

(1991) 08 DEL CK 0085

In the Delhi High Court

Case No : Criminal Writ No. 260 of 1991

Deepak Bhagnani @ Dipu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-08-1991

Acts Referred:

Citation : (1992) 37 ECC 84

Hon'ble Judges : A.B. Saharya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun B. Saharya, J.—By this petition the petitioner has prayed for a writ of habeas corpus for quashing his detention in pursuance of an order dated 29th of January 1991 issued u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Regulation Act, 1974 (sic) (hereinafter referred to as the Act) by Shri Mahendra Prasad, an officer specially empowered by the Central Government.

2. The detention order was served on the petitioner, while he was already in custody in connection with his prosecution under the Customs Act, on 31st of January 1991. The grounds of detention and some relied upon documents were given to him on 4th of February 1991. Later, by a memorandum dated 7th of February 1991, some additional documents relied upon by the Detaining Authority were also supplied to him.

3. In the writ petition, the impugned order has been challenged on various grounds. At the time of hearing, however, learned Counsel for the petitioner has pressed only one of them and as such, it is unnecessary to refer to the other grounds or even to the facts and circumstances of the case in which the petitioner was detained.

4. Counsel for the petitioner has contended that all the relied upon documents should have been supplied to the petitioner along with the grounds of detention

within the prescribed period u/s 3(3) of the Act and that some of the relied upon documents having been supplied later, the petitioner's detention is illegal.

5. This plea has been taken in para 5 of the writ petition as follows:

The petitioner says and submits that he was not served with complete copies of the relied upon documents within prescribed statutory period of 5 days and in exceptional circumstances within 15 days after the recording the reasons thereof. The order of detention was served on the petitioner on 31st January, 1991 and documents were supplied to him only on 16th February 1991 (wrongly typed as 16th January 1991) at 5.35 P.M. which makes the detention illegal, being violative of provisions of the Act and Article 22(5) of the Constitution of India. Copy of the Memorandum dated 7th of February 1991 purported to be signed by Shri Mahendra Prasad, Joint Secretary to the Government of India is enclosed herewith and marked as Annexure "D?".

6. In the counter-affidavit filed on behalf of respondent No. 1, it is stated:

With respect of para 5, I say that the petitioner was served with documents and grounds of detention within a statutory period of 5 days from the date of his detention i.e. 31.1.1991 and some additional documents were supplied on 14.2.91 viz., within a period of 15 days from the date of his detention. It is submitted that under some exceptional circumstances the time limit of 15 days was extended by the Ministry and the same was communicated to the detenu by a letter dated 7.2.1991. Thus, the contention raised by the detenu is denied and disputed.

7. No doubt, the additional documents were supplied within the period of 15 days by memorandum dated 7th of February 1991. Reason for the extra time taken in supply of the additional documents is stated to be that the translation of those documents into a language known to the detenu had taken some time. This Explanation given in the said memorandum is far from satisfactory as it is not the case of any one that the original documents were in a language which was not known to the detenu which may have necessitated the translation thereof into another language also known to him.

8. In any event, if all the relied upon documents are not supplied along with the grounds of detention, that by itself would vitiate the detention. The period prescribed u/s 3(3) of the Act relates to the supply or communication of the grounds and it has no reference to the documents and material on which the detention order has been made.

9. In *Sunil Dutt Vs. Union of India (UOI) and Others*, , the detenu was arrested and detained on 11th of July 1980 pursuant to a detention order dated 9th of July 1980 and on the very date on which he was detained i.e. on 11th of July 1980, grounds of detention were supplied to him. However, copies of the documents and statements relied upon by the detaining authority on the basis of which the grounds of detention were made out, were served upon the detenu on

19th of July 1980. In these circumstances, the detention was set aside by the Supreme Court. The legal position in law was explained by Tulzapurkar, J. thus:

It is true that under Sub-section (3) of Section 3 of the COFEPOSA Act it is provided that for the purpose of Article 22(5) of the Constitution, the communication to a person detained in pursuance of the detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention. This provision under which five days" period in normal circumstances and fifteen days" period in exceptional circumstances has been provided relates to the supply or communication of the grounds on which the order of detention has been made to the detenu. It has no reference to the documents and material on the basis of which the detention order has been made and it is quite clear that there is no reason why the documents and materials in support of the grounds on the basis of which the detention order has been made, the same being ex hypothesis in existence at the lime of the issuance of the detention order and framing of the grounds, should not be supplied to the detenu....

10. In the present case, non-supply of all the relied upon documents along with the grounds of detention, and supply of some of those documents later, clearly amounts to a violation of the safeguard guaranteed under Article 22(5) of the Constitution. Therefore, it is found that detention of the petitioner is illegal and void.

11. Consequently, the writ petition is allowed, Rule is made absolute, and the impugned order of detention is set aside. The petitioner should be released forthwith, unless he be required to be kept in custody for any other cause. No costs.