
(1999) 12 DEL CK 0004

In the Delhi High Court

Case No : Criminal Writ Petition No. 622 of 1999

Brahm Prakash

APPELLANT

Vs

Lt. Governor and Another

RESPONDENT

Date of Decision : 23-12-1999

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
National Security Act, 1980 — Section 3(2)

Citation : (2000) 86 DLT 405 : (2000) 56 DRJ 375 : (2001) 2 RCR(Criminal) 308

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : R.M. Bagai, for the Appellant; K.C. Mittal, Standing Counsel (Criminal), for the Respondent

Final Decision : Allowed

Judgement

R.S. Sodhi, J.—The Commissioner of Police by his order dated 29th April, 1999, was satisfied, that with a view to preventing Mr. Brahm Prakash, son of Mr. Rishal Singh, resident of A-75, Shankar Garden, Vikas Pun, New Delhi, aged about 45 years, from acting in any manner prejudicial to the maintenance of public order, it was necessary to make an order directing that Brahm Prakash be detained. Consequently, while exercising powers conferred vide Sub-section (2) of Section 3 of the National Security Act, 1980 (for short "the Act") as delegated to him vide Government of National Capital Territory of Delhi's Order No. F.2/1/88/HP11 (Pt)/2125, dated 16th April, 1999, directed that Brahm Prakash be detained and kept in Central Jail, Tihar, New Delhi.

2. The aforesaid order was scrutinized in accordance with law by the Lt. Governor of the National Capital Territory of Delhi, who, being satisfied on perusal of the grounds of detention and other material placed before him that it was necessary to detain Brahm Prakash with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, in exercise of powers conferred upon him by Sub-section (4) of Section 3 of the Act approved the

order of the Commissioner of Police dated 29th April, 1999 detaining Brahm Prakash and further directed that Brahm Prakash be kept in custody in Central Jail, Tihar, New Delhi.

3. Pursuant thereto, the petitioner, Brahm Prakash, was detained on 8th May, 1999. He was supplied with the detention order as also the grounds of detention.

4. The petitioner, on 31st May, 1999, made a representation against his detention to the Commissioner of Police as also to the Central Government. The representation made to the Commissioner of Police was considered and rejected on 11th June, 1999, while that, made to the Central Government, was considered and rejected on 16th June, 1999.

5. The matter thereafter was placed before the Advisory Board which opined that there was sufficient cause for the detention of Brahm Prakash, The Lt. Governor after considering the report of the Advisory Board along with the material placed before him, in exercise of powers conferred u/s 12(1) of the Act, confirmed the aforesaid order of detention in respect of Brahm Prakash and further detained, u/s 13 of the Act, that Brahm Prakash be detained for a period of 12 (twelve) months from the date of his detention, i.e. 8th May, 1999.

6. The petitioner, Brahm Prakash, thereafter by this petition under Article 226 of the Constitution has challenged his continued detention on grounds inter alias :

(a) That the representation was not dealt with in accordance with law inasmuch as there was no application of mind by the Detaining Authority.

(b) That the Detaining Authority was bound to supply documents in a language in which the detenu was well conversant. Failure to do so was fatal.

(c) That the Lt. Governor while considering the representation of the petitioner was unduly influenced by the order rejecting the representation of the petitioner by the Commissioner of Police. The petitioner was also critical of material facts having been suppressed and, Therefore, complained of breach of Article 22(5) of the Constitution.

(d) That there was undue delay in passing the detention order.

(e) That the grounds supplied do not constitute breach of public order.

7. In the pleadings before us in ground (G) the petitioner has stated that:

"several documents supplied to the petitioners are totally illegible and as such un-understandable by the petitioner besides the petitioner has been supplied with several documents in English in which he is not well conversant. It is submitted that the petitioner has studied up to XIth Class in a Hindi medium school in his native village in Haryana and as such he is not conversant with the English language. It is time and again held by this Hon"ble Court and by Hon"ble Supreme Court of India that the Detaining Authority is bound to supply the documents in a language understandable by the detenu. Thus there is breach of

the mandatory requirements under Article 22(5) of the Constitution of India, Therefore, the detention order is liable to be set aside on this ground alone."

8. In the counter-affidavit filed on behalf of the State, it is stated as follows :

"The contents of para 4 are wrong and denied. The petitioner has admitted that he is educated up to 11th Class from Haryana and is not conversant with the English language. It is not correct that English language is being read in Haryana to the students from 6th Class. However, a copy of detention order, grounds of detention and all the copies of FIR have been provided to the petitioner in Hindi and English languages. Only copies of orders issued by the Hon"ble Courts from time to time with regard to the cases to his criminal activities and what he has already submitted to the Court have not been provided to him."

9. It was stated at the bar that while considering the representation of the petitioner for supply of documents/material in Hindi, the Detaining Authority had given heed to the request and supplied grounds of detention and the FIRs in Hindi but the other material which formed the basis of the grounds of detention were not supplied to him in Hindi.

10. We have given our careful thought to the contentions of both the parties and are of the opinion that all documents, statements and other material incorporated in the grounds of detention by reference and which have influenced the mind of the Detaining Authority in arriving at the requisite subjective satisfaction, must be furnished to the detenu in a script or language that he understands and failure to do so would amount to breach of the duties cast upon the Detaining Authority under Article 22(5) of the Constitution. The Detaining Authority having partially acceded to the request of the detenu to supply him grounds of detention and the FIRs in Hindi but failed to supply other material in a language understood by the detenu. The continued detention of the detenu would, Therefore, be bad.

11. For the above, we draw upon the Supreme Court in Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher alias Iqbal alias Gulam Vs. State of Gujarat and Others, , wherein the Supreme Court while deciding the question of delay in furnishing grounds of detention as also supplying material in a script or language which is understood by the detenu framed the following proposition:

"All such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the Detaining Authority under Article 22(5) of the Constitution."

The Court thereafter went on to hold that:

"Preventive detention is serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person

preventively detained and Therefore, in preventive detention jurisprudence whatever little safeguards the Constitution and the enactment authorising such detention provide assume utmost importance and must be strictly adhered to...All these, in our view, are material documents which have obviously influenced the mind of the Detaining Authority in arriving at its subjective satisfaction and these are all in a script or language not understood by the detenu, and Therefore, the non-supply of Urdu translations of these documents has clearly prejudiced the petitioner in the exercise of his right to make an effective representation against his detention and hence the safeguard contained in Article 22(5) is clearly violated."

12. In the present case, the non-supply of the material to the detenu in Hindi cannot justify his continued detention. Since we are quashing the detention order on this ground, the other grounds canvassed before us need not detain us.

13. Having regard to the above discussion, it is clear to us that the continued detention of the petitioner is bad in law. Consequently, the writ petition succeeds, the Rule is made absolute and the detention order dated 29th April, 1999, is quashed. The petitioner be released for forthwith, if not wanted in any other case.