
(1981) 05 AHC CK 0010
In the Allahabad High Court

Mushtaq Ahmad Khan

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 20-05-1981

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3
Constitution of India, 1950 — Article 22

Citation : (1981) CriLJ 1185

Hon'ble Judges : V.N. Misra, J; B.N. Katju, J

Bench : Division Bench

Judgement

B.N. Katju, J.—This is a petition filed on behalf of Mushtaq Ahmad Khan for the issue of a writ of habeas corpus.

2. It appears that an order u/s 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act hereinafter referred to as the Act, was passed by the State Government against Mushtaq Ahmad Khan and he was arrested on 23-10-1980 in compliance with the aforesaid order and the grounds of detention were served on him on that very day. Mushtaq Ahmad Khan made a representation against the aforesaid order on 12-11-1980 and prayed that the copies of the statements on which the grounds of detention were based and the recovery list (Panchnama) be supplied to him. The statements on which the grounds of detention were based were served on him on 13-11-1980. The representation of Mushtaq Ahmad Khan was rejected by the State Government on 24-11-1980 and the grounds of detention and the representation of Mushtaq Ahmad Khan were placed before the Advisory Board on 25-11-1980. The Advisory Board recommended the confirmation of the order of detention and the State Government by its order dated 12-12-1980 confirmed the detention of the petitioner in accordance with the opinion of the Advisory Board.

3. Admittedly the statements of Mushtaq Ahmad Khan and the four other co-accused who were arrested along with Mushtaq Ahmad Khan were not supplied

to Mushtaq Ahmad Khan along with the grounds of detention on 23-10-1980. Even if it be held that the grounds of detention contained the substance of the statements of Mushtaq Ahmad Khan and the four other co-accused who were arrested along with him on 23-10-1980 the State Government was still required to supply the copies of the statements of Mushtaq ; Ahmad Khan and the four other co-accused arrested along with him along with the grounds of detention as the aforesaid statements were the basic facts and materials on which the grounds of detention were based and it was not possible for Mushtaq Ahmad Khan to make an effective representation without them. We are fortified in our view by the decision of the Supreme Court in *Ganga Ramchand Bharvani Vs. Under-Secretary to The Government of Maharashtra and Others*, in which it has been held :

The mere fact that the grounds of detention served on the detenu are elaborate, does not absolve the detaining authority from its constitutional responsibility to supply all the basic facts and materials relied upon in the grounds to the detenu. In the instant case, the grounds contain only the substance of the statements while the detenu had asked for copies of the full text of those statements. It is submitted by the learned Counsel for the petitioner that in the absence of the full text of these statements which had been referred to and relied upon in the "grounds of detention", the detenu could not make an effective representation and there is disobedience of the second constitutional imperative pointed out in *Khudiram Das Vs. The State of West Bengal and Others*, . There is merit in this submission.

4. Admittedly the statements of Mutate Ahmad Khan and four other co-accused arrested along with him on 23-10-80 were supplied to Mushtaq Ahmad Khan on 13-11-80. This was, however, done after the expiry of the period of 15 days from the date of his detection. Section 3(3) of the Act. 1974 is as follows:

(3). For the purposes of Clause (5) of Article 22 of the Constitution, the communication to a, person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention." As the grounds of detention were complete only after the statements of Mushtaq Ahmad Khan and the other four co-accused arrested along with him were supplied to Mushtaq Ahmad Khan on 13-11-1980 it follows that there was a breach of Section 3(3) of) the Act. There was thus a violation of Article 22(5) of the Constitution.

5. It was contended by the learned Additional Government Advocate that in the present case it was not necessary to supply the statements of Mushtaq Ahmad Khan and the other four co-accused arrested along with him on 23-10-1980 along with the grounds of detention to Mushtaq Ahmad Khan as the aforesaid statements and the recovery list had been served on the counsel for Mushtaq Ahmad Khan by the customs authorities on 8-12-1978 in connection with the

case against Mushtaq Ahmad Khan under the Customs Act which was admitted by him in his statement made before the Advisory Board. Even if it be held that the aforesaid statements and the Panchnama were supplied to the counsel for Mushtaq Ahmad Khan by the Customs Authorities on 8-12-1978 the detaining authority which was the State Government was still required to supply the aforesaid statements and the copy of the Panchanama (recovery list) to Mushtaq Ahmad Khan under Article 22(5) of the Constitution after the arrest of the petitioner within the period prescribed u/s 3(3) of the Act. As this duty has been cast on the detaining authority under Article 22(5) of the Constitution it is immaterial that the aforesaid statements and the recovery list were supplied to the counsel for Mushtaq Ahmad Khan by the Customs Authorities in connection with a case under the Customs Act against him.

6. It was next contended by the learned Additional Government Advocate that the statements of Mushtaq Ahmad Khan and the other four co-accused were not the basic material on which the grounds of detention were based but were subsidiary facts and other particulars which could have been supplied to Mushtaq Ahmad Khan on being demanded and were, therefore, not covered by the word "grounds" used in Article 22(5) of the Constitution or Section 3(3) of the Act. We are unable to agree with this contention of the learned Additional Government Advocate as the statements of Mushtaq Ahmad Khan and the four other co-accused arrested along with him was the basic material on which the grounds of detention were based and not mere subsidiary facts and other particulars. We are fortified in our view by the decision of the Supreme Court in *Ganga Ramchand Bharvani Vs. Under-Secretary to The Government of Maharashtra and Others*, . It may also be pointed out that it has been held in *S. Gurdip Singh Vs. Union of India (UOI) and Others*, :

In our opinion, this case is clearly concluded by two recent Division Bench decisions of this Court, namely: *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, and *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, . In both these cases, this Court has taken the view that on a proper construction of Article 22(5) of the Constitution, the service of the grounds of detention on the detenu can be complete only if they are accompanied by the documents or materials on which the order of detention is based; for then alone will the detenu be able to make an effective representation. In other words, if the documents which form the basis of the order of detention are not served on the detenu along with the grounds of detention, in the eye of law there will be no service of the grounds of detention and that circumstance would vitiate his detention and make it void ab initio.

7. For the reasons mentioned above the detention of Mushtaq Ahmad Khan is illegal.

8. This petition is accordingly allowed and Mushtaq Ahmad Khan is directed to be set at liberty forthwith unless wanted in connection with any other case.