
(1988) 10 DEL CK 0035

In the Delhi High Court

Case No : Criminal Writ Appeal No. 222 of 1988

Aziz Ahmed

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-10-1988

Acts Referred:

Citation : (1989) 16 DRJ 10

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : Harjinder Singh and Rohit Kochhar, for the Appellant;

Judgement

Malik Sharief-ud-din, J.

(1) The petitioner who himself is a detenu has challenged the order of his detention dated 12th of January, 1988 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) by Shri K.L. Verma, Joint Secretary to the Government of India. This followed an incident dated 21st of November, 1987 when a narcotic smuggling ring was busted in New York pursuant to which the functionaries of the Narcotic Control Bureau in India were alerted and they started investigating links of various persons connected with the conspiracy to smuggle narcotics out of India and the manner in which it was being smuggled out. The petitioner was arrested as a part of this conspiracy after one Sukh Dev Singh and Narinder Vashnoi were found in hotel Ashoka and were found carrying the telephone number of the detenu. While the narcotic people were there the petitioner also arrived there and he was allegedly removed to the headquarters of the Narcotic Control Bureau located in Ranjit Hotel where some other persons connected with this conspiracy were also brought. There is no need for me to refer to any further details excepting the fact that during the course of investigation statement of the petitioner u/s 67 of the Ndps Act was recorded in which he indicated the role he was assigned in this conspiracy. As a necessary link to this conspiracy the premises of one Surendra Shantilal Shah at Bombay was also searched and from

the terrace of his house 2.5 K.Gs heroin were recovered. Statements of all the persons connected with this smuggling syndicate were recorded and on the basis

(2) Now before proceeding further, here at this stage I may take notice of the fact that on 24th of November, 1987 Surendra Shantilal Shah filed an application before the court at Bombay in which apart from seeking bail on the set of facts mentioned in the application he stated that his statement was taken by coercion and under duress and that it was involuntary. This is characterised by Mr. Herjinder Singh, learned counsel for the petitioner, as a retraction of the confession alleged to have been made by Surendra Shantilal Shah.

(3) The main contention of Mr. Herjinder Singh, appearing for the detenu, is that since the grounds of detention delivered to the detenu at para 25 clearly reveal that the detaining authority in making the detention order has also relied on the bail applications moved in the court by the detenu and his accomplice and also by the Ncb and orders passed thereupon he made a representation to the detaining authority on 22nd February, 1988 requesting him for supplying the retractions made by his co-accused. His contention is that the retraction of Surendra Shantilal Shah which he made in the bail application even though taken into consideration by the detaining authority while making the order of detention was not supplied to him on 23rd June, 1988 though in the case of his alleged accomplices it was supplied to them on 24th of May, 1988. It is thus stated that since the Advisory Board had met earlier and the order of detention had also been confirmed the detenu was prevented from making an effective and purposeful representation.

(4) Closely connected with this contention, another limb of the same argument is that this relevant material which was in fact relied upon by the detaining authority as is clear from the grounds of detention ought to have been supplied to the detenu *pari passu* with the grounds of detention but since it was supplied as late as 23rd June, 1988 there is a long delay in the supply of this document, even if it is assumed on the statement of the detaining authority that this document was only available with him on 24th of May, 1988 and not prior to that date.

(5) Now before I deal with the contention raised by Mr. Herjinder Singh I find it necessary to dispose of certain submissions made by Mr. Watel on behalf of the Union of India. The first contention of Mr. Watel is that the detenu for the first time asked for this document on 11th of May, 1988 and that it was supplied to him without any inordinate or unexplained delay. I am not in agreement with Mr. Watel for the simple reason that in the first representation dated 22nd of February, 1988 the petitioner, apart from others had asked also for retractions of the alleged co-accused. How this representation was ultimately dealt with will be examined in a subsequent para of this order. Mr. Watel also submits that even though the factum of Surendra Shantilal Shah having retracted the confession was known to the detaining authority the papers were not with him at the time the detention order was made. This, to my mind, does not improve the position

as this court in *Andrew Simon King v. Union of India and others*, 1988(1) Delhi Lawyer p. 50 (a Division Bench judgment) has held that the detaining authority is duty bound to take into consideration all these matters and it is the duty of the concerned authority to collect all the relevant material and place it before the detaining authority. I am not really able to understand the divergent stands that are being taken. In the grounds of detention the court is told that all these matters were considered which, according to my understanding, means that all this material was before the detaining authority but in the submissions made before the court it is stated that the detaining authority was aware of the fact, though the actual retraction was not before him. Lastly, Mr. Watel urges that this was not a relevant material at all for the simple reason that the detention of the petitioner was not made as a result of the statement of Surendra Shantilal Shah of Bombay and the detention of the petitioner was actually made on the basis of grounds 5, 6, 7 and 14 (wrongly as No. 13 for 14) of the grounds of detention. To me, this contention is unsustainable for the simple reason that the case being of conspiracy with its tentacles in Delhi, Bombay and U.S.A. spread all over and different persons performing different roles at different places having the same object of smuggling narcotics out of India. This is what I can find out after reading the grounds of detention in its totality. No part of the grounds of detention can be read in isolation, particularly in view of the fact that the entire efforts of the investigation were directed towards detecting the conspirators, their objective and their modus operandi.

(6) Now having disposed of the contentions raised by Mr. Watel, I may, with out hesitation, state that in a case such as this where a co-conspirator had retracted from his confession, it was necessary for the sponsoring authority to place the retraction before the detaining authority. How it would have affected the mind of the detaining authority is not for the court to speculate but one cannot rule out that it could have affected the mind of the detaining authority either of the ways. In the counter affidavit the stand taken by the respondents is that the allegations that bail application, order on bail application, were not considered by the detaining authority is wrong and it further submits that the said documents were considered but not relied upon. Now in a case such as this I have already pointed out that this retraction was a necessary and relevant piece of material and ought to have been placed before the detaining authority for arriving at a subjective satisfaction. In *Sk. Abdul Karim and Others Vs. State of West Bengal*, , the Supreme Court has held that the requirement of Article 22(5) of the Constitution also is that a detenu has a right to obtain information as to the grounds of detention and has also a right to make a representation protesting against the order of detention. The Supreme Court is further of the view that the authority to whom the representation is made must apply its mind to it as soon as it is made and, if necessary, take appropriate action. According to the law laid down by the Supreme Court, Article 22(5) of the Constitution must be taken to include by necessary implication the Constitutional right to a proper consideration of the representation made by the detenu.

(7) The fact of the matter is that mere ipse dixit of the respondents does not solve the problem. It is stated that this material was not relied upon. Obviously it is so said because the sponsoring authority did not care to supply this material to the detaining authority in time. Nobody says that this material was not relevant. Assuming though not granting for the sake of argument that this retraction of Surendra Shantilal Shah was not relevant the question that still arises is as to whether the detaining authority was duty bound to supply it to the detenu when asked for. I need not refer to the several judgments of the Supreme Court on the point. In this connection I may refer to a Division Bench judgment of this court in Jasbir Singh v. Union of India and others, 1988(1) Delhi 203 which itself is based on various observations of the Supreme Court in which this court has held :

"IT is well settled now that failure to furnish copies of documents to the detenu on which reliance has been placed by the detaining authority vitiates the detention. This court in a number of cases has further held that the copies of documents which have been referred in the grounds of detention but not relied upon by the detaining authority have to be supplied to the detenu if he seeks copies of the same. On such a request being made by the detenu, it is not for the detaining authority to conclude that the copies of documents sought for were not relevant even for the defense of the detenu. It is for the detenu to consider as to how he can show his innocence from these documents."

(8) Now the clear position in law is that even if a document is not relevant for the purpose of detention, but the detenu considers it relevant for the purpose of his defense and asks for the same it is to be supplied to him. In the present case, to say that the detention of the petitioner is not connected with the event of Surendra Shantilal Shah is untenable for the simple reason that this event has been taken into consideration as a part of the conspiracy and in the list of documents supplied to the detenu certain documents pertain ing to Surendra Shantilal Shah have been supplied to the detenu. I am Therefore, of the view that the failure of the sponsoring authority to place this document before the detaining authority does vitiate the subjective satisfaction and the non-supply of this document to the detenu on asking further vitiate the order of detention.

(9) Before parting with this order I may refer to the representation dated 22nd of February, 1988 made by the detenu in which apart from agitate ing the truthfulness and relevance of the grounds of his detention he had asked for the retractions of his alleged co-accused. It seems that this representation was received by the detaining authority on 23rd of February, 1988. A copy of this representation was also sent to the Central Government. The answer received to this representation from the detaining authority as also from the Central Government, in short, is that the representation has been carefully considered by the detaining authority/Central Government and it is regretted that the same has been rejected. One is baffled to find the type of consideration the representation of the detenu has received. This is the earliest possible representation which the detenu could make and at the earliest possible occasion apart from asking for

revocation of the detention order he has asked for certain important documents which, according to him, would enable him to make a further and proper representation to the Advisory Board. It seer that the representation has not at all been read by the authorities concerned else there was no earthly reason for the appropriate authority not to notice the fact that the detenu had demanded something and they would have in that connection informed him that either the document does not exist or that it will be supplied to him or it may have been supplied to him along with the order of rejection of his representation. Could it be said, Therefore, that there has been a proper consideration of the representation as laid down the Supreme Court in the case of Abdul Karim (supra). In my view, Therefore the representation of the detenu made on 22nd February, 1988 has also been casually dealt with which also vitiates the order of detention. Nothing further requires to be said. On the basis of the above observations I allow this petition and quash the continued detention of the detenu. The rule is made absolute and the detenu shall be released forthwith unless required in so other case.