
(1991) 04 DEL CK 0074

In the Delhi High Court

Case No : Criminal Writ Appeal No. 513 of 1990

Ramesh D. Shah

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-04-1991

Acts Referred:

Constitution of India, 1950 — Article 225, 226

Customs Act, 1962 — Section 110

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 3(1)

Citation : (1991) 44 DLT 395

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

Bench : Single Bench

Advocate : C.N.S. Kumar and G. Prakash, for the Appellant;

Judgement

V.B. Bansal, J.

(1) The Officers of the Cochin Customs House were keeping a watch on the movement of Shipping Bill No. 0766 dated 15th November, 1989 for export of 100 bundles of Galvanised Fencing wire and 86 Pellets of M.S. Grills hand-made by M/s.Taraporewala Engineers, Bombay on the basis of suspicion. Cargo was presented for examination in the Ernakulam Wharf at Q. 7 Shed on 16th November, 1989. The Officers of the Customs House searched Room No. 315 of Hotel Dwarka in the occupation of Ramesh D. Shah and Bachan Singh Vig. This search led to the recovery of some incriminating documents which were seized. On enquiry, both Ramesh D. Shah and his companion Bachan Singh Vig admitted concealment of Hashish inside the Pellets of M.S. Grills.

(2) Accordingly, on 17th November, 1989, at Q-7 Shed of Ernakulam Wharf Cochin Port, a consignment of 186 packages declared to contain 100 bundles of Galvanised Fencing wire and 86 pellets of M.S, Grills hand-made U.S.A. under Shipping Bill No. 0766 dated 15th November, 1989 by the exporter M/s. Taraporewala Engineers. Andheri, Bombay was opened. On examination, out of 186 packages, 74 packages of M.S. Grills purported to be contained 2404 slabs

of Hashish weighing 1165. I kg. This Hashish was seized u/s 110 of the Customs Act and Narcotics Drugs and Psychotropic Substances Drugs Act, 1985 (for short the Act).

(3) Statements of Ramesh D. Shah, Bachan Singh Vig and others were recorded. Arvind D. Shah was arrested on 20th November, 1989 and his bail applications were dismissed.

(4) On the basis of the material before it, the Government of Kerala came to the conclusion that with a view to preventing him from engaging in Illicit Traffic in Narcotics Drugs, it was necessary to make an order directing that Arvind D. Shah be detained .Accordingly, exercising the powers u/s 3(1) of the Prevention of Illicit Traffic in the Act, an order of detention was issued by the Government of Kerala under signatures of its Secretary to the Government of Kerala on 11th January, 1990. This order of detention was served on Arvind D. Shah when grounds of detention and the documents relied upon by the Government were also supplied. In exercise of the powers under Sec. 10(1) of the Act, the Central Government passed a declaration on 20th February, 1990 issued under the signatures of Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue about its satisfaction that Ramesh D. Shah was likely to engage in illicit traffic, that is, export of Narcotic Drugs from India. Thereafter, vide order dated 14th May, 1990 the Government of Kerala confirmed the order of detention and fixed the period of detention of Arvind D. Shah for a period of two years with effect from 18th January, 1990.

(5) By way of this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure. Arvind D. Shah, petitioner has prayed for quashing the order of detention dated 11th January, 1990 and the declaration dated 20th February, 1990 and that he may be ordered to be released forthwith.

(6) I have heard Shri C.N. Sree Kumar, learned counsel for the petitioner and Shri G.Prakash, learned counsel for respondent no. 2. I have also gone through the records.

(7) Learned counsel for the petitioner has submitted that in spite of the fact that Rule was issued on 26th October, 1990, no counter has been filed by the respondents though service was duly effected. He has, thus, submitted that in the absence of any counter the allegations made in the writ petition have to be deemed to have not been controverted and thus admitted. Learned counsel for respondent No. 2 has frankly admitted that in spite of the fact that notice was served upon the respondents, no counter has been filed. In the circumstances I have no hesitation in coming to the conclusion that the allegations made by the petitioners have not been controverted and should be deemed to be admitted.

(8) A number of grounds have been taken by the learned counsel for the petitioner in this petition. He has, however, restricted his arguments on two points, namely, there was no material before the detaining authority that

petitioner though in custody was likely to be released and that the petitioner was not made aware of his right of making a representation against the order of declaration.

(9) Learned counsel for the petitioner has submitted that Ramesh D. Shah, petitioner and Bachan Singh Vig were arrested and simultaneous orders of detention were passed against them based on same facts. He has also submitted that aforesaid Bachan Singh filed Crl. Writ No. 188 of 1990 decided on 24th August, 1990 by this Court in which the order of Detention dated 11th January, 1990 and the order of declaration dated 20th February, 1990 were quashed and Bachan Singh was ordered to be released forthwith. Counsel for the petitioner referred to copy of the judgment in the aforesaid writ. which is annexure "A" to the writ petition and Mr. G. Prakash was appearing for the respondents 2 to 4 in the said" petition. These facts again are not controverted by learned counsel for respondent No. 2. It is well established principle that if one person has been given relief based on certain facts, the relief should be made available to another person against whom the same facts are alleged. On this account also and without going into further details the petitioner is entitled to be released forthwith.

(10) Learned counsel for the petitioner has submitted that after his arrest, the petitioner along with Bachan Singh Vig moved applications for bail which had been dismissed. He has also submitted that no application of bail of the petitioner or of any other accused was pending when the order of detention was made. In this way, there was no compelling necessity for the detaining authority to pass the order of detention and, thus, subjective satisfaction of the detaining authority is not based on any material on account of which the order of detention passed by respondent No. 2 cannot be sustained. A perusal of the grounds of detention does not indicate as to how there was any apprehension in the mind of the detaining authority that the petitioner was likely to be released. There is a clear authority of the Supreme Court in the case of Shri Dharmendra Suganchand Chelawat v. Union of India and others. Judgments Today 1990(1) S.C. 184. In the said judgment dealing with similar circumstances the Supreme Court observed as under :

"THE expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

(11) This judgment of Supreme Court has been followed by this Court in numerous cases including J.L. Khanna v. Union of India and others, in 1990 1 CCC 545 and Arayath Barambil Markkar v. Union of India & Ors., Crl. Writ No.

363 of 1990.

(12) Learned counsel for the respondent No. 2 has not been able to advance any argument against the aforesaid submissions of learned counsel for the petitioner, in the circumstances, I hold that on this ground the petitioner is entitled to be released and the order of detention cannot be sustained.

(13) Learned counsel for the petitioner has also submitted that after the order of declaration issued by the Central Government, petitioner was not made aware of his right of making representation against the aforesaid declaration on account of which the petitioner has been deprived of his valuable right to challenge this order of declaration and on this account the declaration order cannot be sustained. There is no mention in the order of declaration that the petitioner was made aware of this right. There is -nothing to controvert. the submission of learned .counsel for the petitioner that on account of petitioner having be6n not aware of his right, he has not made any representation against the aforesaid declaration. The petitioners right under Article 22(5) of the Constitution of India has thus been affected. Reliance in this regard has been made by learned counsel for the petitioner on the case Shri Jagprit Singh v. Union of India & others Jt 1990(3) S.C. 293, Gurmeet Singh v. Union of India & others 1990(3) DL 221=42(1990) Dlt (SK) 22,Ahmad Faleel Mohammad Luthfi V. State of Kerala and others. Criminal Writ No. 150 of 1990 and Balvinder Singh v. Union of India & others, Crl. Writ No. 112 of 1990. On this ground also the detention of the petitioner cannot be sustained.

(14) In view of my aforesaid discussion, the Writ Petition is allowed. Rule is made absolute. The Order of detention dated 11th January, 1990 and the Order of declaration dated 20th February. 1990 are quashed. The petitioner is ordered to be released forthwith, if not required in any other case.