

(1986) 11 DEL CK 0040

In the Delhi High Court

Case No : Criminal Writ No. 236 of 1986

Ram Dass Chauhan

APPELLANT

Vs

The Administrator, Union Territory of Delhi and others

RESPONDENT

Date of Decision : 04-11-1986

Acts Referred:

Citation : (1987) CriLJ 1223 : (1987) 12 DRJ 66 : (1989) 40 ELT 295 : (1987) 2 RCR(Criminal) 222

Hon'ble Judges : S. Ranganathan, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Ram Jethmalani, H.K. Jaggi and R.M. Bagai, for the Appellant;

Judgement

S. Ranganathan, J.—This is a petition for the issue of writ of Habeas Corpus directing the release of the brother of the petitioner who has been detained in pursuance of an order made by the Administrator of the Union Territory of Delhi on 12th March, 1986 in exercise of the powers conferred under S. 3(1) read with S. 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("COFEPOSA Act").

2. Ram Dass Chauhan, a Sweeper employed at the Delhi Airport in Air India, was detained on 12th April, 1986 in pursuance of the above order and the grounds of detention were served on him on the 13th April, 1986. The detention was the result of an incident on the 14/15th July, 1985 at the Delhi Airport when some gold biscuits of foreign origin were recovered from one Daya Ram, also a Sweeper in Air India. The grounds of detention broadly were that the detenu, who was traveling by Air India Flight 301 from Hong Kong to Bombay with a stop over at Delhi, had handed over an air sickness bag to Daya Ram. The allegation of the authorities was that the air sickness bag which was found to contain sixteen gold biscuits, valued at Rs. 2,70,750/- had been brought from Hong Kong and handed over to Daya Ram. The further case of the enforcement authorities was that the smuggling was done by the detenu in collusion with one Parminder Singh who was also a co-passenger with the detenu on the same flight, that the

gold biscuits had been slid by the said Parminder Singh hidden under his seat in the air sickness bag with the intention that it should be handed over by the detenu to Daya Ram when the latter came to clean the aircraft when it stopped over at Delhi. The detenu was also arrested on 15th July, 1985 and statements were recorded from both Daya Ram and the detenu. Parminder Singh, however, obtained anticipatory bail. Eventually an order was passed by the competent authority, detaining Ram Dass Chauhan under COFEPOSA Act.

3. Several objections have been taken on behalf of the petitioner to the order of detention. But it is not necessary to consider them in detail. It is sufficient to refer to two of the principal objections raised on behalf of the petitioner as, in our view, consideration thereof is sufficient to dispose of the present petition. These contentions are :-

(i) That there had been an undue delay of about eight months in passing the order of detention. It is pointed out that the incident of smuggling is alleged to have taken place on 15th July, 1985 whereas the detention order has been made on 12th March, 1986. Moreover, the service of the grounds of detention and the actual detention took place almost one month after passing of the detention order. There has thus been, according to the petitioner, an undue delay in the detention which is not satisfactorily explained.

(ii) The second contention of the petitioner is that the detenu made a representation on the 27th May, 1986 requesting the detaining authority to supply him with copies of a number of documents. Two sets of these documents have been specifically mentioned and relied upon by the detaining authority while ordering the detention. The first of these are the application made by Parminder Singh for grant of anticipatory bail and the order therein, which though mentioned as Items 24 and 25 in the annexures to the grounds of detention, had not been supplied to the detenu. In paragraph 13 of the grounds of detention it is specifically mentioned that the Administrator had gone through the copies of applications moved in the various courts, replies thereof and the judgments of the courts. It is, Therefore, clear that the anticipatory had application of Parminder Singh as well as the order made thereon have been relied upon in the grounds of detention. The second set of documents consist of a black white sheet of paper, which inter alia, is supposed to bear the signature of the detenu, and a visiting card pertaining to a banking institution of Hong Kong called Credit Suisse. These two documents are alleged to have been recovered on a search of the residential premises of Parminder Singh following the incident dated 15th July, 1985. It is quite clear that this document which was said to contain the signature of the detenu was a vital document relied upon as connecting him with Parminder Singh. The grievance of the petitioner is that these two important sets of documents which constitute substantial pieces of material relied upon by the detaining authority in the grounds of detention were not made available to the detenu despite the specific request made in the representation dt. 27-5-1986, which incidentally was rejected by the detaining

authority after a lapse of almost one month 20th June, 1986.

4. We are of the opinion that the contention urged on behalf of the detenu that the detention order should be set aside on the above two grounds has to be accepted. There can be no doubt there has been undue delay in passing the order of detention and that effective representation has also been denied to the detenu by the non supply of the two sets of documents referred to above. In this context we must mention that on the same day i.e. 12th March, 1986, a detention order was also passed against Daya Ram on the basis of similar grounds of detention. Daya Ram filed the Criminal Writ Petition No. 179/86 which was disposed of by this court on 21st July, 1986. In the writ petition filed by Daya Ram identical contentions regarding delay as well as the non supply of material documents had been urged on behalf of Daya Ram. In that case, the two documents were only the visiting card and the anticipatory bail application of Parminder Singh. Here we are concerned with one more document namely, the black sheet of paper said to contain the signature of the detenu, which is a more vital document the supply of which is crucial to the case of the detenu in putting forward an effective representation against the detention order. Mrs. Sunanda Bhandare, J. in a detailed judgment dt. 21st July, 1986 has dealt with these two contentions at great length. On the question of delay the reason given for the delay has been examined and it has been pointed out that there was no cogent or tenable Explanation for the delay and that, Therefore, there was no proximity/continuity between the occurrence and the detention of the petitioner. The learned Judge has also pointed out that the detaining authority had relied upon the two documents and that their non supply had deprived the detenu of his valuable rights. We fully agree with the reasoning and the conclusion reached by the learned Judge in Crl. W. 179/86. For the same reasons we have also come to the conclusion that there is no satisfactory Explanation for the delay in the detention of the detenu and further that he has been denied an opportunity of effective representation by non supply of copies of the anticipatory bail application the blank sheet of paper said to contain his signature and the visiting card which have been relied upon by the detaining authority in reaching the conclusion that he should be detained. We are, Therefore, of the opinion that the continued detention of the detenu is not justified and that he should be released immediately.

5. We, Therefore, make the rule absolute and direct the release of the detenu forth with unless there is some other detention order or other legal justification for not so releasing him.

6. Petition allowed.