

(1989) 04 DEL CK 0046

In the Delhi High Court

Case No : Criminal Writ Appeal No. 582 of 1988

Amrik Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 04-04-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1989) 2 Crimes 172 : (1989) 38 DLT 237

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Urmil Khanna, U.K.Sharma and Ratan Lal, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This petition has been brought under Article 226 of the Constitution of India read with Section 482, Criminal Procedure Code seeking quashment of the detention order dated September 5, 1988 passed by respondent No. 2 u/s 2(1) of the Cofeposa Act. One of the pleas raised in support of this petition is that petitioner could only read and write in Gurumukhi language but he had not been supplied the grounds of detention and the documents relied upon for passing the detention order in the language known to him and thus the first facet of the constitutional safeguard provided in Article 21(5) of the Constitution of India which requires that the grounds of detention be communicated to the detenu along with the order of detention stands violated which has the effect of vitiating the detention order.

(2) Shri S.K. Chaudhary, Under Secretary in the Ministry of Finance has filed the counter-affidavit in opposition to this writ petition and has pleaded that the detenu can understand Hindi and Punjabi languages and thus the order of detention and the grounds of detention including the copies of the documents

relied upon have been supplied to the detenu in the Hindi language and thus there has been no violation of the aforesaid constitutional provisions. It was nowhere controverted in the affidavit that the petitioner could write and read Punjabi language in Gurmukhi script. However, the averment of the petitioner that he could not write or read the Hindi language was not specifically controverted. It is pleaded that in the statements recorded by the officials that the petitioner had stated that he was illiterate who could understand only Hindi and Punjabi languages. There is no other material to show that the petitioner is illiterate. However, when a controversy has been raised that petitioner can only read the Punjabi language in Gurmukhi script while he cannot read and write any other language and if the said fact is proved then obviously a duty was cast on the detaining authority to have supplied the documents to the petitioner in Gurmukhi script.

(3) Be as it may, the learned counsel for the petitioner has pointed out that on the Arrest Memo, copy of which is at Page 57 of the Paper Book the petitioner had written in Gurmukhi that he had received the copy thereof indicating that the officials of the Directorate of Revenue Intelligence were well aware while arresting the petitioner that petitioner knew Gurmukhi script. Still the petitioner had not been supplied documents in that script. It has been pointed out by the learned counsel for the petitioner that petitioner had taken a plea in this writ petition that whatever has been recorded in his so called confessional statement is false and he had been only made to sign that statement which is not recorded in his hand-writing. So, the petitioner denies that he had made a statement admitting that he is illiterate and could understand only Hindi and Punjabi languages. The officials of the respondent were very well aware that petitioner had scribed on the receipt of the Arrest Memo in Gurmukhi script. There is nothing to show from any other material in possession of the respondents that petitioner did not have the knowledge of reading and writing in Gurmukhi script. So, it was incumbent upon the detaining authority to have supplied the grounds of detention and the copies of the documents relied upon to the petitioner in the Punjabi language in Gurmukhi script which the detaining authority had failed to do and thus there had not taken place the communication of the grounds of detention in the language known to the petitioner which violates the first facet of the constitutional safeguard given in Article 22(5) of the Constitution and hence the order of detention stands vitiated for this lapse.

(4) It is not necessary to deal with other points raised in the writ petition. I allow the writ petition, make the rule absolute and quash the continued detention of the petitioner and direct that he be set at liberty forthwith if not required to be detained in any other case. Parties are however, left to bear their own costs.