

(1986) 08 DEL CK 0012

In the Delhi High Court

Case No : Criminal Writ Appeal No. 186 of 1986

Gursharan Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-08-1986

Acts Referred:

Citation : (1986) 3 Crimes 257 : (1986) 30 DLT 422 : (1989) 41 ELT 44 :
(1986) 1 ILR Delhi 571 : (1986) 2 RCR(Criminal) 599

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : Harjinder Singh, B.P.S. Mangat, Madan Lokur and Ratan Lal, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) This criminal writ of the petitioner Gursharan Singh son of late Jagat Singh resident of 2/32 A, Punjabi Bagh, New Delhi, at present lodged in Central Jail, Tihar, New Delhi, is directed against the order of detention dated 19th March, 1986 passed by respondent No. 2 Shri M. L. Wadhawan, Additional Secretary to the Government of India, in legard to the petitioner u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974 (as amended up to date) with a view to preventing him from abetting the smuggling of goods, engaging in transporting, concealing and keeping and dealing in smuggled goods) and the petitioner was ordered to be detained and kept in custody in the Central Jail, Tihar, New Delhi.

(2) The grounds of detention against the petitioner allege that there was an information that a notorious smuggler Rajpal @ Brbu resident of 36, Shastri Park, Chander Nagar, Delhi, was a prominent member of an international syndicate of smugglers and was receiving gold biscuits from one Zahid of Dubai via Pakistan and was disposing of the same in the major cities of India. Further information was gathered by the officers of the Directorate of Revenue Intelligence, New Delhi, on 10th March, 1986 to the effect that Rajpal @ Babu had received

smuggled gold biscuits from Indo-Pakistan Border with the assistance of his elder brother Satpal and that the same had been kept at premises BJ-98, Shalimar Bagh, New Delhi, and that those premises were under the control of the petitioner Gursharan Singh., a close associate of Rajpal. These premises were searched in pursuance of the said information on 10th March, 1986 and as a result thereof 100 gold biscuits of 10 tolas each with foreign markings, valued at Rs. 25 lakhs and Indian Currency amounting to Rs. 5,11,500 besides highly incriminating documents under the Customs Act, 1962 were recovered.

(3) Thereafter, the residential as well as business premises of the petitioner located at 2/32A, Punjabi Bagh, New Delhi, and M/s. G. S. Motor, Shop No. 8, 18.3 Western Extension Area, Karol Bagh, New Delhi, respectively were also subjected to search by the officers of the Directorate of Revenue Intelligence, New Delhi, on the same day i.e. 10th March, 1986 and the search of his residential premises resulted in the recovery of Rs. 40,000 Indian Currency along with documents, whereas the search of his business premises resulted in the recovery of Indian Currency amounting to Rs. 1,70,000. The aforesaid recovered currency was seized under the Customs Act, 1962.

(4) THE. only contention raised by Mr. Harjinder Singh learned counsel for the detenu during the course of arguments was that when the petitioner was produced before the Advisory Board on 29th April, 1986 from Jail, he submitted before the Advisory Board that he had brought his witnesses viz., Thaneshwar Singh, Sunder Pal Singh, Pawan Kumar, Balvinder Kumar and Vikiam Singh and that they would rebut the allegations made against him in the grounds of detention and especially that Thaneshwar Singh and Sunder Pal Singh would prove that the amounts of Rs. 1,70,000 and Rs. 40,000 seized by D.R.I, were all accounted for money and not sale proceeds, but those witnesses were not examined by the Advisory Board and thus the detenu had not been given reasonable opportunity as envisaged under Article 22(4) of the Constitution of India and u/s. 8 of the Cofeposa Act and thereby the detenu was deprived of his valuable right of rebutting the allegations made in the grounds of detention, which rendered his detention and continued detention illegal, In support of this contention of this he has relied upon A.K. Roy and Others Vs. Union of India (UOI) and Others, wherein para No. 105 the following observations appear :-

"The last of the three rights for which Shri Jethmalani contends is the right of the detenu to lead evidence in rebuttal before the Advisory Board. We do not see any objection to this right being granted to the detenu. Neither the Constitution nor the National Security Act contains any provision denying to the detenu the right to present his own evidence in rebuttal of the allegations made against him. The detenu may, Therefore, offer oral and documentary evidence before the Advisory Board in order to rebut the allegations which are made against him....".

In the counter-affidavit deposed to by Shri A. K. Agnihotri, Under Secretary, Ministry of Finance, Government of India, New Delhi, filed by the respondents it is conceded that the petitioner before the Advisory Board stated that he had

brought two witnesses to prove that the Indian Currency seized from his shop to the tune of Rs. 40,000 was duly accounted for in the account books and also requested that the witnesses may be examined to rebut the grounds of detention, but the Advisory Board rejected the request for production of witnesses on the ground that those witnesses were not going to depose anything which may affect their opinion and that the sum of Rs. 40,000 had already been returned to the persons to whom the same belonged. The opinion of the Advisory Board has also been perused and the same also supports the aforesaid averments in the counter-affidavit. The right of rebuttal by production of oral as well as documentary evidence by the detenu before the Advisory Board has been recognised in *A.K. Roy and Others Vs. Union of India (UOI) and Others*, . Had the Advisory Board recorded the statements of the witnesses brought by the detenu on the date of hearing before the Advisory Board, the Advisory Board might have agreed with their statements and even if the Advisory Board were not to agree with their statements, it would have forwarded the entire record including the statements of those witnesses to the appropriate Government along with its own opinion regarding the order of detention, which on perusal of the opinion of the Advisory Board as also the entire record including the statements of those witnesses, might have been induced to come to a finding favorable to the detenu and it rests in the discretion of the appropriate Government either to confirm or not to confirm the detention order even if the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of the detenu. This discretion has been vested in the appropriate Government u.s. 8(f) of the Cofeposa Act which reads as follows :-

"(F)in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith."

(5) The perusal of this provision of law shows that when the Advisory Board opines no sufficient cause for the detention, the appropriate Government is bound to revoke the detention order and cause the detenu to be released forthwith, but when the Advisory Board favors the detention, that opinion is not binding on the appropriate Government which has been vested, on the other hand, with the discretion to confirm or not to confirm the detention order. In this view of the matter even if the Advisory Board had opined in favor of the detention, the appropriate Government could have differed from the same on the basis of the material sought to be produced by the detenu before the Advisory Board on the date of hearing and who were also admittedly present on that day.

(6) Mr. Harjinder Singh has also relied upon a Division Bench decision of this Court pronounced on 21st February, 1986 in *Lakshman T. Advani v. Union of*

India and others- Criminal Writ Petition No. 2.83 of 1985(2). The perusal of this authority shows that the Advisory Board refused to examine the witnesses of the detenu as it felt that no useful purpose would be served in examining them even though those witnesses were sought to be produced by the detenu for proving that the recovered and seized amount of Rs. 1,75,000 was his lawful earning which could be accounted for and had nothing to do with the foreign exchange. It was held that by declining to examine the witnesses of the petitioner, which were present, the petitioner had been deprived of his valuable right of effectively representing his case before the appropriate Government and the continued detention which thereby stood vitiated was quashed.

(7) So, in view of the above discussion, the detenu was deprived of his valuable right of effectively representing his case before the appropriate Government and this factor vitiates the continued detention of the detenu and so accepting this writ petition the detention of the detenu hereafter is quashed and he shall be released forthwith.