

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN
&
THE HONOURABLE MR.JUSTICE T.R.RAVI
FRIDAY, THE 24TH DAY OF APRIL, 2020 /4TH VAISAKHA, 1942
Urgent Application No. of 2020
in
W.P.CRL. NO.68 OF 2020.

PETITIONER

JEETHA AGNES, AGED 44 YEARS, WIFE OF
FRANCIS, CHALICHAN HOUSE, KANNAMALY
P.O., KOCHI 682008.

BY ADVS: SRI C RAJENDRAN

SRI B.K.GOPALAKRISHNAN

RESPONDENTS

1. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO THE
GOVERNMENT OF INDIA, MINISTRY OF FINANCE, DEPARTMENT OF
REVENUE, NEW DELHI - 110001

2. THE JOINT SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF
FINANCE, DEPARTMENT OF REVENUE, 6TH FLOOR, 'B' WING, JANPATH
BHAVAN, JANPATH, NEW DELHI - 110001

3. THE SUPERINTENDENT, CENTRAL PRISON, POOJAPURA,
THIRUVANANTHAPURAM - 695012

4. SENIOR INTELLIGENCE OFFICER, DIRECTORATE OF REVENUE
INTELLIGENCE, COCHIN ZONAL UNIT, PALARIVATTOM, ERNAKULAM

BY GOVT.PLEADER, SRI.PP THAJUDHEEN.

W.P.Cr1.68/2020.

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ASGI , DAYA SINDHU SHREEHARI N.S. CGC.

SRI.S.MANU, GP

THIS UNNUMBERED URGENT APPLICATION IN W.P.(CRL)No.68 OF 2020
HAVING COME UP FOR ORDERS ON 24.04.2020, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

ORDER

T.R. Ravi, J.

The above Writ Petition (Cr1.) has been filed by the wife of the detenu, who is under orders of detention under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Ext.P1 is the detention order which was passed on 22.05.2019. Petitioner has moved an application seeking interim release of the detenu pointing out that similarly situated persons have already been released on the basis of the judgment of this Court in W.P.(Cr1.) Nos.377/2019 and 378/2019. It is contended that the above writ petition could not be heard and disposed of due to the countrywide lock down and that the detention period is to expire on 31.05.2020. Applications submitted under Section 11 of the COFEPOSA Act for revoking the detention order have been dismissed. Petitioner hence prays that the detenu may be released temporarily invoking the power under Section 12 of

the COFEPOSA Act.

2. We heard the counsel for the petitioner and the counsel for the respondents.

3. The counsel for the respondents contend that an application under Section 12 the COFEPOSA Act has to be primarily considered by the Government and the question of invoking the jurisdiction of the Court under Article 226 would arise only if there is an unjustifiable refusal of a request under Section 12 by the Government. Reliance is placed on the Constitution Bench judgment of the Hon'ble Supreme Court in **Sunil Fulchand Shah V. Union of India and Others [(2000) 3 SCC 409]**.

4. It is settled law that an application under Section 12 has to be primarily considered by the Central Government. It has been held by the Constitution Bench in the decision referred above that the Courts cannot exercise the power to grant temporary release of detenus having regard to the

express prohibition contained in sub-section (6) of Section 12 of the COFEPOSA Act. The Court further held that the bar of judicial intervention will not affect the jurisdiction of the High Courts under Article 226, to direct the temporary release of the detenu, where request of the detenu to be released on parole for a specific reason and/or for a specific period, has been, in the opinion of the Court, unjustifiably refused or where in the interest of justice such an order of temporary release is required to be made. The Hon'ble Supreme Court has also cautioned that the above jurisdiction has to be sparingly exercised and that even when it is exercised, it is appropriate that the Court leaves it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu.

5. With regard to the question whether an application under Section 12 of the COFEPOSA Act has been made by the petitioner, it is submitted by the counsel for the Central

Government that no such application is so far received.

6. In the circumstances, we are of the view that interest of justice will be served if the petitioner is permitted to submit an application under Section 12 of the COFEPOSA Act seeking interim release of the detenu, and, the Central Government is directed to consider and pass orders on such application within a period of two weeks from the date of receipt of the application.

7. We therefore direct the petitioner to submit an application under Section 12 of the COFEPOSA Act immediately. The application may be submitted through e-mail having regard to the present situation. A hard copy of the application shall be sent to the 1st respondent at the earliest. The 1st respondent shall, on receipt of the application via e-mail, consider and pass orders on the same, within a period of two weeks from the date of receipt of the application and communicate the order to the petitioner immediately.

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The Writ Petition (Cr1.) will be listed after three weeks for ascertaining the outcome of the request under Section 12 of the COFEPOSA Act.

**DEVAN RAMACHANDRAN
JUDGE**

**T.R.RAVI,
JUDGE**

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