

(1996) 01 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 276 of 1995

Pardeep Singh Jassal alias Babla

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 3(3)
Constitution of India, 1950 — Article 22, 22(5), 226

Citation : (1996) CriLJ 1830 : (1996) 2 ILR (P&H) 173 : (1996) 1 RCR(Criminal) 723

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

Bench : Single Bench

Advocate : H.S. Mattewal and Sukhbir Singh, for the Appellant; D.D. Sharma and Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—This petition has been filed by the detenu Pradeep Singh Jassal alias Babla son of Shri Pritam Singh Jassal under Article 226 of the Constitution of India for quashing the detention Order No. F. No. 673/15/95-OUS, VIII dated 7-12-1995 (Annexure P. 9) passed by the Joint Secretary to the Government of India, Ministry of Finance, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Conversation of Foreign Exchange and Prevention of Summoning Activities Act, 1974 (hereinafter referred to as "the Act") and with a prayer that he be released forthwith from the illegal detention.

2. The allegations on the basis of which the impugned order has been passed can be gathered from the grounds of detention (Annexure P. 8).

3. On receipt of some secret information with regard to Pardeep Kumar, Karamwant Singh and Pardeep Singh Jassal alias Babla (detenu) that they were indulging in illegal distribution of payments in India on instructions of Indian residing abroad, on November 15, 1994, Car No. PB-37-1213 was intercepted by

the Punjab Police at Chahal Nagar Crossing, G. T. Road, Phagwara and Rs. 15 lakhs were found in that car in which" these three persons were travelling. Officers of the Enforcement Directorate were also informed and they recorded the statements of these three persons and it was revealed that these persons were taking this money for being handed over to Narvail Singh at his house in Jalandhar. Premises of Narvail Singh House No. 167-B, Cheema Nagar, Jalandhar were searched and Indian currency of the value of Rs. 6,20,000/- and documents showing the receipt and distribution of payments on instructions received from abroad were seized. Some documents were also recovered from the shop of detenu-Pardeep Singh Jassal. In his statement-detenu Pardeep Singh Jassal admitted the said recovery from the said car and disclosed that this sum of Rs. 15 lakhs had been given to them by Prem Kumar r/o New Delhi on the instructions of Kulwinder Singh of Dubai for delivering the same to Narvail Singh on instructions of said Kulwinder Singh. He also admitted that Rs. 10 lakhs had been similarly received by him from said Prem Kumar in the similar manner which he had delivered to Narvail Singh in the last week. He disclosed that on instructions received from Kulwinder Singh of Dubai, he had been collecting the money from Prem Kumar of Delhi for the last two months and in this manner he had collected Rs. 1,10,00,000/- and had delivered rupees one crore to Pardeep Kumar and Rs. 10 lakhs to Narvail Singh and had been receiving Rs. 800/- per one lakh of such money as commission. He also disclosed that Karamwant Singh of Ludhiana and his nephew Jagjit Singh were similarly receiving money on instructions of Kulwinder Singh and Karamwant Singh had also accompanied this detenu for making payment to Narvail Singh once when Rs. 10 lakhs were paid. He also admitted that Karamwant Singh also accompanied him to Delhi and brought Rs. 25 lakhs and Rs. 15 lakhs respectively during two visits. He also disclosed that on instructions of Kulwinder Singh of Dubai, he had gone to deliver Rs. 10 lakhs to Paramjit Singh, nephew of Narvail Singh as Narvail Singh was not present at that time. Statement of Karamwant Singh, Pardeep Kumar and Narvail Singh on similar lines were also recorded. Narvail Singh disclosed that his brother-in-law (sister's husband) Malpinder Singh was residing in Dubai and on his instructions, he had been receiving amounts which he had been distributing to different persons and he had been receiving instructions on the FAX machine and Paramjit Singh also had been engaged for the purpose of distributing the money being sent to Narvail Singh through various persons for being distributed in India and Rs. 7,000/- were being paid to both of them separately as their expenses. According to Narvail Singh, he was getting about Rs. 40,00,000/- per month on instructions of Malpinder Singh and Narvail Singh and Paramjit Singh had received about Rs. 2.5 crores since June 1994 which they had distributed amongst the persons whose relations had given foreign exchange to Malpinder Singh in Dubai. Both. Pardeep Singh Jassal and Narvail Singh in their statements explained the entries appearing in various documents which were seized from them indicating the said Hawala transactions.

4. On the above allegations, Joint Secretary to the Government of India, Ministry

of Finance, Department of Revenue, after being satisfied that the petitioner has engaged himself in unauthorised transaction of foreign currency in violation of provisions of Foreign Exchange Regulation Act, 1973, passed the impugned detention order (Annexure P. 9).

5. The petitioner has challenged the legality and validity of the said detention order on the following grounds:-

(i) that the petitioner has not been supplied with the copies of the documents relied upon/referred to in the detention order and specifically asked for by the petitioner in spite of his representation;

(ii) that a number of documents relied upon by the competent authority *per* passu the grounds of detention were not legible and the legible-copies thereof were not supplied to him, on account of which he could not make an effective representation;

(iii) that the competent authority has taken into consideration and relied upon certain material which was irrelevant and extraneous in nature.

6. Notice of motion was given to the respondents.

7. In its return filed on behalf of respondent No. 1, it has been stated that the detention order has been passed by the detaining authority after due application of judicious mind and after due subjective satisfaction and this Court cannot sit as a Court of appeal and cannot go into the merits or demerits of the detention order. It has been further stated that all the documents relied upon by the detaining authority were supplied to the petitioner and the representation dated 24-3-1995 was duly considered and rejected and the petitioner was informed accordingly. It has been further stated that the documents contains instructions received from abroad through fax messages and the same have been supplied as recovered and seized, and that illegible part of the documents recovered were not considered by the detaining authority while passing the detention order. It is also explained that no irrelevant or extraneous document has been take into consideration by the detaining authority.

8. I have heard the learned counsel for the parties and have gone through the record.

9. Shri H. S. Mattewal, Sr. Advocate, while appearing on behalf of the petitioner, has argued that the petitioner was not supplied with the documents relied upon/referred to by the detaining authority and also requested for by the petitioner which deprived him from making an effective representation. While elaborating this argument, the learned counsel has pointed out that according to the department, shop of the petitioner was searched and certain documents were seized but surprisingly neither the list of the documents nor the copies thereof have been supplied to him. It has been further contended that the petitioner had asked for these documents along with the copy of the passport of Pardeep Kumar as well as the registration certificate of the Maruti car stated to have been seized

by the authorities which prevented the petitioner from making an effective representation and this omission in itself is enough to strike at the root of the detention order being in violation of Article 22 (5) of the Constitution of India. The learned counsel has placed reliance upon certain decisions reported in Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, ; Mehrunissa Vs. State of Maharashtra, ; Ashok Kumar v. Union of India 1988(1) All Ind Cri LR (SC) 677; Mohd. Hussain Vs. Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay and others, ; M. Ahamedkutty v. Union of India 1990 (1) RCR 423 ; Hyder v. Union of India 1989 All Ind Cri LR 942 and Sarup Singh v. Union of India 1992 All Ind Cri LR 83.

10. While meeting the aforesaid contention of the learned counsel for the petitioner, Shri D. D. Sharma, Advocate, Additional Standing Counsel for the Union of India, has contended that to meet the requirements of Article 22 (5) of the Constitution, the detaining authority is bound to supply the copies of those documents which have been relied upon by him for his subjective satisfaction for passing an order of preventive detention i.e. the documents relied upon by him and stated in the grounds of detention. It has been further contended that the detaining authority is not bound to supply the copies of those documents which have been casually mentioned in the grounds of detention or which were not relevant in nature. It has also been urged that the petitioner has not been able to point out if any prejudice has been caused to him on account of the non-supply of the alleged documents which were neither relied upon, nor referred to, nor relevant to the passing of the impugned detention order. Learned counsel has placed reliance upon a judgment of the Supreme Court rendered in Abdul Sathar Ibrahim Manik v. Union of India 1992 SCC 1.

11. I have considered the respective arguments advanced at the Bar and have also perused the relevant record.

12. It is now well settled that in order to make an effective representation, a detenu is entitled to obtain information relating to the grounds of detention. When the grounds of detention are served on the detenu, he is entitled to ask for the copies of the statements and documents referred to and relied upon in the grounds of detention to enable him to make an effective representation. The question has been authoritatively answered by the Apex Court in Smt. Ichchu Devi Choraria Vs. Union of India (UOI) and Others, , as under:-

"Now it is obvious that when Clause (5) of Article 22 and Sub-section (3) of Section 3 of the COFEPOSA Act provide that the grounds of detention should be communicated to the detenu within five or fifteen days, as the case may be, what is meant is that the grounds of detention in their entirety must be furnished to the detenu. If there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them. It would not therefore be sufficient to communicate to

the detenu a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to Clause (6) of Article 22 in order to constitute compliance with Clause (5) of Article 22 and Section 3, Sub-section (3) of the COFEPOSA Act. One of the primary objects of communicating the grounds of detention to the detenu is to enable the detenu, at the earliest opportunity, to make a representation against his detention and it is difficult to see how the detenu can possibly make an effective representation unless he is also furnished copies of the documents, statements and other materials relied upon in the grounds of detention. There can therefore be no doubt that on a proper construction of Clause (5) of Article 22 read with Section 3, sub-section (3) of the COFEPOSA Act, it is necessary for the valid continuance of detention that subject to Clause (6) of Article 22 copies of the documents, statements and other materials relied upon in the grounds of detention should be furnished to the detenu along with the grounds of detention or in any event 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. If this requirement of Clause (5) of Article 22 read with Section 3, Sub-section (3) is not satisfied, the continued detention of the detenu would be illegal and void."

13. Without burdening this judgment with various precedents on the point, it may be pointed out that on a survey of the case law in this respect a Division Bench of the Bombay High Court in Mohd. Hussain Vs. Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay and others, , summarised the law relating to supply of copies of the documents to the detenu in pursuance of Article 22 (5) of the Constitution of India as under:-

"(a) the copies of all the documents which are relied upon in or which form the basis of the grounds of detention must be supplied to the detenu along with the grounds of detention;

(b) the documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually or incidentally as and by way of narration of facts in the grounds of detention need not be supplied to the detenu;

(c) however, even such documents, if the detenu requests for the same, have to be supplied to him, for whether they are relevant to his defence or not is for the detenu to decide and not for the detaining authority to judge."

Thus, it may be stated that the decision of the Apex Court in Abdul Sattar Ibrahim Manik's case 1992 SCC (Cri) 1 (supra), relied upon by the learned counsel for the respondent, stands explained.

14. In Mehrunissa Vs. State of Maharashtra, , their lordships of the Supreme Court had

made it clear that when a detenu asks for the supply of copies of certain documents, the same cannot be refused on the ground that the detenu was already aware of the contents of the documents. Since the documents were not supplied in spite of the request of the detenu, the detention was quashed. It may also be clarified here that the question as to whether the documents, copies of which have been asked for by the petitioner, are relevant or material, although not relied upon by the detaining authority, is to be decided by the petitioner and not by the detaining authority. This question directly arose before the Delhi High Court in *Hyder*" s case 1989 (2) All Ind Cri LR 942 (supra), and. the following reply was given :-

"The crucial question whether the detenu should or should not be supplied copies of such documents which are not relied upon but to which a casual reference has been made in the grounds of detention on such documents being demanded by the detenu never came up for consideration by the Supreme Court in this case. No other judgment of the Supreme Court has been cited where such a specific question had been considered. The reason why the detenu should be supplied copies of document on demand to which only casual reference has been made in the grounds of detention is that the detenu has to be afforded a reasonable opportunity of making an effective and purposeful representation against his detention orders. It is for the detenu to make up his mind as to what help he can derive out of the said document while making an effective or purposeful representation. The Court or the detaining authority are not supposed to go into the question as to whether in fact such documents could possibly furnish any material to the detenu for making an effective or purposeful representation. A duty lies on the detaining authority to comply with the demand of the detenu in this connection and it is for the detenu to see how he can make out any defence out of such documents in making an effective or purposeful representation against the detention order. It is true that while considering the procedural safeguard enshrined in Article 22 of the Constitution the Court must construe the same in proper light and from pragmatic commonsense point."

15. Reverting to the facts of the case in hand, it is not disputed that the shop (business premises) of the petitioner was searched by the authorities on 15-11-1994 and certain documents were seized therefrom. Neither the list of such documents nor the copies thereof were supplied to the petitioner in spite of the written request contained in his representation (Annexure P. 10). Similarly, the petitioner asked for the copy of the passport of Pardeep Kumar whose statement recorded by the authorities has been considered as a part of the material for passing the impugned detention order. Similarly, copy of the registration certificate of the Maruti car from which Indian currency of 15 lakhs is alleged to have been recovered besides the presence of the petitioner and his two associates, was not supplied in spite of the written request of the petitioner contained in his aforesaid representation. Copy of the passport of the petitioner was also admittedly not supplied to him, although the statement of the petitioner that he knew Kulwinder Singh of Dubai when he had been to that place and on

whose behalf he had been collecting the money from one Prem Kumar of Delhi, has been relied upon by the detaining authority in passing the impugned detention order.

16. In view of the law discussed above, the detaining authority was bound to supply the copies of all the documents since the same were expressly requested by the petitioner in his representation (Annexure P. 10). The question as to whether these documents were relied upon or not by the detaining authority or whether these documents were relevant or not from the point of view of the detaining authority is irrelevant. It was for the petitioner to make up his mind as to what help he could derive out of the said documents while making an effective or purposeful representation. The Court or the detaining authority are not supposed to go into the question as to whether in fact such documents could possibly furnish any material to the detenu for making an effective or purposeful representation. Therefore, non-supply of the copies of the documents demanded in the representation (Annexure P. 10), in itself, is enough to strike at the root of the impugned detention order. In view of this finding, I need not consider other two grounds taken up by the petitioner.

17. As a result of the above discussion, this petition is allowed. The detention order dated 7-2- 1995 (Annexure P. 9) is hereby quashed. The petitioner shall be set at liberty forthwith, if not wanted in any other case.