

(1987) 02 DEL CK 0033

In the Delhi High Court

Case No : Criminal Writ No. 464 of 1986 (Against order of Dr. R.S. Asthana, Joint Secy. Home and confidential Dept., Uttar Pradesh Admn., D/- 9-8-1986)

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

1. Rule in this petition was issued on 19th December, 1986. The respondents have neither appeared nor have they filed a return despite service. Under these circumstances I have heard Mr. N. S. Mathur on behalf of the petitioner.

2. The husband of the petitioner, Dorje Wangchuk (detenu in this case) was detained in pursuance of an order dated 9th August, 1986. The order was passed by the Government of Uttar Pradesh under S. 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The detention was ordered with a view to preventing the detenu from smuggling of goods and engaging in transporting, concealing and keeping smuggled goods.

3. Before I take up for consideration the contentions raised by Mr. Mathur, a brief reference may be made to the incident that ultimately culminated in the passing of the said detention order. On 22nd June, 1986 at about 4.30 hours the Customs Officers of Basti signaled a tourist bus number DEP 7788 to stop near the bridge over river Karachi on Basti-Naugarh road. The bus was coming from Nepal. On failure of the driver to stop the bus the Customs Officers gave a chase. Since the barrier of the Bridge was closed the bus came to stop. The detenu is said to have jumped from the driver's window and thereafter it is stated that various kinds of foreign made goods valuing at Rs. 3,28,420/- were recovered from the possession of the detenu. Similar goods were also recovered from some

other persons. On investigation it was found that the detenu was associated with the smuggling of foreign made goods. It is this event which is made the basis for passing of the detention order. The case of the detenu is that he was taken into custody on 22nd June, 1986 while that of the other side is that he was actually taken into custody on 27th June, 1986.

4. Mr. Mathur has detailed a number of contentions before me. His main contention is that he was denied his constitutional right of examining witnesses in rebuttal of the grounds of detention by the Advisory Board and that this is sufficient to vitiate the order of detention. His second contention is that even though he was in custody right from 22nd June, 1986 and was in judicial custody right from 27th June, 1986 and no bail had been granted till 14th August, 1986 in his favor, this fact was suppressed by the sponsoring authority from the detaining authority resulting in not showing any awareness about it by the detaining authority and in not taking into consideration this fact while passing the detention order. Mr. Mathur states that this is a vital matter for the simple reason that if the detaining authority this might have affected its decision authority this might have affected its decision to pass the detention order. In this regard reliance is placed on *Sk. Nizamuddin Vs. State of West Bengal*, .

5. Next, Mr. Mathur contended that the detenu is a Tibetan and is not properly educated and the only language he understands is Tibetan while the material supplied to him is all in Hindi and English. The contention is that in this way he has been deprived of making an effective and purposeful representation. It is submitted that this matter was taken up on 5th September, 1986 when he first made the representation to the detaining authority.

6. Adverting to the first contention it may be stated that the Advisory Board met on 23rd September, 1986. The detenu made a written representation to the Board on the same date. In that representation the detenu gave a list of six witnesses namely, Dorje Wangchuk, Tpsi Risht, Thondup Dorejee, Dandul Tearing, Smt. Thering Tandon and Smt. Dochia Risht and had brought to the notice of the Board that his witnesses are present outside the room where the Advisory Board was giving hearing and that they may be examined in rebuttal of the grounds of detention. It is, however, stated that the Advisory Board did not grant this request and failed to examine the witnesses other than the detenu himself and in this manner he was deprived of a valuable right resulting in the invalidity of the detention order. That a detenu has a right to be represented by a friend of his choice and that he has a right to examine witnesses to rebut the allegations made against him has been held in *A.K. Roy and Others Vs. Union of India (UOI) and Others*, . In Criminal Appeal No. 55 of 1986 decided by the Supreme Court on 14th January, 1986 (*Surinder Kumar Arora v. Union of India*) the Supreme Court has gone a little further in observing that if a request has been made in writing in the representation, there is no question in this regard. In that case the High Court had held that there was nothing on record to show that the detenu made an oral request before the Advisory Board. In the presence of a

mention of this fact by the detenu in the written representation the Supreme Court did not approve of this approach. In the present case the respondents have chosen not to contest and I take it that the Advisory Board despite a written request for examination of his witnesses in rebuttal has not examined the witnesses. In this manner the detenu has been deprived of his Constitutional right which by itself is sufficient to vitiate the detention order. Since the petition is to be allowed on this ground, there is no need for me to go into the other contentions. The petition is allowed and the detention order is quashed. The detenu shall be released forthwith unless required in some other case.

7. Petition allowed