
(1988) 10 DEL CK 0034

In the Delhi High Court

Case No : Criminal Writ Petition No. 427 of 1988

Rajinder Gautam

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-10-1988

Acts Referred:

Citation : (1988) 36 DLT 439

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : Harjinder Singh, Rohit Kochhar, Sat Pal and Maninder Singh, for the Appellant;

Judgement

Charanjit Talwar, J .

(1) By this petition under Article 226 of the Constitution of India, Rajinder Gautam, the detunes seeking quashing of the detention order dated the 6th July, 1988 passed by Shri K.L. Verma, Joint Secretary to the Government of India u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and "Psychotropic Substances Ordinance, 1988. The impugned detention order was passed with a view to preventing the petitioner from engaging in sale and purchase of Narcotic Drugs. The detenu vide his representation dated the 9th August, 1988 sought revocation of the detention order on various grounds. Inter alia, he brought to the notice of the detaining authority that documents mentioned at items No. 26, 27, 28, 29, 35, 36, 37 and 90 of the grounds of detention, which were supplied to him were illegible. He did not receive any reply to the representation. The documents sought for, apart from the documents which were illegible, were also not supplied to him. He, Therefore, filed the present petition on 5th September, 1988.

(2) The admitted position is that during the pendency of the writ petition, on 5th October, 1988, the detenu was supplied documents running into 179 pages. The said documents included legible copies of the earlier mentioned documents, i.e.,

documents at items. No. 26, 27, 28, 29, 35, 36, 37 and 90. It is further admitted that on that very day the order of detention was confirmed by the Central Government Prior to that, it is the admitted position that the Advisor) Board meeting had taken place on 15th September, 1988. These facts have been culled out from the counter affidavit filed on behalf of respondents I and 2 and from the rejoinder-affidavit of Smt. Aravind Gautam.

(3) During the course of arguments, we asked Mr. Satpal to read for our benefit anyone of the said documents, copies of which were sought on the ground that those were illegible. Mr. Satpal frankly conceded that he was unable to fully read the documents mentioned at items 26, 35, 36 and 37. We have also perused those documents and we agree with the contention of the petitioner that those documents were illegible.

(4) The legible copies of the said documents were supplied to the petitioner on 5th October, 1988, the day on which the detention order was confirmed. The Advisory Board had already met on 15th September, 1988. Thus the petitioner was prevented from filing an effective representation against his detention. That the said documents were relied upon, is being admitted. Atleast four of those documents are illegible. The fundamental right guaranteed to the detour under Article 22(5) of the Constitution of India has been contravened. The continued detention of the detenu is illegal.

(5) Thus the impugned detention order dated the 6th July, 1988 is to be quashed. We order accordingly. We allow the petition and make the Rule absolute. We direct that the petitioner, if not required under any other valid detention order or in any other case, be set at liberty forthwith.