

(1999) 11 DEL CK 0021
In the Delhi High Court
Case No : Criminal W. 412/99

Fateh Mohd. @ Fateh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
National Security Act, 1980 — Section 3(2)

Citation : (2000) 1 AD 448

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Ms. Sangita Bhayans Adv, for the Appellant; Mr. Priya Kumar and Mr. HJS Ahluwal IA, for the Respondent

Judgement

M.S.A. Siddiqui, J.—By this writ petition u/s 226 of the Constitution, the petitioner challenges the order of his detention dated 31.7.1997 passed by the Commissioner of Police, Delhi u/s 3(2) of the National Security Act.

2. Various pleas have been raised but it is not necessary to refer to them because the petitioner's detention is liable to be quashed on the ground of non-supply of legible documents relied on the referred to the impugned order of detention, to the petitioner. It is averred in the petition that the relied upon documents accompanying the grounds of detention and supplied to the petitioner are not legible at all. This position has not been controverted by the State.

3. It is well settled that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to the order of detention pari passu the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. Mohd. Zakir Vs. Delhi Administration and Others, . In M. Ahamedkutty Vs. Union of India (UOI) and Another, , it was held that the question of demanding the document was wholly irrelevant and the infirmity in that regard was vocative of constitutional

safeguards enshrined in Art. 22(5) of the Constitution. The detenu has, Therefore, the statutory right to be furnished with the grounds of detention with the legible documents so referred to or relied upon. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation against his detention.

4. In the instant case, it is an admitted position that the copies of the documents, (at pages 26 to 45 of the paper book), which were served on the petitioner Along with the impugned order of detention are not legible at all. On this ground alone, the impugned detention order is liable to be quashed. I, Therefore, hold that the continued detention of the petitioner is violative of the Art. 22(5) of the Constitution.

5. For the foregoing reasons, the Rule is made absolute and the detention order dated 31.7.1997 is quashed. The petitioner should be set at liberty forthwith if he is not wanted in my other case.