

(1990) 12 DEL CK 0007

In the Delhi High Court

Case No : Criminal Writ Appeal No. 281 of 1990

Praduman Kumar Jain

APPELLANT

Vs

United of India and Others

RESPONDENT

Date of Decision : 03-12-1990

Acts Referred:

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

Citation : (1991) 43 DLT 361

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : Harjinder Singh, A. Acharjee, Naveen Malhotra and Rajeev Trivedi,
for the Appellant;

Judgement

V.B. Bansal, J.

(1) Praduman Kumar Jain has by way of this writ petition under Article- 226 of the Constitution of India read with Section 482 of the Code of Criminal Proceedings prays for his being released forthwith after quashing the order of detention dated 18th April, 1990.

(2) On 18th December, 1989, Shri Mahinder Prasad, Joint Secretary to the Government of India, a specially empowered officer u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 (for short the Act) passed an order for the detention of Praduman Kumar Jain with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange.

(3) The facts leading to the passing of the said order have been that Delhi Zonal office of the Enforcement Directorate had an information that Praduman Kumar Jain a resident of 322 Dariba Kalan, Chandni Chowk, with business premises 142, Katra Mashroo, Dariba Kalan, Chandni Chowk Delhi was indulging in unauthorised purchase and sale of foreign exchange and gold on very large scale. In

pursuance of this information residential premises of the petitioner were searched on 20th March 1990 when Indian Currency of Rs. 50,000.00 and some documents were recovered. Business premises of the petitioner were also searched when foreign currency, Indian currency, documents and primary gold weighing 1118.950 gms. were recovered. When the search proceedings were being carried out in the business premises of the petitioner a number of persons came, who were also searched and recoveries effected. Statement u/s 40 of the Foreign Exchange Regulation Act, 1973 of the petitioner was recorded on 29th March 1990 which was concluded only on 21st March 1990. After considering the statement and other documents including the recoveries effected from the petitioner the said order of detention was passed.

(4) This order of detention was served on the petitioner on 23rd April, 1990 when the grounds of detention and the documents relied upon were also supplied to the petitioner. The matter was placed before the Advisory Board in its meeting on 16th May, 1990. A representation was made by the petitioner which after consideration was rejected by the competent authority on 19th June, 1990. A prayer was made by the petitioner for supply of material documents by way of the aforesaid representation. These documents have been supplied to the petitioner on 28th June, 1990 after the order of detention was confirmed on 26th June, 1990.

(5) A number of grounds have been taken by the petitioner in this writ petition, learned counsel for the petitioner has, however, restricted his submissions only to one ground.

(6) LD. counsel for the petitioner has submitted that a representation was made by the petitioner on 8th May, 1990 in which he had asked for supply of documents including the documents recovered and seized from the residential premises of the detenu, search warrants in respect of the business premises as also the residential premises and other documents. He has also submitted that these documents have been supplied to the petitioner only on 28th June, 1990 even after the order of confirmation was passed and in this way there has been a violation of the provisions contained in Article 22(5) of the Constitution of India. He has, thus, submitted that the petitioner has been deprived of his valuable right of making representation and on this account alone the order of detention is liable to be quashed. There has been a controversy with regard to the date on which the representation was made by the petitioner. His claim has been that this representation was made on 8th May, 1990. No specific affidavit has been filed by the Superintendent Jail to whom, as per the allegations of the petitioner, representation was given. However in the affidavit dated 3rd September, 1990 of respondent no. 2 it has clearly been stated that as per the information given to him by the Superintendent Central Jail no such representation was moved by the petitioner and it was submitted only on 15th May, 1990. Without going further into this controversy, the question for consideration, however, is as to whether there has been any delay on the part of the respondents to supply material

documents so as to affect the right of the petitioner of making effective representation. There can possibly be no dispute that the search warrants relating to the petitioner- detent and the documents seized from his residential houses are material and relevant documents and it is only on this account that these documents along with others asked for by the petitioner have been supplied. Submission of the learned counsel for the respondent has been that it was open to the petitioner to have made such a grievance of the non-supply of the documents before the Advisory Board where he was produced or he could have made a separate representation in this regard. The petitioner having failed to do so would indicate that he has not been prejudiced in his right of making a representation. Reliance in this regard has been placed on the case Abdul Sattar Abdul Kadar Shaikh Vs. Union of India (UOI) and Others, . Learned counsel for the petitioner has however submitted that this judgment of Abdul Sattar AbdulKadar Shaikh (supra) came up for consideration before the Supreme Court in Criminal appeal arising out of SLP (Cr.) 923 of 1990 titled Abdul Rahiman v. Union of India & others decided on 1st November 1990 where it has been held that the said case was decided on the particular facts of that case.

(7) I have gone through both the judgments and am of the view that the facts of the case Abdul Sattar Abdul Kadar Shaikh (supra) are distinguishable and not applicable to the present case. In the said case a writ for habeas corpus was filed by the detenu which was dismissed and only thereafter the second petition was filed in which the plea of the non-supply of the documents was taken. In this subsequent petition a plea was taken by the detenu that he was unaware of the existence of the documents but the petition showed that he was aware of all those documents. In the instant case at the very beginning the petitioner has made a grievance of the non-supply of the documents.

(8) Counsel for the respondent submits that there has not been any delay on the part of the respondents in the supply of the documents since the representation was rejected on 19th June, 1990 and the documents were supplied on 28th June, 1990. The material question in this petition is as to whether there has been a delay in the supply of relevant documents or not. It is not the case of the respondents that these are not the material documents or that they were not required to be supplied. The mere facts that comments were obtained and after processing the representation it was rejected and only thereafter the documents were supplied cannot be said to be a compliance of the provisions so as to hold that the petitioner has not been deprived of his right to making a representation. I do not think it was necessary to delay the supply of the documents till the representation on other grounds was rejected. As already stated the order of confirmation was passed on 26th June, 1990 and it is only thereafter that the documents have been supplied. On this ground alone, I am of the view that the order of detention is liable to be quashed. I find support for this conclusion from the judgment Bhupinder Singh v. Union of India & Others : (1987)2SCC234 .

(9) As a result the writ petition is allowed. Rule is made absolute. The order of

detention dated 18th April, 1990 is quashed. The petitioner shall be released forthwith, if not required in any other case.