

(1988) 10 DEL CK 0023

In the Delhi High Court

Case No : Criminal Writ Appeal No. 255 of 1988

Diwan Singh Verma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-10-1988

Acts Referred:

Citation : (1988) ILR Delhi 414

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

Bench : Single Bench

Advocate : R.M. Bagai, Sunil Bagga and Madan Lokur, for the Appellant;

Judgement

Malik, J.

(1) The petitioner has challenged his detention made pursuant to a detention order dated 7th of March 1988 passed by the Government of India u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short Cofeposa Act).

(2) This followed an incident dated 28th of February 1988. The allegations on the basis of which the detention was ordered are that one Tariq from Dubai used to send gold to one Mohammed Akram Chaudhary in Pakistan. Mohammed Akram Chaudhary used to hand over this foreign made gold at Amritsar Border to one Sukha Pahalwan and Hardayal alias Dayala. They in their turn used to give it to one Vinod Kumar alias M.P. and Vinod used to carry the gold in truck to Delhi and give it to the detenu Diwan Singh Verma and co-detent Raghbir Prasad Sharma. "These two in their turn used to dispose of the gold in Agra and Mathura.

(3) On 28th of February 1988 one Maruti car No. Ddq 6910 was intercepted at Delhi Haryana border at Faridabad. There were four persons Narinder Pal Singh, his wife, co-detent Raghbir Prasad and a child traveling in that car from which 200 gold biscuits were alleged recovered. Thereafter, 79 more gold biscuits were recovered from a place at Pahar Ganj, allegedly to be in the possession of detenu Diwan Singh. In all, there were six persons involved in the whole incident and all

the six persons were examined and their statements recorded on 29th of February 1988.

(4) On 1st of March 1988 the premises of the detenu at Mathura and the premises of co-detent Raghbir Prasad at Hathras were searched and 10 documents were recovered there from. On 29th of February 1988 itself, all these persons including the detenu were produced in the court of the Additional Chief Metropolitan Magistrate, New Delhi and were remanded to judicial custody till 14th of March 1988. No bail application has been moved.

(5) On 29th of February 1988 a retraction was made by Narinder Pal Singh for himself and for his father Diwan Singh detenu before the Additional Chief Metropolitan Magistrate when they were also directed to be medically examined. A letter was sent to Superintendent, Tihar Jail by the D.R.I, officials on 3rd of March 1988 for furnishing the copies of the medical examination of the detenus. It appears that the detenu including his co-detents were medically examined on 1st of March 1988 excepting Raghubir Prasad who was examined on 7th of March 1988. The detention orders were passed on 7th itself in respect of all the persons, though for various reasons. The Advisory Board met on 14th of April 1988 and the detention order was confirmed on 1st of June 1988 and communicated to the detenu on 18th of June 1988.

(6) Now, the principal and primary contention of Mr. R. M. Bagai, learned counsel for the detenu, is that in the grounds of detention it is clearly stated by the detaining authority that while passing the detention order he has relied on the documents mentioned in the list enclosed with the grounds of detention. Mr. Bagai's submission is that apart from other documents a set of documents appearing at pages 63 to 72 of the writ petition was also delivered to him thereby indicating that in making the detention order the detaining authority has also relied on this set of documents. Mr. Bagai has read out the contents of these documents before me in the presence of the learned counsel for the other side and there is no dispute in respect of the fact that these documents do not contain any sort of incriminating material or anything against the detenu.

(7) It is in this connection that Mr. Bagai has urged that this is a case of total non-application of mind by the detaining authority which would vitiate the subjective satisfaction. He states that his case is not that there is no material which could result in the detention of the detenu but his Case is that the detaining authority has also relied on a set of documents which constitute no material against the detenu and since the subjective satisfaction has been also based on the set of documents containing nothing against the detenu it would clearly go to indicate that there has been a non-application of mind which essentially would vitiate the subjective satisfaction.

(8) I have gone through the grounds of detention. The detaining authority has nowhere disclosed as to what these documents contained and how the detenu is linked with the alleged prejudicial activities on the basis of these documents. It

may be noticed that after seizing these documents they were not at all put up to the detenu or his accomplices for explaining as to what these contained. The petitioner has raised a specific ground in this regard and in reply the respondents have stated as under:

"IT is incorrect to say that the detaining authority has relied on irrelevant documents including blank papers in forming his subjective satisfaction. No blank paper was supplied to the detenu. However, on one of the seized documents which was placed before the detaining authority the word "chimti" was written in Hindi. All the documents seized from the residence Of the petitioner and co-detent Shri R. P. Sharma were relevant and hence considered by the detaining authority before passing the order of detention. As such, the question of non-application of mind by the detaining authority does not arise."

(9) Now this is the kind and quality of the reply to the contention raised by the detenu. Mr. Lokur on behalf of the Central Government wants to supplement it with the argument that, in fact, these documents are contained in the Panchnama and what was considered was the Panchnama. Moreover, he has urged that since there is sufficient material apart from these documents on which the subjective satisfaction has rightly been based, it is not fair to argue that there has been non-application of mind.

(10) Normally, this court in its writ jurisdiction would not go into the subjective satisfaction of the detaining authority if it is based on relevant material and proper application of mind. Sufficiency or insufficiency of the material or its truthfulness or otherwise is also none of the concerns of the court but then the court is always available to find out whether the subjective satisfaction arrived at is based on proper application of mind. This is a unique case of its own kind and I have tried to find out if there is a precedent which will cover this case. Mr. Bagai fairly concedes that there is no precedent as such, though he has referred to a passage from *Sadhu Roy vs. The State of West Bengal*, Air 1975 Supreme Court page 919(1) with a view that these observations of the Supreme Court will provide guidance to this court as to how it should deal with the case. In this judgment at page 924 sub-para (3) of para 10, the Supreme Court has made the following observations:

" THE satisfaction ,though attenuated by "subjectivity" must be real and rational, not random divination, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases."

(11) The above observations of the Supreme Court would indicate as to what type of subjective satisfaction is the requirement of law. In the present case, both in the grounds of detention as also in the return the detaining authority insists that it has relied on this set of documents also in arriving at subjective satisfaction. The documents are the same as are appearing at pages 63 to 72 of the Writ Petition and I have already indicated that there is nothing in these documents which would show any link of the detenu or his accomplice with the

alleged prejudicial activity. If the detaining authority had really applied its mind and if the subjective satisfaction were really based on proper application of mind the detaining authority would not have said that it has also relied on this set of documents. There was nothing to prevent the detaining authority from stating that these documents were also placed before it but they were not relied upon. However, that type of statement could only be made if the detaining authority had really applied its mind. This clearly goes to show that the application of mind in the present case is totally casual and mechanical and it is not the type of the application of mind which the law insists upon. If the detaining authority says that it has also relied on a set of documents which provided no evidence against the detenu, it naturally follows that he has not cared to go into the material. On this short ground, Therefore, the subjective satisfaction of the detaining authority in the present case is vitiated. The petition is allowed, the rule is made absolute and the detention order is quashed. The detenu shall be released forthwith unless required in some other case.