

## **Smt. Kalawati Gupta vs Union Of India (Uoi) And Ors. on 29 January, 1980**

**Equivalent citations: (1980)3SCC90, 1980(12)UJ522(SC)**

**Author: S. Murtaza Fazal Ali**

**Bench: A.D. Koshal, P.S. Kailasam, S. Murtaza Fazal Ali**

### **JUDGMENT**

S. Murtaza Fazal Ali, J.

1. This Petition by the wife of the detenu is directed against an order of detention dated 28th June, 1979 passed by the Additional Secretary to the Government of India under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA) on 27th June, 1979. The grounds of detention dated 28th June, 1979 were supplied to the detenu on the 30th June, 1979. We have gone through them and have heard Counsel for the parties at great length. We are satisfied that if the detention authority had considered the grounds carefully it would have it self been convinced that there was no material to justify the detention.

2. On a persual of the grounds of detention it is manifest that there is no allegation of the dentenu's direct or indirect participation in or connection with the recovery of the smuggled goods. It appears that the detenu was arrested as far back as 18th February, 1979 and was produced before the Chief judicial Magistrate on 14th February when he was released on bail. The prosecution wanted to the a complaint against the detenu under the Customs Act. Times was allowed and was extented right upto 15.11.79 when the complaint was filed. Before, however, the compliant could be filed the detenu received a summons from a Customs Officer Incharge of Prevention to appear before him as the 2nd July, 1979. It is rather interesting that even before the date of his appearance before the Customs Officer, the detenu was arrested on the 30th June, 1979 and the grounds of detention were served on him. A bare perusal of the grounds of detention would show that a house at 12 Rajab AH Lane, Calcutta was searched and certain articles in the nature of synthetic fabrics of foreign make, fountain pens and other articles were recovered, therefrom. The godown was in the occupation of Shri Dayararn Gupta who was a sub-tenant of the detenu who himself had taken the premises on rent from the real owner. Another allegation contained in the grounds of detention is that the smuggled goods were recovered from the godown at 27 Raja Ali Lane, Calcutta which belonged to the detenu and Ors. It was however clearly mentioned in para 12 of the grounds of detention that Dayaram Gupta had built the godown and was in occupation and control of the same Even from this para it appears that the detenu was not at all in occupation or control of the godowa. Similarly all the grounds served on the detenu did not contain iota of evidence to show that the detena had any

connection with the recovery of the smuggled goods. Even Mr. Sanghi who appeared on behalf of Union of India fairly conceded that the grounds alleged do not appear to have made out any ground of detention. At the most, Mr. Sanghi contended, the grounds merely disclosed that the detenu might have been joint owner of some of the premises along with other co-owners but that by itself is not sufficient to show possession or his connection with the recovery of the smuggled goods. In these circumstances the grounds taken ex-facio had not disclosed allegation which may bring the case of the detenu within the four corners of the COFEPOSA. We are rather surprised that in view of the self destructive nature of the grounds even the Advisory Board did not consider it fit to recommend the release of the detenu. In this case the detaining authority should have at least applied his mind to the grounds which he had himself set forth in support of the detention and should have further satisfied himself regarding the existence of some material indicating that the detenu was engaged in keeping smuggled goods and that his detention was therefore necessary to prevent him from indulging in such activity. For these reasons we allow this petition, set aside the order of detention and direct that the detenu be released forthwith.