

(1988) 09 DEL CK 0030

In the Delhi High Court

Case No : Criminal Writ Petition No. 361 of 1988

Kailasho

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-09-1988

Acts Referred:

Citation : (1988) 36 DLT 178

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : R.M. Bagai, Rajender Dutt and S. Kohli, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) The impugned order in the present petition was passed on 5th March, 1988 with a view to preventing the petitioner from engaging in transporting smuggled goods. The grounds of detention of the same date served on the petitioner Smt. Kailasho while she was in judicial custody in the Central Jail. Amritsar rely on the statement made by her on the 4th February, 1988, wherein it is alleged that she had admitted her guilt. That statement was recorded u/s 108 of the Customs Act, 1962.

(2) The further reliance in the grounds is on the inculpatory statement made by her co-detent Narinder Kumar, which statement was also recorded on 4th February, 1988.

(3) It is averred in paragraph 4 of the petition that Narinder Kumar, the co-detent retracted his statement by writing a complaint to the Chairman, Customs and Central Excise, Government of India on 10th February, 1988. The copies of this complaint were sent to the Secretary, Ministry of Finance, Government of India, New Delhi and Collector of Customs and Central Excise, Chandigarh, the sponsoring authority. The plea urged by the petitioner in Ground "C" of the petition is that the retraction statement of Narinder Kumar being a very material document, which was capable of influencing the subjective satisfaction of the

detaining authority one way or the other, not having been placed before him, the" detention is vitiated.

(4) We may note here that Rule in the present petition was issued on 4th August, 1988. We had directed the respondents to file their return within a fortnight. It was further directed that this petition be heard Along with the co-detent's petition (Cr. Writ 233/88). Although counter-affidavit was filed by the respondents in the other petition, but no reply has been filed in the present one.

(5) By our order passed in open Court on 6th September, 1988, we set aside the detention of Narinder Kumar on the ground that the retraction statement made by him on 10 February, 1988 had not been placed before the detaining authority. The petitioner's detention is also liable to be quashed on that very ground. The detaining authority, it is clear from the grounds, had relied on the statement of the co-detent. It was, Therefore, incumbent on the sponsoring authority to have placed the letter dated the 10th February, 1988 before the detaining authority.

(6) We hold that the detention order is liable to be quashed on this ground alone. We allow the petition and make the rule absolute. The petitioner if not required in any other case, be released forthwith.