

(1988) 09 DEL CK 0033

In the Delhi High Court

Case No : Criminal Writ Appeal No. 199 of 1988

Kulwant Singh Sethi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-09-1988

Acts Referred:

Citation : (1988) 36 DLT 368

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : Harjinder Singh, Rohit Kochhar, Naveen Malhotra, Rajender Dutt and S. Kohli, for the Appellant;

Judgement

M.K. Chawla, J.

(1) In this writ of habeas corpus for quashing the order of detention dated 8.3.1988, 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 (hereinafter called the Cofeposa Act), the main grievance of the petitioner is that in the grounds of detention, certain documents have been referred to and relied upon by the detaining authority. Copies of these very documents have not been supplied to him *pari passu* the grounds of detention. Even his subsequent specific request for the same has been ignored. This omission has thus deprived him of his right of making the representation against the detention order, as envisaged in Article 21(5) of the Constitution of India, In *P. Moida Hazi and another v. Union of India and others* 1985 L.J. 1430, a Division Bench of this Court considered this aspect and held:

"IT is well settled now that failure to furnish copies of documents to the detenu on which reliance has been placed by the detaining authority vitiates the detention. This court in a number of cases has further held that the copies of the documents which have been referred in the grounds of detention but not relied upon by the detaining authority have to be supplied to the detenu if he seeks

copies of the same. On such request being made by the detenu, it is not for the detaining authority to conclude that the copies of the documents sought for were not relevant even for the defense of the detenu. It is for the detenu to consider as to how he can show his innocence from those documents."

In order to stretch the above said principle, to the case in hand, it is necessary to notice a few relevant facts. On 14th February, 1988, a consignment containing 27 packages weighing 1968 kgs. said to contain diplomatic goods covered under Airway bill no. 027-1954-6995 dated 12.2.1988 in the name of Mr. Sameuddin, Embassy of Democratic Republic of Afghanistan, New Delhi, arrived at the Cargo Terminal of I.G.I. Airport, New Delhi, by Air France flight no. AF-179. On 15th February, 1988, one Mr. Kumar Sambhav filed the documents for clearance of the said consignment. The number and the nature of packages in the consignment created suspicion with regard to its real contents vis-a-vis the covering invoice/exemption certificate. Suspecting the correctness of the information, release of the consignment was, therefore, delayed and Kumar Sambhav was asked to come later in the day. He, however, did not turn up and was later on apprehended at about 2100 hrs. near the residential premises of Mr. Sameuddin at A-15/15, Vasant Vihar, New Delhi.

(2) During the course of interrogation, Kumar Sambhav, inter alia, stated that he was working with M/s Arena Electricals, D-12A, Hauz Khas, New Delhi, since 1986, and has been doing its clearing work. Shri Ashok Gupta is the owner of the said firm who has employed him as its Sales Executive at a salary of Rs.1500.00 per mensem. During the interrogation, it transpired that Ashok Gupta after collecting the goods, used to sell a part of the consignment to the present petitioner against cash payments. On 15th February, 1988, the petitioner's residential premises were searched which resulted in the recovery of various imported goods like video-cassettes V. C. Rs. and such like articles. A sum of Rs. 2,50,000.00 in cash was also found. All the items, including the cash, were seized. On the next day, the petitioner was arrested u/s 104 of the Customs Act but was granted bail by A.C.M.M. New Delhi on 1st March, 1988.

(3) With a view to preventing him from engaging in keeping smuggled goods, the impugned order of detention under S. 3(I) of the Cofeposa Act was passed. This order of detention and the grounds of detention were duly served on the petitioner on 9th March, 1988 and 11th March, 1988 respectively .

(4) In his representation dated 26th March, 1988, the detenu besides repudiating the averments made in the detention order, submitted that as many as 17 vital and material documents have not been supplied to him thus depriving him of an opportunity to make an effective and purposeful representation. These documents are :-

"(i) Gist of information, mentioned in the grounds of detention; (ii) Arrest Memo pertaining to the arrest of Mr. Kumar Sambhav from near the residential premises of Mr. Sameuddin; (iii) Search authorisation for the search conducted at

the residential cum office premises of Ashok Gupta at D-12/A Hauz Khas; (iv) Search authorisation for the search conducted at the petitioner's residential premises; (v) Search authorisation pertaining to the search conducted at the petitioner's business premises; (vi) Search authorisation pertaining to the search of the 27 packages conducted on 17.10.88; (vii) Arrest Memo dated 16.2.88 pertaining to the arrest of the petitioner; (viii) Arrest Memo dated 17.2.88 pertaining to the arrest of Mr. Kumar Sambhav; (ix) Rejoinder filed by the Department Counsel to the bail petition dated 17.2.88 filed by the petitioner; (x) Summons dated 18.2.88 issued to Shri Ashok Gupta; (xi) Summons dated 19.2.88 issued to Shri Ashok Gupta; (xii) Summons dated 19.2.88 issued to Vinod Kohli; (xiii) Summons dated 23.2.88 served on Ashok Gupta; (xiv) Copy of Passport bearing no. C-082229 belonging to Shri Ashok Gupta; (xv) Visiting card of Kumar Sambhav; (xvi) Visiting card of Ashok Gupta; (xvii) Bank record showing that M/s Arena Electronics was active and functioning;"

The submission of the learned counsel for the petitioner is that out of all these documents, documents shown at item nos. (iii) to (vi), (x) to (xiii), (xv) and (xvi) were the most vital and material documents which ought to have been supplied *pari passu* the grounds of detention. Even these very documents were not supplied to him in spite of the demand. This action of the respondents has deprived the petitioner of his Constitutional right to make an effective representation. This has resulted in his illegal detention.

(5) The respondents have controverted the allegations of the non-supply of the material documents. Their stand as disclosed in the affidavit of Shri K.L. Verma is as under :-

"(13)With reference to para no. 13 it is denied that vital facts and material documents were not supplied to the petitioner and he was deprived of making an effective and purposeful representation. The gist of information has been given in the first para of grounds of detention. As regards point no. (ii), it is submitted that Kumar Sambhav was merely apprehended and was not arrested at that time. No arrest Memo was Therefore prepared. As regards item no. (iii) to (v), copies have been supplied to the detenu As regards point no. (vi) it is submitted that no authorisation was required for such examination. As regards (vii) and (viii), copies have been supplied to the detenu. As regards item no. (ix), it is submitted that no rejoinder was filed by the Departmental Counsel to the bail application dated 17.2.88. With reference to items no. (x) to (xiv) copies have been supplied to the detenu. As regards item no. (xvi) it is submitted that the same was already supplied with the grounds of detention. As regards item no. (xvii), the bank records were already supplied with the grounds of detention. It is denied that the documents were not supplied to him in spite of demand and the detention is illegal and violative of Article 22(5) of the Constitution."

This is the common case of the parties that the documents listed in para 13 of the petition (para 14 of the representation Annexure-D) do not find mention in the list of documents annexed to the grounds of detention. The case of the

petitioner is that till today, copies of none of these documents have been supplied to the petitioner. This plea prima facie stands admitted in reply, as the respondents have intentionally not mentioned the date on which some of the documents, if at all, were supplied to the petitioner. Learned counsel for the respondents relied upon the averments of para no. 18 of the counter to say that the documents requested for were supplied to the petitioner on 26th April, 1988. This averment firstly relates to the Supply of legible copies of the documents of pages 26, 28 and 29 by the Collector of Customs and not the copies of the documents asked for in the representation. Secondly, even if it be presumed for the sake of arguments that some of the copies of documents were supplied but that was too late in the day, as by that time, the meeting of the Advisory Board had already taken place on 15th April, 1988.

(6) The importance of the documents asked for cannot be minimised as each of them is quite relevant and material for the detenu to make out his defense. To start with, I take up the documents mentioned at item nos. (xv) and (xvi) i.e. visiting card of Kumar Sambhav and that of Ashok Gupta. Its non-supply has been held to be fatal to the order of detention in the case of the co-detenu Ashok Gupta in Crl. W.P. no. 180/88 decided by Mohinder Narain J. on June 10, 1988: The ratio descends of Ashok Gupta's case fully applies to the case in hand.

(7) The second set of documents of which the detenu sought copies were the search authorisation slips and the summons issued by the respondents to various parties for their examination. Since the statements of several persons have been relied upon in the grounds of detention, naturally, it was necessary for the detenu to satisfy himself that these persons have been properly summoned and examined by the authorities. These summons, Therefore, were very relevant and necessary to enable the detenu to make a proper representation. The non-supply of the search authorisation slips and the summons, according to the learned counsel, will vitiate the order of detention. In this respect, he has relied upon the Judgment of this Court reported as *M. Yusuf v. Union of India & Ors.* Crl. Writs no. 324 and 325 of 1986) decided by S, Ranganathan, J. (as His Lordship then was and H.C. Goel, J. on March 17, 1987. In the detailed Judgment, the importance of the non-supply of the search warrant and the summons was indicated thus :-

"IN the present case, the detaining authority in the detention order relies upon certain searches conducted at various premises and the panchnama in respect of these searches is relied upon as part of the grounds of detention. However, it is clear that no valid search could have been conducted except in pursuance of a geared warrant and, as Shri Harjinder Singh has pointed out, every one of the panchnama contains a reference to the search warrant in pursuance of which the search was conducted and the panchnama was recorded. 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. How vital such a document can be is illustrated by the decision of this Court in Crl. W. 127/85 decided by a division bench of this court on 5th September, 1985. In that case, the detenu had asked the detaining authority to supply, inter alia, the search warrant issued by the Assistant Collector of Customs together with the reasons to believe recorded by him at the time of issue of search warrant and also the exact time and date when the reasons to believe in the case was recorded. This request was rejected by the detaining authority. The Court perused the search warrants and found that in the search warrant for the search of one of the properties, there was no mention that there was information that smuggled goods belonging to the detenu were lying in the property in question. The court was thus satisfied that by the non-supply of search warrant, a prejudice has been caused to the detenu in making an effective representation. It is true that in the above case the court examined the search warrants and found that a prejudice had been caused, but the question of prejudice is not really relevant at this stage vide *Iserling Dolkar v. Administrator*, 1987 Judgments Today (1) 479. The prejudice to the detenu really lies in his not having been supplied with the search warrants. Had he been supplied with the search warrants, he might have been able as in the case in Crl. W. 127/85 to show that a prejudice had been caused to him. We are, Therefore, of the opinion that the non-supply of the search warrants asked for by the detenu vitiates the detention."

The observations of the above said Judgments fairly cover the case of the present petitioner. It may be that the authorities are not under an obligation to supply to the detenu Along with the grounds of detention all documents which may be referred to in the detention order (but not relied upon in passing the detention order), they are, however, duty bound to supply such documents as and when the detenu asks for the same, with a view to make an effective representation In the present case, the detenu has made a representation on 26 3.88 Annexure D) asking for the supply of number of documents which till today have not been supplied. Assuming for the sake of argument that quite a few of them have been supplied on 26th April, 1988 but it was after the Advisory Board had met and given its opinion in the matter. This only indicates that even according to the detaining authority at least some of the documents which had been called for by the detenu were relevant for the purposes of his defense The failure on the part of the respondent to discharge their legal obligation has deprived the petitioner of his Constitutional right under Article 22(5) of the Constitution, to make an effective and purposeful representation against the order of detention.

(8) In the result, the petition succeeds. The order of detention is set aside. Petitioner be set at liberty forthwith if not required to be detained in any other case.