

(1987) 02 DEL CK 0042

In the Delhi High Court

Case No : Criminal Writ Appeal No. 464 of 1986

Dorje Wangchuk

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-02-1987

Acts Referred:

Citation : (1988) CriLJ 221 : (1987) 12 DRJ 237 : (1989) 41 ELT 67

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

Bench : Single Bench

Judgement

Malik Sharief-ud-din, J.

(1) I have heard Mr. Jethamalani in respect of Criminal Misc. Application No. 3 of 1987 by which he has sought to raise an additional ground and in that regard filed a copy of the remand application. Since this is a Habeas Corpus petition, there can be no serious objection to the raising of additional ground, particularly, in view of the fact, that the contents of the remand application, are not something new to the other side. Relying on the case of Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, , I allow this petition. In the case supra, the Supreme Court has clearly held that it would be no argument on the part of the detaining authority to say that a particular ground is not taken in the petition and the burden of proving that the detention is in accordance with the procedure laid down by law has always been placed by the court on the detaining authority. This is because Article 21 of the constitution provides in clear and explicitly terms that no one shall be deprived of his life or personal liberty except in accordance with the procedure laid down by law.

(2) The petitioner was detained in pursuance of the written order dated 28/4/1986 passed by Mr. M.L. Wadhawan, Additional Secretary, to the Government of India. The detention order was passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and was with a view to prevent the petitioner from abetting the smuggling of goods, engaging in transporting, concealing and keeping: smuggled goods and

dealing in smuggled goods. This order was confirmed by the Central Government.

(3) There is no necessity for me to detail the grounds of detention. The principal contention of Mr. Jethamalani is that the detention order is vitiated for the simple reason that there has been total non-application of mind by the detaining authority and the grounds of detention as conveyed to the petitioner are verbatim copy of the remand application that had gone from the Officer of the Revenue Authorities to the Court of the Magistrate and on which the petitioner was remanded to the judicial custody. I have gone through the grounds of detention as well as the contents of the remand application. Excepting the change in paragraph numbers the contents of the grounds of detention are verbatim copy of what is stated in the remand application. Mr. Jethamalani has also invited my attention to certain paragraphs in the grounds of detention where Karim Yusuf is mentioned as Karim @ Sunil. In one of the paragraphs namely, paragraph No. 4, he is however, mentioned as Shri Karim. The detaining authority has gone to the extent of every copying this from the remand application. Throughout in the grounds of detention the petitioner has been addressed as Shri Karim alias Sunil or "Shri Karim" instead of addressing him as "you". This was necessary to convey it to him that the allegations mentioned in these paragraphs related to him. The grounds conveyed to the detenu must always be clear, specific and further they must clearly tell the detenu all the allegations attributed to him and which form the basis for his detention.

(4) In order to bring home his point, Mr. Jethamalani in particular, invited my attention to a letter dated 30/5/1986. This was addressed by the detenu to the detaining authority by which he had demanded that the alleged disclosure made by him may be supplied to him. In their counter affidavit in paragraph 3, the respondents have stated that since this particular paragraph appears in the remand application, it was accordingly conveyed to him in the grounds. The relevant paragraph may be quoted for purpose of convenience:

ON the basis Of the disclosures made by Shri Karim Yusuf @ Sunil and Ravinder Bali & Satish, residential premises under the control of Shri Satya Narain Aggarwal located at 1428 Maliwara, Delhi were searched on 1/4/1986....."

(5) From the counter affidavit, Therefore, it is clear that the detaining authority has not applied his mind to the material and the facts before arriving at his conclusion that is why he has mechanically copied the contents of the remand application while conveying the grounds of detention to the petitioner. I find that barring a change in paragraph numbers otherwise the grounds of detention were verbatim copy of the remand application. In my view, Therefore, Mr. Jethamalani is very much justified in commenting that there has been complete non-application of mind by" the detaining authority. This court has taken consistent view that under these circumstances, the detention order cannot be sustained. Reference in this regard may be made to a Division Bench Judgment in Criminal Writ No. 230 of 1986, Smt. Veena Kapoor v. Shri M.L. Wadhawan & Ors. Since, I

find that on this ground alone, the detention order is to be quashed, there is no need for me to examine the other contentions raised by Mr. Jethamalani and this petition is to be allowed. The impugned order of detention is quashed. The petitioner shall be released forthwith unless he is required in any other case.

(6) Criminal Writ No. 303/86 (Satya Narain v. Sh. M.L. Wadhawan & Ors.) Criminal Writ No. 317 of 1986 (Om Prakash Bah v. M.L. Wadhawan & Ors.) Criminal Writ No. 318 of 1986 (Mrs. Sital Sharma v. M.L. Wadhawan & Ors.) in which the petitioners are represented by Miss Rani Jethamalani suffer from same infirmity as detention order in Criminal Writ Petition No. 297 of 1986 (Sh. Karim Yusuf v. Sh. M.L. Wadhawan & Ors.) Criminal Writ Petition No. 318 of 1986 has been filed by the wife of the detenu while Criminal Writ Petition No. 317 of 1986 has been filed by the father of the detenu. Since in all these three petitioners, I find that there has been total non-application of mind as the detaining authority while conveying the grounds of detention to the petitioners has, reproduced the contents of the remand application in verbatim. For that reason alone, these three petitions are also to be allowed as they are also covered by the Division Bench Judgment of this Court in Criminal Writ No. 230 of 1986, (Smt. Veena Kapoor v. Shri M.L. Wadhawan & Ors.) These three petitions are also allowed and the detention orders made for the similar reason are quashed. In view of the fact that these petitions are to be allowed on the ground of non-application of mind, there is no need for me again to examine other contentions raised in this petition. The detenus in all these three petitions shall be released forthwith unless they are required in other cases.

(7) Criminal Writ No. 244 of 1986 (Smt. J. Usha Mary Thomas v. Sh. M.L. Wadhawan & Ors.). This petition, has been filed by the wife of the detenu and the petitioner is again represented by Miss Rani Jethamalani. In this petition also the ground urged for revocation of the detention order is again the same as in the aforesaid writ petitions i.e. to say that there has been complete non-application of mind by the detaining authority in as much as he has while framing grounds of detention, copied in verbatim the contents of the remand application and thereby instead of applying his mind to the facts and the material, has completely allowed himself to be guided by the Custom Authorities who in fact had drafted the remand application. This petition is also covered by the Division Bench ruling of this Court supra. Ms. Jethamalani further stated that Kashmeri Lal v. Union of India, Criminal Writ NO. 15 of 1986 and Raj Kumar v. Union of India, both decided on 3/12/1986, are the writ petitions in respect of same incident and were allowed by this Court on the same ground. On this ground, therefore, this writ petition is allowed. There is no need for me to examine the other contentions raised. The detention order is quashed. The detenu shall be released forthwith unless required in any other case