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**(1988) 10 DEL CK 0011**

**In the Delhi High Court**

**Case No :** Criminal Writ Appeal No. 257 of 1988

Gurdeep Singh @ Sarpanch

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 07-10-1988

**Acts Referred:**

**Citation :** (1988) ILR Delhi 522

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

**Bench :** Single Bench

**Advocate :** Harjinder Singh, Rohit Kochhar, Sat Pal and Maninder Singh, for the Appellant;

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## Judgement

Malik, J.

(1) The detenu petitioner has challenged order of detention dated 9th of March 1988 passed by Shri K.L. Verma, Joint Secretary to the Government of India, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended). The detention has been ordered with a view to preventing the detenu from abetting the smuggling of goods, engaging in transporting smuggled goods and dealing in the smuggled goods otherwise than by engaging in concealing or keeping smuggled goods.

(2) This detention order followed an incident dated 24th of February 1988 when the petitioner-detenu was arrested from premises No. 113, Ek Jot Group Housing Society, Pitampura, New Delhi, along with one Hardayal Singh. The premises allegedly belonged to one Om Prakash but nothing was recovered there from. They were thereafter taken to the D.R.I. office where one Halwinder Singh and Harbans Singh who had been arrested in truck No. Hru 1357 on the same day and from that truck 480 foreign made gold biscuits were recovered This truck had come from Amritsar and was intercepted at Delhi border. On 25th of February 1988 the petitioner's brother Maluk Singh was also summoned from Amritsar and thereafter the statements of all these persons were recorded u/s

108 of the Customs Act and the petitioner along with others was produced before the Duty Magistrate on 25th of February 1988. Maluk Singh, brother of the petitioner, was produced before the Additional Chief Metropolitan Magistrate on 26th of February 1988. Mr. Herjinder Singh, learned counsel for the petitioner, states that thereafter on 3rd of March 1988 when the petitioner and Hardayal Singh were produced before the A.C.M.M. New Delhi, they retracted their confessions whereas others also sent their retractions from jail on 3rd of March 1988 of which it seems there is no record.

(3) The order of detention was served upon the detenu along with grounds on 9th of March 1988.

(4) The main and principal contention, of Mr. Herjinder Singh is that on 24th of March 1988 the detenu made a representation to the detaining authority where in he asked for a number of documents including the search authorisation of House No. 113, Ek Jot Group Housing Society, Pitampura, Road No. 44, New Delhi, search authorisation regarding residential premises of Jagjit Singh at Amritsar & search authorisation regarding the search of residential premises of Maluk Singh, Gurdeep Singh, Om Parkash, Balwinder Singh, Harbans Singh & Hardayal Singh. He has emphasised the fact that these documents which are relevant and were made basis for the detention of the petitioner were only supplied to him on 19th April 1988 after the meeting of the Advisory Board which was convened on 12th of April 1988 and thereby he was deprived of making an effective and purposeful representation. In between it is submitted that a representation was made to the Central Government on 9th of April 1988 reiterating his request for the supply of the same set of documents. A communication dated nil was allegedly received by the detenu on 15th of April 1988 informing him that his representation has been rejected in which he was told that the Deputy Director, Directorate of Revenue Intelligence, Delhi Zonal Office, has been advised to supply him the search authorisations which were not supplied to him earlier.

(5) Now the position thus is that even according to the memo dated 15th of April 1988 the documents regarding the search authorisations were not supplied to the detenu pursuant to his representation even though these were made basis for ordering his detention. These were only supplied 00 19th of April 1988 after the Advisory Board had met where also the detenu had reiterated his demand for such documents.

(6) The question that arises, Therefore, is as to whether the non-supply of the search authorisations *pari passu* with the grounds of detention would vitiate the order of detention and whether the non-supply of documents on demand in time even if not considered to be relevant by the detaining authority would also vitiate the order of detention. The law on the subject is very clear. In the case of Vinod Kumar Arora vs. Administrator, Union Territory of Delhi and others, 1984 Crl.1344 the law on this point is settled. This extract in the judgment (*supra*) itself is from a Judgment of the Bombay High Court in Mohd. Hussain v.

Secretary Government of Maharashtra, 1982 Criminal Law Journal 1948(2), wherein the entire case law was surveyed and the extract reads as under :

" WE may ,Therefore, summarise the law laid down by the Supreme Court on the point as follows :- (a) the copies of all the documents which are relied upon in or which form the basis of the grounds of detention must be, supplied to the detenu along with the grounds of detention; (b) the documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually or incidentally as and by way of narration of facts in the grounds of detention need not be supplied to the detenu; (c) however, even such documents, if the detenu requests for the same, have to be supplied to him for whether they are relevant for his defense or not is for the detenu to decide and not for the detaining authority to judge."

(7) The settled position in law, Therefore, is that all the documents relied upon for the purpose of ordering detention ought to be supplied *pari passu* with the grounds of detention to the detenu and documents not relied upon but casually referred to for the purpose of narration of facts are also to be supplied to the detenu if he so demands. This is for the reason that what is relevant for the defense of the detenu is not for the detaining authority to decide but this is an area which entirely falls within the domain of the detenu.

(8) The fact of the matter in this case is that the detenu did demand a set of documents whether they were relied upon or not and some of these search authorisations warrants were supplied to him only after the meeting of the Advisory Board. The detenu's case is that these were very relevant for his defense. I am, however, not going into this question in this particular case because a Division Bench judgment of this court in *M. M. Yusuf vs. Union of India and others*; Criminal Writ Nos. 324 & 325 of 1986 decided on 17th March 1987(3) wherein the search authorisations have been held to be documents and found to be in the category of material on which the detention is based. In this case it was held :

"IN other words, the search warrants are the basic documents on the basis of which the searches, the result of which is relied upon, were conducted. A document of this type is of a vital nature and, though it may not be specifically referred to in the grounds of detention, the reference to the search and the supply of panchnama clearly brings in the search warrants also as one of the material documents on which the detention is based."

(9) I may here refer to the fact that this conclusion was arrived at by the Division Bench while considering the facts and the judgment recorded in Criminal Writ No. 127185 decided on 5th September 1985 by a Division Bench of this Court. It was on that basis that the search authorisation warrants were held to be vital documents. In the case of *M. M. Yusuf (supra)* the Division Bench of this Court, Therefore, held that nonavailability of search warrants asked for by the detenu vitiates the order of detention. Sitting as I am singly I am bound by the Division

Bench judgment of this court and I hold that the search authorisation warrants which were demanded by the detenu in his representation dated 24th of March 1988 made to the detaining authority were supplied to him as late as 19th of April 1988 after the meeting of the Advisory Board and thereby his right to make an effective and purposeful representation must be held to have been impaired. Non-supply of search authorisation warrants in time to the detenu, in my view, in the circumstances of this case, Therefore, vitiates the order of detention. The petition is allowed and the rule is made absolute. The order of detention impugned in this petition is quashed and it is directed that the petitioner shall be set at liberty unless required in some other case.