

1987 (1) Crimes(HC) 569

**GUJARAT HIGH COURT**

**Hon'ble Judges:D.C.Gheewala and J.P.Desai JJ.**

Latif Khamisa Versus State Of Gujarat

Special Criminal Application No. 731 of 1985 ;  
Special Criminal Application No. 160 of 1986 ; 188 of 1986 ; 189 of 1986 ; 191 of 1986 ;  
282 of 1986 ; \*J.Date :- APRIL 21, 1986

- [CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974](#) Section - [3\(1\)](#), [8](#), [9\(1\)](#)

**CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974 - S.3(1) - S.8 - S.9(1) - POWER TO MAKE ORDERS DETAINING CERTAIN PERSONS - ADVISORY BOARDS - CASES IN WHICH AND CIRCUMSTANCES UNDER WHICH PERSONS MAY BE DETAINED FOR PERIODS LONGER THAN THREE MONTHS WITHOUT OBTAINING THE OPINION OF ADVISORY BOARD - APPLICATION ALLOWED.**

**KeyWords:** Advisory Board - Detention order -

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**JUDGMENT :-**

**J.P.Desai, J.**

**1** These six Special Criminal Applications have been filed challenging the respective orders of detention passed on different dates, the detention having been ordered under sec. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the Act"). One of the grounds raised in all these Special Criminal Applications is common and that ground has appealed to us and, therefore, we are disposing of these Special Criminal Applications by this common judgment.

**2** The respective petitioners were detained by an order passed under sec. 3(1) of the Act. Thereafter in each of these matters a declaration under section 9(1) of the Act was made by the Additional Secretary to the Government of India, Ministry of Finance. The ground of challenge in all these petitions is that while making a declaration under section 9(1) of the Act, it was not mentioned in the order as to on what material the declaration was made, and that the material is still not disclosed to the petitioners so far. Even while communicating the detenus about rejection of their representations, they have not been informed on what material the declaration under section 9(1) was made. The authority making a declaration under section 9 of the Act having not informed the detenus as to on what material the declaration was made, the declaration under section 9(1) of the Act is vitiated, The learned

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Advocate Mr. S.D. Shah who appeared on behalf of the Union of India and the learned Addl, Public Prosecutor Mr. J.U. Mehta who appeared on behalf of the State of Gujarat in all these matters were unable to satisfy us as to how the declaration under section 9(1) of the Act could stand in view of the above infirmity in all these matters. In fact, the above position of law with regard to the declaration under section 9(1) of the very well settled so far as this Court is concerned. Different Division Benches of the Court have taken such a view in the following matters:

(1) Special Criminal Applications Nos. 691 to 698 and 700 to 704 of 1985, decided on 10.2.1986 by A. M. Ahmadi and D.H. Shukla. JJ.

(2) Special Criminal Application No. 11301 86 with Nos. 1131, 1133, 1134, and 1079 of 1986 decided on 8.4.1986 by G.T. Nanavati and R.I. Shah, JJ.

**3** So far as the detention of the petitioners is concerned, it appears that in all the matters, reference to the Advisory Board was made more than five weeks after the date of detention. In Special Criminal Application No. 731 of 1985, the order was passed on 20.10.1984, the petitioner was actually detained on 23.8.1985, the declaration under section 9(1) was made on 13.9.1985 and thereafter reference was made to the Advisory Board on 23.12.1985. It was thus more than 12 to 15 weeks after the detention that reference was made to the Advisory Board. In Special Criminal Applications Nos. 160, 188, 189, 191 and 282 of 1985, the detention order was passed on 16.10.1985, while the detenus were detained respectively, on 19.11.1985, 20.10.1985, 3.11.1985, 19.10.1985 and 21.12.1985. Reference to the Advisory Board was made in all these matters on 3.3.1986. Reference was thus made more than five weeks from the date of the actual detention. In the first four matters, reference was made about 12 to 14 weeks after the date of detention, while in the last matter i.e. Special Criminal Application No. 282 of 1986 it was made about ten weeks after the actual detention. The detention having been continued for more than five weeks without making a reference to the Advisory Board as required by the provisions of section 8 of the Act, the detention of the petitioners in all these materials is on the face of it illegal and is required to be quashed. We are not going in to any of the other grounds raised by the petitioners in these petitions because all these petitions succeed on this ground alone, viz. more than five weeks after the date of actual detention, section 9(1) of declaration having been found to be bad.

**4** As a result of the aforesaid discussion all these Special Criminal Applications are allowed, the respective orders of detention at Ann. 'A' are hereby set aside and each of the detenus is hereby ordered to be set at liberty forthwith if not required to be detained in jail for any other lawful purpose.

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