

Detention order under COFEPOSA Act, 1974

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The **Madras High Court (HC)** recently quashed a **detention order** issued under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (**COFEPOSA**) Act, 1974, against a **practicing lawyer**.



[Ref- Legal India]

About the HC order:

- The order was passed by a **division bench** on a **habeas corpus petition (HCP)** filed by the petitioner through his advocate.
 - **Habeas corpus** (you may have the body) is a **writ** issued by a **court** directing one who holds another person in **custody**, to produce the person before the court for a specified purpose.
- There was pendency of **anticipatory bail petition**, while it had already been dismissed.
 - **Anticipatory bail** is a **direction** to **release** a **person** on bail, issued even **before** the **person** is **arrested**.
- The **preventive detention** order had been vitiated.

About the Preventive detention:

- It is an **action taken** by the **administration** on the **grounds of suspicion** that some wrong actions may be done by the person, **prejudicial** to the **state**.
- **Article 22** of the Constitution states that **every arrested person** who is **detained** in custody shall be **produced** before a **magistrate** within a **period** of **24 hours** (excluding time for journey), and shall **not** be in **custody** without the authority of a magistrate.
- **Article 22(4):** No law providing for **preventive detention** shall authorize the detention of a person for more than **3 months** unless an **Advisory Board** provides its **opinion**.
- **Article 22(3):** If the person is arrested or detained under preventive detention laws then **protection against** it provided under Article 22 (1) and 22 (2) **shall not be available**.
 - **Article 22 (1):** No person who is arrested shall be detained in custody without being **informed** of the grounds for such arrest **nor** shall he be **denied** the **right to consult**, and to be **defended** by, a **legal practitioner** of his choice.

- **Article 22(2):** Every **detainee** shall be produced before the **nearest magistrate** within **24 hours** of such arrest excluding the **time** taken for the **journey** & **no** such person shall be **detained** in **custody** beyond such period without the **authority** of a **magistrate**.

About the COFEPOSA Act, 1974:

- It provides for **preventive detention** in certain cases for **conservation** and **augmentation** of foreign exchange and **prevention** of **smuggling activities**, violating which may affect the **economy** and **national security**.
- Power to make orders are vested in **Central** or **state Government officer** or any **officer not** below the **rank of a Joint Secretary** in cases of abetment, transport, hiding, harbouring people **involved** in **smuggling goods**.
- **No detention order** shall be **invalid** or inoperative if the **detention** is **outside** the **territorial jurisdiction** of the concerned office.
- For **highly vulnerable areas** related to smuggling or related activities, it is necessary for the **effective prevention** and **violations** to provide for detention of concerned persons.
- Detention may be **longer** than **3 months** but **not** more than **6 months**, without obtaining the permission of **advisory board** in smuggling related cases.