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**(1990) 04 DEL CK 0022**

**In the Delhi High Court**

**Case No :** Criminal Writ Appeal No. 93 of 1990

Maninder Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 18-04-1990

**Acts Referred:**

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —  
Section 3(1)

**Citation :** (1990) 41 DLT 255 : (1990) 28 ECR 452 : (1990) 2 RCR(Criminal) 183

**Hon'ble Judges :** P.K. Bahri, J

**Bench :** Single Bench

**Advocate :** Ashutosh, Naveen Matta and Madan Lokur, for the Appellant;

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## **Judgement**

P.K. Bahri, J.

(1) This petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking quash meant of the order dated January 24, 1990 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974(For short, the Act) with a vi

(2) The facts of the case, in brief, are that on June 18, 1989 the petitioner had arrived from Singapore via Bangkok at Indira Gandhi International Airport, New Delhi and in presence of two independent witnesses his personal search was carried out and three egg shaped objects were recovered from his trousers pocket and they were broken and 7 pieces of gold were recovered on weighing of which the gold came to be 375 Grams. of the value of Rs. 1,15,500.00 .

(3) One of the pleas taken by the petitioner in the writ petition in Ground No. Ii is that the authorities suspected the petitioner of having indulged in smuggling goods earlier and thus residential premises of the petitioner were got searched but no incriminating article was recovered. The Panchnama showing Nil recovery was not placed before the detaining authority and the same being a vital

document which could have influenced the mind of the detaining authority, the detention order stands vitiated due to non-application of mind by the detaining authority to the said vital and important document. In the counter-affidavit filed by Shri A.S. Dagar on behalf of the detaining authority, it is admitted that the said document was not placed before the detaining authority. In the affidavit filed by Shri A.K. Prasad, Assistant Collector of Customs it has been mentioned that Assistant Collector of Customs, Patiala was required to carry out the search of the residential premises of the Petitioner but the reply sent by the Assistant Collector of Customs, Patiala was not on record and hence the same was not placed before the detaining authority.

(4) The learned counsel for the petitioner has also pointed out that the sponsoring authority had sent a telegram to the Assistant Collector, Patiala requiring that the search of the petitioner's house be carried out. It is not disputed before me that such a search was carried out and no recovery was effected and the panchnama showing Nil Recovery was prepared. A Division Bench of this Court in the case of Andrew Simon King v. Union of India & Ors. 1988 (3) Cri 33 has held that it is the duty of the sponsoring authority to collect all the material documents which could sway the mind of the detaining authority in considering whether the detention order should be made or not and to place them before the detaining authority. It is not the case of the respondents that sponsoring authority was not in a position to collect the panchnama in question from Patiala and place it before the detaining authority. The crucial question which has been raised before me is whether the aforesaid panchnama could be treated as a vital document or not. The counsel for the petitioner has brought to my notice the case of Ramavtar Motilal Jangid v. Union of India & Ors. Crl. Writ No. 720/89 decided on February 5, 1990 where similar question arose for decision. In the said case also the detenu was found to have smuggled about 20 gold biscuits and in his voluntary statement it was mentioned that he had visited Dubai four times and the authorities had carried out the search at his house but no incriminating articles were recovered and the said panchnama showing Nil Recovery was not placed before the detaining authority. This Court relying on the judgment of Bombay High Court in the case of Abdulla Kozukhal Assainar Vs. State of Maharashtra, had held that such a panchnama is a vital document which could have materially influenced the mind of the detaining authority in arriving at his subjective satisfaction to decide whether the detention order should be made or not. It was observed by this Court that it is evident that suspicion of the authorities that petitioner was indulging in such smuggling activities even on earlier occasions in view of his previous visits to the foreign countries stood not substantiated when residential premises of the detenu were searched and no recovery of any incriminating thing was made. It was held that if the panchnama showing the Nil Recovery had been placed before the detaining authority, it is possible that the detaining authority might have considered that it was not a fit case for passing the detention order when the petitioner had succumbed to the temptation of earning about Rs.5,000.00 as a carrier. It was observed that it may

be that the detaining authority could have come to the conclusion differently that despite the fact that no recovery had been effected from the residence of the petitioner still keeping in view the other facts, it is a fit case for passing the detention order. So, it was laid down that such a panchnama showing Nil Recovery was a vital document which could have swayed the mind of the detaining authority and if such a document was not placed before the detaining authority, the order of detention will stand vitiated. It is pertinent to mention that in the Grounds of Detention the said document was not relied upon and there is not even any mention to the fact that the search of the petitioner's house was carried out and no incriminating thing was recovered. So, following the aforesaid judgment I hold that the detention order in the present case also stands vitiated on account of suppression of material fact in the shape of said panchnama showing Nil Recovery from the detaining authority.

(5) I allow the writ petition, make the rule absolute and quash the detention order and direct that the petitioner be set at liberty, if not required to be detained in any other case,