CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974.**

**KeyWords:** smuggling activities -

**Cases Referred to :**

1. Ashadevi V/s. Shivraj & Anr., AIR 1979 SC 447

**Equivalent Citation(s):**

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**JUDGMENT :-**

**N.H.Bhatt, J.**

1 These four petitions under Article 226 of the Constitution of India are filed for the release of four different detenus, who were detained under the provisions of the Conservation Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Though the four cases are distinct, they can be conveniently dealt with together because the background that resulted into their detention is one and common. The orders of detention are to be found at Annexure A in each of these petitions and the grounds at respective Annexure B. We say that the grounds of detention are almost the same because, as said by us above, the occasion for giving rise to the alleged satisfaction of the detaining authority is a single transaction, to which we shall advert immediately. It is alleged that on 10-2-1984, the son of detenu Ahmed Jelaila, who was the owner of a mechanised boat, styled as "Al-Anwar" engaged the service of one Mr. T. D. Francis, a driver of the launch, against the promise to pay him Rs. 15000 for a trip to Dubai and back. Said Mr. T. D. Francis readily agree. In the mean time, Ahmed Jaleila, the detenu of the special Criminal Application No. 440 of 1984, had sought clearance from Bombay in order to sail the boat to Dubai from Hey Bunder. The launch started its journey from Bombay on 10-2-1984 and reached O.N.G.C. point in Bhandar District. It was anchored there. Then said Ahmed Jaleila and one another man went there by one mechanised boat, contacted Mohmed Noormohmed, the tindal of Al-Anwar, had some talks with him and they went back. After about 15 minutes, Ahmed Jaleila returned to that Al-Anwar with three

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sailing boats, tinsel of which was Yakoobkhan Abdaskhan Pathan, the detenu of the Special Criminal Application 449 of 1984, and Shankerbhai Maganbhai, the detenu of the Special Criminal Application No. 449 of 1984, as one of the members of the crew. In those three sailing boats, the detenu of the Special Criminal Application No. 441 of 1984, Saujuddin Abdulla Shaikh, which we shall refer to by his nick name "Kanu Shaikh" hereinafter, and who had been at Bombay and who has also instrumental in purchase of this Al-Anwar a few days prior to 10-2-1984 was there. All these people got 65 bundles of snake skin loaded into Al-Anwar which then started its journey and thereafter this Kanu Shaikh and Ahmed Jaleila left the place. 65 bundles were successfully carried to Dubai and in the return trip, there were stored contraband goods worth Rs. 30 lac and odd, but on 29-3-1984, this Al-Anwar was intercepted by the Customs Officer, acting on the clue which they had received earlier. The members of Al-Anwar jumped into the sea, but two persons came to be rescued by the very Customs Officers. They are T. D. Francis and one Kasam Alna. Their statements of and those of various witnesses were recorded and ultimately the orders of detention came to be passed against these four persons on 29-6-1984 by the Central detaining authority, who was the Additional Secretary to the Government of India.

2 These matters were heard by us and various contentions were advanced before us. Those points need not detain us because, in our view, despite our agony upto their release as citizens of India, we find ourselves helpless in the matter. All these petitioners had filed writ petitions in the High Court in the month of April, 1984, asserting that they were innocent, that they had nothing to do with this Al-Anwar or the contraband goods and that they apprehended wrongful detention and exercise of coercion and undue pressure from Customs Officers at Surat and, therefore, they had filed four petitions requesting the Hon ble High Court to permit them to appear before the Customs Officers in the company of their Advocate. Obviously, in view of the settled legal position, the prayers were granted and, therefore, the writ petitions came to be withdrawn. The detaining authority applied its mind to various documents and reached the satisfaction to the effect that as far as Ahmed Jaleila and Saujiddin Abdulla Shaikh (Kani Shaikh), the petitioners of the Special Criminal Application Nos. 440 and 441 of 1984, were concerned, they were required to be detained in order to prevent them from carrying on smuggling activities while Yakoobkhan Abbaskhan Pathan and Shanorbhai Mangabhai were required to be detained with a view to preventing them from abetting smuggling. He found that there was almost no material from which Yakoobkhan, the detenu of the Special Criminal Application No. 449 of 1984, and Shankerbhai Mangabhai, the detenu of the Special Criminal Application No. 469 and of 1984, can be by any stretch of imagination be stated to be involved in the act of smuggling by way of abetment. However, we do not think it necessary to express any opinion on this count because the detention stands vitiated for not furnishing the copies of the writ petitions filed by each of these detenus in the High Court in the month of April, 1984 to the detaining authority, wherein they had asserted that they were innocent, they had nothing to do with this journey of Al-Anwar export of snake skins or material of any contraband goods. Unfortunately for the detaining authority and the sponsoring authority, this important document was not placed before the detaining authority and obviously, therefore, the copy of such a document was not furnished to the detenu also. What was furnished was only the High Court's order on those writ petitions. Those orders were read before us and we find that the High Court had only dealt with the prayers about the assistance of an Advocate when they were being interrogated by the Customs Officers. The copies of the writ petitions are annexed to these memos of these four petitions and they show that each of these petitioners long before their interrogation by the Customs Officers had asserted with vehemance and that too on oath that they were innocent, that they had nothing to do with Al-Anwar or its journey to Dubai and back or the export of

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snake skins or the import of contraband goods of substantial size and value. Unfortunately, this important document in act of these four petitions was kept back from the detaining authority. The detaining authority was required to consider the value of this assertion on oath made in the month of April, 1984, long before the proposal was made for their detention on 15-7-1984. This assertion may be discarded by the detaining authority as an interested version but its relevance as a document of some consequence and of some probative value for the purpose of the detaining authority cannot be ruled out. It is settled legal position that if a document material in the sense of its having the possible or likely effect on the ultimate satisfaction and conclusion of the detaining authority is kept back from the detaining authority, the satisfaction allegedly reached by him can be said to be vitiate. This is exactly what has happened in these four cases.

**3** Mr. J. U. Mehta, the learned advocate appearing for the respondents Nos. 1 and 2, could not dispute the fact that copies of these writ petitions were not furnished. His answer to this contention is two-fold. Firstly, he stated that the copy of the High Court's order served the purpose and when in the subsequent statements also the very stand of the detenu was there before the detaining authority, their earlier assertions would not have conveyed any force to the mind of the detaining authority, which sat to consider the cases of detention.

It is difficult to accept this argument. We have already stated above that the order of the High Court on those four petitions, which was shown to us, does not refer to this assertive part of the statements of these detenus. Secondly, it cannot be said that subsequent similar stand taken by these detenus was before the detaining authority, which the detaining authority in its jurisdiction was competent to cast aside. However, if the detaining authority had before it the fact that these detenus even on the earlier occasion before the public authority like the High Court had asserted on oath that they had nothing to do with this, it cannot be ruled out that with some hypothetical detaining authority such a circumstance might weigh. In this sense we can say that an important document has been kept back from the detaining authority, which is not permitted in view of the judgement of the Supreme Court in the case of Ashadevi V/s. K. Shivraj and Anr. 1979 S.C. 447, which is binding on all of us.

**4** Mr. Mehta's another argument was that the writ petitions were withdrawn and that obliterated those writ petitions from the scene. It is difficult to subscribe to this argument. The writ petitions were withdrawn, but along with their withdrawal, the assertions could not have been withdrawn. They reminded an important document and copies of those writ petitions were with sponsoring authorities, as is evident from order passed by the High Court. We fail to see why such an important document was kept back.

**5** In the above grounds, we have to quash the orders at Annexure 'A' in each of these petitions.

**6** The result is that the petitioners are allowed by quashing the orders at Annexure 'A' in each of these petitions, being dated 29-6-84 and the result would be that the consequential direction will be issued these detenus shall be released forthwith.

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