

(1991) 12 DEL CK 0048

In the Delhi High Court

Case No : Criminal Writ Petition No. 523 of 1991

Anil Sanan

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 04-12-1991

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 22(5)

Citation : (1992) 46 DLT 87

Hon'ble Judges : Sunanda Bhandare, J;Chander Mohan Nayar, J

Bench : Division Bench

Advocate : Ashok Arora, B.K. Saini and P.K. Jain, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) This petition under Articles 226 and 227 of the Constitution of India has been filed challenging the order of the Joint Secretary to the Govt. of India dated 29th July, 1991 passed u/s 3(1) of Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974. The petitioner was arrested by the Directorate of Revenue Intelligence on 17th July, 1991 when the officers of the Directorate of Revenue Intelligence intercepted two white Maruti Cars bearing No. DL-3C-B-3050 and DL-4C- 1957 in front of Cargo Complex, near Igi Airport, New Delhi. On search of Car No. DL-3C-B-3050 gold bearing foreign marking was recovered. The said car was driven by one Shri Ratnesh Sahai and the petitioner was sitting in the said car. It is alleged that the gold was given to the petitioner by one Shri Issac Samuel, Duty Manager of Ambassador Flight Catering Operation and he had in turn to hand over the said gold to Shri Rajinder Singh and Shri Harbhajan Singh. It is alleged that this gold was brought by a passenger Gurdeep Singh from Hongkong who travelled by Air France Flight No. AF-183 on 16th July, 1991. This flight was catered by Ambassador Catering Services and Shri Issac Samuel is employer of Ambassador Catering Services. The petitioner was produced

before the A.C.M.M., Delhi on 17th July, 1991 and remanded to judicial custody. The petitioner made a representation to the respondent on 14th August, 1991, Annexure-D to the petition. The petitioner sought certain documents from the respondent in order that he could make a representation to the respondent for revocation of the detention order. The petitioner also by the same representation asked for revocation of the detention order dated 29th July, 1991. The respondent rejected the representation on 21st September, 1991.

(2) It is submitted by the learned Counsel for petitioner that because of non supply of the documents asked for by the petitioner the petitioner was unable to make effective representation as contemplated under Article 22(5) of the Constitution. It is further submitted that there was unexplained delay in disposing of the representation. Learned Counsel for the petitioner relied on the D.B. judgment of this Court reported in *Govind Ram v. Union of India & 3 Others* 1985 (1) Cri 777, and submitted that if the detenu asks for certain documents they must be given to him in order that he is able to make effective representation. Learned Counsel submitted that failure to give the documents results in denial of the right to make an effective representation guaranteed under Article 22(5) of the Constitution of India. Learned Counsel for the petitioner submitted that the representation was made by the petitioner on 14th August, 1991. However, the respondent did not dispose of the same till 21st September, 1991. Thus, the respondent took over one month to dispose of the representation. 89

(3) The learned Counsel for the respondent however, submitted that the respondent was not required to give the documents like the flight manifest to the petitioner because these documents were not relied on by the detaining authority while making the detention order.

(4) A counter affidavit has been filed by the respondent and it is submitted that the representation is dated 19th of August, 1991 and not 14th August, 1991 as stated by the petitioner. It is, however, not denied that the representation was rejected by order dated 21st September, 1991. It is further stated that the documents were supplied by the Dri only on 13th September, 1991. Thereafter, the report was considered by the Joint Secretary, Cofeposa on 16th September, 1991 and forwarded to the Special Secretary and Do to the Minister of State, Revenue on 18th September, 1991 and on the same day the Minister of State Revenue sent it to the Finance Minister. The Finance Minister signed on 19th September, 1991 and rejected the said representation. Thereafter, the memorandum was issued on 20th September, 1991 which was communicated to the petitioner on 21st September, 1991.

(5) We find great force in the contention of the petitioner on the question of non supply of documents asked for by the petitioner vide the aforementioned representation. Undoubtedly, since the respondent states that the respondent had not relied on the documents for passing the detention order the respondent was not obliged to give the document along with the detention order. However,

since the petitioner had asked for the document specifically, in our view. It was obligatory on the respondent to supply the documents so that the petitioner could make an effective representation. This Court in Govind Ram's case (supra) has observed as follows :- "These documents were in the possession of the sponsoring authority and, Therefore, available to the detaining authority. The law on this point is settled. If asked for, the documents had to be supplied to the detenu to enable him to make an effective representation. It could be said that the detaining authority was not bound to supply these documents along with the grounds of detention because he had not relied upon them. He could not, however, deny these documents to the petitioner once he has asked for it." The Court has further observed that it was not necessary for the detaining authority to decide on the relevancy of the documents asked for by the petitioner.

(6) In the present case, the petitioner apart from some other documents, had asked for the passenger manifest of the flight on which Gurdeep Singh is alleged to have travelled to India from Hongkong. Learned Counsel for the petitioner submitted that the petitioner could show that Gurdeep Singh did not in fact travel on that flight. The respondent has not claimed privilege or stated that the document is secret or it is against public interest to supply the document. The respondent also does not say that the manifest is not available. We are, Therefore, of the view that the documents asked for by the petitioner ought to have been furnished to the petitioner and the non-supply of these documents has resulted in miscarriage of justice in as much as the petitioner was unable to make an effective representation as provided under Article 22(5) of the Constitution of India.

(7) Now coming to the question of delay in disposing the representation. We find that though the respondent has given some Explanation for the 90 delay in disposal from 13th September, 1991 to 19th September 1991 .there is no Explanation for the delay from 20th August, 1991 till 13th September, 1991. It is stated that the representation was long and it required detailed examination and, Therefore, the delay had occurred. We fail to understand why it should take so many days to give the comments. Learned Counsel for the respondent orally submitted that the investigation of the case took that long. This Explanation is far from satisfactory. In our view, the delay in disposing the representation is unreasonable. Article 22(5) of the Constitution of India requires that the representation should be expeditiously considered and disposed of without avoidable delay. If there is unreasonable and long delay and no Explanation is offered by the detaining authority, such delay would vitiate the detention order.

(8) In the circumstances, we allow the writ petition and quash the detention order dated 29th July, 1991 and make the Rule absolute. The petitioner will be released forthwith, unless required in any other case.