

(1989) 03 DEL CK 0001

In the Delhi High Court

Case No : Criminal Writ Appeal No. 502 of 1988

M.K. Jamal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-03-1989

Acts Referred:

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

Citation : (1989) 2 Crimes 348 : (1989) 38 DLT 201

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

Bench : Single Bench

Advocate : Rohit Kochhar, J.C. Verma, G. Prakash, K.K. Kunnikaran and W. Singh, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This is a petition brought under Article 226 of the Constitution of India read with Section 482 Criminal Procedure Code seeking quashing of the detention order dated May 22, 1988 passed u/s 3(1) of the Cofeposa Act 1974 and the declaration dated July 6, 1988 passed u/s 9(1) of the said Act.

(2) It is not necessary to refer to various grounds taken in the writ petition because

(3) The learned counsel for the respondents-detaining authority has argued that these documents were not at all relevant and the detenu was aware of the contents of these documents and hence no prejudice is caused to the detenu for non-supply of the said documents. He has relied upon Yogendra Murarl v. Slate of U.P. 1988 (3) J.T. 351. In the cited case one of the pleas raised before the Supreme Court was that a copy of the application moved by the petitioner in that case by way of a counter case, had not been supplied to the petitioner. In dealing with this point in Para 10 of the Judgment it was observed that there is no force in this particular contention as it cannot be presumed that the petitioner was

prejudiced by non-service of a copy of this own application. I have gone through the whole of this judgment and find that the particular point has not arisen before the Supreme Court that in case a demand is made by the detenu for supply of copies of documents which are casually referred to in the grounds of detention, the authorities are not bound to supply such copies of the documents on the ground that detenu is well aware of the contents of the said documents, and no prejudice has been caused to the detenu for non-supply of such documents. In *Mehrunissa Vs. State of Maharashtra*, a contention was raised that as the detenu was well aware of the documents which have been relied upon for passing the detention order and non-supply of such documents has not prejudiced the detenu. It was held that in order to enable the detenu to make an effective and purposeful representation, it is incumbent that detenu was supplied with copies of all the documents instead of leaving him to rely upon his memory in regard to the contents of the documents. The mere fact that detenu is supposed to know the contents of the application for bail moved by him and the order of the bail made in the case would not mean that detenu's demand to have such copies of documents is to be ignored by the authorities because it is for the detenu to see as to how and in what manner he could make use of the contents of the said documents to make an effective and purposeful representation. In *Kuriniyan Saidalikatty v. Union of India and others* 1987 (3) Crimes 851 this Court had considered the similar point and it was held that where a demand is made by the detenu for supply of copies of some documents which have been casually referred to in the grounds of detention although those documents are not relied upon for passing the detention order, even then the authorities are legally bound to supply copies of the said documents to the detenu to enable the detenu to make an effective and purposeful representation and non-supply of such copies of document on demand, would vitiate the detention order of the detenu.

(4) The learned counsel for the respondent has also made reference to *Haridas Amarchand Shah of Bombay v. K.L. Verma and others* 1988 (4) J.T. 632. I have gone through this judgment and find that the question which had arisen for decision before the Supreme Court was different from the facts of the present case. Rather what has been discussed by the Supreme Court is about the non-placing of a subsequent order of the Court vitiates the conditions of bail before the detaining authorities. In the said case the question had arisen for decision as to whether the authorities are bound to supply copies of all the documents which are not material and have not been relied upon for reaching the subjective satisfaction for passing the detention order. It was held that no duty is cast upon the authorities to supply copies of such documents. It was clearly indicated in the judgment that no application was moved by the detenu for getting the copies of such documents which may have been referred to casually in the grounds of detention. It is settled law that if any material document which is relied upon for passing the detention order is not supplied with grounds of detention, the detention stands vitiated. In the present case there is no such grievance made

that the copies of the documents which have been relied upon by the detaining authority for passing the detention order have not been supplied to the petitioner. The grievance raised is that certain copies of the documents were asked for but the detaining authority for no good reason had refused to supply the copies of said documents. So, the said case is distinguishable on facts.

(5) So, keeping in view the ratio of the case in *Kuriniyan Saidalikutly v. Union of India and others*, (supra) I hold that the continued detention of the petitioner stands vitiated on account of non-supply of copies of the documents particularly the bail order demanded by the detenu which has deprived the detenu of making an effective and purposeful representation against the impugned orders. I allow the writ petition, make the rule absolute and quash the continued detention of the petitioner and direct that the petitioner be set at liberty forthwith if not required to be detained in any other case. Parties are left to bear their own costs. Petition allowed. the seal impression Ssy and PNA. Therefore, it is really strange that when sample parcels were sent to CfsI, they were found to contain only one seal impression of SSY. It is thus clear that either the sample parcels sent in this case were not of this case or they were tempered with either in the police Malkhana or somewhere else before they were deposited in CFSL. Other person Baldev Singh who was also apprehended along with the appellant was acquitted by P.K. Babri, J. vide judgment reported as *Baldev Singh Vs. State*, . This was also the specific point raised in that appeal whereupon the Hon"ble Judge acquitted Baldev Singh. This case also suffers from the same infirmity and as already stated above, it cannot be said that the sample parcels sent to CfsI could be the same which were prepared in this case.

(6) I am, Therefore, of the view that the appellant could not be convicted and sentenced in the facts and circumstances of this case. The appeal is, Therefore, accepted. The conviction and sentence against the appellant are set aside. He be set at liberty forthwith if he is not wanted in any other case.