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**(1988) 05 DEL CK 0036**

**In the Delhi High Court**

**Case No :** Criminal Writ Appeal No. 599 of 1987

Hari Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 04-05-1988

**Acts Referred:**

**Citation :** (1988) 35 DLT 134

**Hon'ble Judges :** H.C. Goel, J

**Bench :** Single Bench

**Advocate :** Rohit Kochhar and U.L. Watwani, for the Appellant;

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## Judgement

H.C. Goel, J.

(1) This is a writ petition under Article 226 of the Constitution of India seeking the quashing of the order of detention dated April 1, 1986 of Hari Singh, petitioner-detenu, as passed by Shri M.L. Wadhawan, respondent No. 2, and for the petitioner being set at liberty forthwith. I need not give the facts leading to the passing of the order of detention of the petitioner as this petition must succeed on the short ground of the non application of mind of the detaining authority in passing the order of detention. The challenge to the legality of the detention of the petitioner is also squarely covered by the decision of a Division Bench of this Court in the case of Vimal Kapur, a co-detent of the petitioner and in whose case also an identical order of detention was passed as in the case of the present petitioner. A comparison of the grounds of detention of the petitioner and the application dated March 16, 1986 submitted by Mr. J.S. Arora, Advocate for the Customs Department to the Additional Chief Metropolitan Magistrate, New Delhi for obtaining the remand of Vimal Kapur and four other persons concerning the affair shows that paras 1 to 5 and 7 to 12 of the grounds of detention are the verbatim copy of paras 1 to 12 of the said application. Only a short para. No. 6 relating to the para search of the premises of Hari Singh, petitioner, has been inserted in the grounds of detention against the petitioner. In remaining paras 14 to 20 of the order of detention the detaining authority has made observations

regarding its arriving at the satisfaction for passing the order of detention of the petitioner. Further, in the grounds of detention the detaining authority has not made a direct and specific reference to the detenu. On the other hand, the grounds of detention are in a narrative form and reference to the petitioner has been made in the form of a third person referring him by his name only. The detaining authority has not tried to segregate the role of the petitioner and that of other persons involved in the affair and there is no clear and specific reference of the role attributed to the petitioner, but the role of all the six persons, including the petitioner, has been generally narrated. It was stated by Mr. Kochhar at the bar and which fact could not be denied by Mr. Watwani, Vimal Kapur was accordingly set aside and he was directed to be set at liberty forthwith. The other writ petition of Riaz Ahmed, another co-detent of the petitioner, was also allowed observing that the grounds of detention in his case were also identical with that of Vimal Kapur. The Division Bench had relied on a decision of the Supreme Court in *Jai Singh and Others Vs. State of Jammu and Kashmir*, in arriving at their conclusion. Mr. U.L. Watwani, learned counsel for the respondents submitted that Hari Singh, petitioner, could not be arrested in this case and, as such, he was not one of the persons whose remand was prayed for in the aforesaid application for remand and that Therefore, his case was distinguishable from the cases of Vimal Kapur and Riaz Ahmed. I am unable to see as to how that is a distinguishing feature in the case of the petitioner from the cases of Vimal Kapur and Riaz Ahmed. It is not a question as to who were the persons whose remand was sought for. The question is as to whether the detaining authority has adopted the contents of the application for remand in making the order of detention. This has been so done by the detaining authority in the case of all the detenues, including the present petitioner, Hari Singh, against whom the order of detention was passed by the detaining authority. Following this decision of the Division Bench of this Court I hold that the present is a case non-application of mind on the part of the detaining authority, respondent No. 2, in passing the order of detention of the present petitioner, Hari Singh. I accordingly accept the writ petition and quash the order of detention of the petitioner and direct that the petitioner be set at liberty forthwith if otherwise not required by any other lawful authority.