

**(1991) 12 DEL CK 0050**

**In the Delhi High Court**

**Case No : Criminal Writ Appeal No. 31 of 1991**

Cypriain Duruaku

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision : 18-12-1991**

**Acts Referred:**

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)  
Constitution of India, 1950 — Article 226  
Criminal Procedure Code, 1973 (CrPC) — Section 482

**Citation : (1992) 47 DLT 170**

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

**Bench : Single Bench**

**Advocate : Rohit Kochhar and Sashi Kiran, for the Appellant;**

## **Judgement**

V.B. Bansal, J.

(1) This order is to dispose of a petition under Article 226 of the Constitution of India read with Sec. 482 of the Code of Criminal Procedure by the petitioner praying for issuance of a writ of habeas corpus quashing the order of detention dated 14/02/1990 passed by respondent No. 2 under Sec. 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 (for short the Act) and also for quashing the declaration dated 8/03/1990 passed by Shri K. Prakash Anand, Addl. Secretary to the Govt. of India, respondent No. 3 and that the petitioner may be ordered to be released forthwith.

(2) On 14/02/1990 Smt. Nisha Sahai Achutchan, Joint Secretary to the Government of India, and a specially empowered officer under Sec. 3(1) of the Act passed an order that the petitioner be defamed and kept in custody in the Dum Dum Central Jail, Calcutta with a view to preventing him from engaging in the possession and export from India of Narcotic Drugs. This order was served upon the petitioner on 22/02/1990 when he was already in custody. The grounds of detention along with the documents relied upon were also made available to

him.

(3) The allegations against the petitioner, briefly, stated, have been that on 25/11/1989 he was found in possession of 2.8 kgs. of heroin which was kept concealed by him in his baggage and had not been declared. He was arrested on 25/11/1989 produced in the Court of CJM Barasat and has been in custody under different orders of remand by the concerned Court.

(4) On 6/03/1990 Shri K. Prakash Anand, Additional Secretary to the Government of India, a specially empowered officer by the Central Government passed a declaration to the effect that he was satisfied that the petitioner was likely to engage in illicit traffic, i.e. possession and export from India of Narcotic Drugs out and through the Customs Airport at Calcutta which was an area highly vulnerable to such illicit traffic as defined in Explanation I to Section 10(1) of the Act. In pursuance of this declaration an order dated 23.5.90 was passed by the Central Government issued under the signatures of A.K. Roy, Under Secretary to the Government of India that the petitioner be detained for a period of two years with effect from 22/02/1990.

(5) A number of grounds have been taken by the petitioner challenging his detention. Learned Counsel for the petitioner has, however, restricted his submission to one ground.

(6) Learned Counsel for the petitioner has submitted that after the issuing of declaration against the petitioner he was not informed by the appropriate authority that he had a right of making a representation against the said declaration on account of which the petitioner has been deprived of his valuable right to challenge the said declaration. He has also submitted that it was on this account and the petitioner being ignorant he could not exercise his right of making a representation against the said declaration on account of which the detention of the petitioner cannot be sustained. This plea has specifically been taken by the petitioner in para Xx (iii) of the grounds .

(7) I have gone through the reply in the counter-affidavit of the respondent in which this plea has not been denied. Learned Counsel for the respondent when asked could not controvert the claim of the petitioner that the petitioner was not made aware of his right of making a representation against this declaration. All that has been submitted by learned Counsel for the respondent was that the declaration was made by the competent authority in exercise of the powers under Sec. 10(1) of the Act and no fault could be found against the said declaration. I am afraid this may not be the answer to the argument and the simple question to be answered by the learned Counsel for respondent was as to whether the petitioner was made aware of his right of making a representation against the declaration. A perusal of the aforesaid declaration makes it abundantly clear that there is no mention in it that the petitioner could make a representation against this declaration. There is nonmaterial on behalf of the respondent to indicate that the petitioner was made aware of such a right even

subsequent to the making of this declaration.

(8) Learned Counsel for the respondent has also not controverted the claim of the petitioner that no representation at all has been made by the petitioner against this declaration. Thus, there is no dispute with regard to the factual position, namely that the petitioner was not made aware of his right of making a representation against the declaration and no representation at all has been made by the petitioner against such a declaration.

(9) The short question now for consideration is about the effect of the petitioner being not made aware of such a right. Case *Shri Jagprit Singh. v. Union of India & Ors.* JT 1990 (3) S.C. 293 is a judgment on all fours in favor of the case of the petitioner. It has specifically been held by the Supreme Court that a detenu has a right of being informed that he can make a presentation against the declaration and if not made aware or if there is a delay in making him aware of such a right it would be inconsistent with the provisions of Article 22(5) of the Constitution of India and, thus, the detention beyond the original period of one year would not be justified. This judgment has been followed by this Court in numerous cases including *Gurmeet Singh v. Union of India & Others* 1990 (3) DL 221; *M.A. Pocket Haji v. Union of India & Ors.* 1990 (3) DL 170 and *Mohan Lal v. UOI & Ors.*, Cr. W. No. 288 of 1990 decided on 4/02/1991.

(10) It is, thus, clear that the continued detention of the petitioner in pursuance of this declaration cannot be sustained.

(11) As already referred to the petitioner was detained on 22/02/1990 in pursuance of the detention order dated 14/02/1990. The period of one year of detention has already lapsed. In these circumstances, the petitioner has a right to be released.

(12) In the circumstances, the writ petition is allowed. Rule is made absolute. Continued detention of the petitioner in pursuance of the declaration dated 8/03/1990 and order of confirmation dated 23/05/1990 cannot be sustained. The petitioner is ordered to be released forthwith, if not required in any other case.