

(1991) 04 DEL CK 0035

In the Delhi High Court

Case No : Criminal Writ Appeal No. 393 of 1990

Amarjit Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1991) 44 DLT 649 : (1991) 3 RCR(Criminal) 150 : (1991) RLR 261

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : Sangeeta Nanchaha, Gulab Chandra and B.D. Batra, for the
Appellant;

Judgement

V.B. Bansal, J.

(1) This writ petition under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure has been filed by Amarjit Singh with a prayer that the order of detention dated 6th June, 1990 be quashed and the petitioner be released forthwith.

(2) Briefly stated the facts leading to the filing of this writ petition are as follows:- On 26th January, 1990 Amarjit Singh petitioner arrived at Indira Gandhi International Airport, New Delhi from Dubai by Air India Flight and when he reached near the exit gate of the Customs Arrival Hall was intercepted by Customs Officer. An enquiry was made from him by the Customs Officer as to whether he was carrying any contraband items like gold or wrist watch. He replied in the negative. A similar enquiry was again made from the petitioner in the presence of two independent witnesses when he repeated his place of not carrying any contraband. The baggage of the petitioner when checked was not found containing any contraband. The petitioner, however, when checked with the help of the metal detector was found having some metallic substance near his rectum and on further detailed enquiry he admitted having concealed gold in

his rectum. The petitioner eased out two egg-shaped objects which on checking was found containing 10 pieces of gold which on weighing were found to be of 290 grams of 24 ct. purity. The petitioner was unable to produce any evidence documentary or otherwise about the lawful import of the recovered gold. The same was, Therefore, seized by the Customs Officer on a reasonable belief that it was liable for confiscation.

(3) Amarjit Singh was examined in terms of Sec. 108 of the Customs Act wherein he admitted the recovery of the aforesaid gold. He has also, inter alia, stated that the said gold was given to him by one Mohan, a cloth merchant in Dubai, which was to be collected by Mohan's man from his house and he was to be paid a sum of Rs. 4000.00 . It was further stated by him that he had gone abroad 11 times for bringing gold and he was earning about Rs. 2000.00 to Rs. 3000.00 per trip.

(4) The Administrator of Delhi considered all these facts including the fact of the petitioner having visited foreign countries i.e. Singapore and Dubai 11 times between 23rd November, 1989 and 24th January, 1990 and was satisfied that it was necessary to detain him under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter to be referred to as the Act) with a view to preventing him from smuggling goods and also preventing him from engaging in transporting, concealing and keeping smuggled goods. Accordingly an order dated 6th June, 1990 issued under the signatures of Mrs. A.C. Singh, Deputy Secretary (Home) Delhi Administration, Delhi. This order of detention was served on the petitioner on 10th July, 1990 and simultaneously grounds of detention along with documents supplied were furnished.

(5) I have heard learned counsel for the petitioner Ms. Sangita Nanchahal, learned counsel for Respondent No. 1 Mr Gulab Singh and learned counsel for respondents Nos. 2 and 3 Mr, B.D. Batra. I have also gone through the records.

(6) A number of grounds have been taken by the petitioner. Learned counsel for the petitioner has however, restricted her arguments only on one point, i.e. non-consideration of material documents by the detaining authority.

(7) Learned counsel for the petitioner has submitted that it is the admitted case of the respondent that the residence of the petitioner was searched when nothing incriminating was recovered and a panchnama in this regard was prepared. It has been submitted that this panchnama was a material document which has not been placed before the detaining authority, and thus, it has affected the subjective satisfaction of the detaining authority on account of which the petitioner has been prejudiced and, thus, a violation of the provisions contained in Article 22(5) of the Constitution of India. This plea has specifically been taken by the petitioner in ground No. 4. In the affidavit of Shri M.U. Siddique, Deputy Secretary (Home) Delhi Administration, Delhi plea taken up by respondent No. 2 has been that the panchnama showing "nil" recovery was not placed. The fact,

Therefore remains that the panchnama was not placed before the detaining authority for coming to a subjective satisfaction for passing the order of detention. As already referred to the case of respondent No. 2 has been that the petitioner was in the past also including in smuggling activities and perhaps it was with that view that the search of the residential premises of the detenu was conducted. Learned counsel for the respondents 2 & 3, has, however, submitted that there was sufficient material before the detaining authority for its subjective satisfaction by way of the recovery and it has not been effected by not placing before it the panchnama showing no recovery. He has, thus, submitted that the impugned order cannot be successfully challenged the ground.

(8) I have given my thoughtful consideration to this submission but have not been able to persuade myself to agree with the same. The detention order will certainly stand vitiated if a material document is not placed before the detaining authority at the time of consideration of the material for arriving at the subjective satisfaction for passing the detention order. This has been the consistent view of the Supreme Court followed by different Courts in India. Reference in this regard can safely be made to the case *Asha Devi v. Shiv Raj* 1979 S.C. 447.

(9) Learned counsel for the petitioner has submitted that this was a material document which could have shown that the "nil" recovery was indicative of the fact that the petitioner was not indulging in smuggling. The case of the respondents 2 & 3 has been that the petitioner was indulging in smuggling activities in the past also. It was perhaps for getting corroborative evidence of the fact that house search was conducted. This was, however, not substantiated. Had, this document been considered by the detaining authority, may be that it could come to the conclusion that it was not a fit case for detention May be detaining authority could still come to the conclusion that in spite of there being no recovery there was sufficient material for coming to the conclusion that the petitioner was indulging in smuggling activities and so it was necessary to pass the order of detention. In these circumstances, I am clearly of the view that it was a material and vital document which was required to be placed before detaining authority. Thus to my mind, the subjective satisfaction of the detaining authority stands vitiated on account of the non-consideration of the panchnama a material document showing "nil" recovery from the house search of the petitioner. I find support for. this view from the Cases *Ramavtar Moti Lal Jangid v. Union of India & Ors.* 1990 (1) C.C. Cas 479 *Maninder Singh v. Union of India & Ors.* 1990(2) DL 232 and *Bal Kishen v. Union of India*, Cr. W. 320/90 decided on 17th January 1990 and *Abdulla Kozukhal Assainar v. State of Maharastra* 1989 (39) E.L.T. 47 (Bombay). Therefore, I am clearly of the view that on this ground alone the order of detention cannot be sustained.

(10) In view of my aforesaid discussion the writ petition is allowed. Rule is made absolute .The detention order is quashed. Petitioner is ordered to be released forthwith, if not required in any other case.