

(1991) 11 DEL CK 0050

In the Delhi High Court

Case No : Criminal Writ Appeal No. 518 of 1990

Ramesh Kumar Wadhera

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

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

Citation : (1992) 46 DLT 158

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

Bench : Single Bench

Advocate : Harjinder Singh and Jagdev Singh, for the Appellant;

Judgement

B.V. Bansal, J.

(1) Ramesh Kumar Wadhera, petitioner, has filed this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, with a prayer that the detention order dated 14.9.90, may be quashed and he may be released

(2) In exercise of the powers u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act), Shri Mahendra Prasad, specially empowered officer and Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, passed an order dated 14.9.90, for the detention of the petitioner with a view to preventing him from engaging in keeping smuggled goods and dealing in smuggled goods otherwise than by transporting and concealing smuggled goods. This order was served upon the petitioner on 15th September, 1990, when grounds of detention along with the documents relied upon were also supplied.

(3) A number of grounds have been taken by the petitioner challenging the said order of detention. Learned Counsel for the petitioner has restricted his

arguments only on one ground mainly, that the grounds served upon him are vague on account of which the petitioner has been deprived of his right of making an effective representation. Since, this will be a legal question, it is not necessary to refer to the detailed facts leading to the passing of the order of detention.

(4) After narrating the detailed facts in the ground of detention, the Joint Secretary to the Govt. of India, has made the following observations :

"FROM the foregoing. I am satisfied that you were engaged in keeping smuggled goods and dealing in smuggled goods otherwise than by transporting and concealing smuggled goods. I am aware that you are in judicial custody. However, the possibility of your getting enlarged on bail cannot be ruled out and unless prevented, you may indulge yourself in the prejudicial activities in the similar manner or otherwise".

(5) Submission of learned Counsel for the petitioner has been that the detaining authority has not clarified as to what was in his mind by the using the words "in a similar manner or otherwise". This ground has specifically been urged by the petitioner as ground No. 18 in the Writ petition. The reply given in counter affidavit by the respondent has been :

"IT is further denied that the satisfaction of the detaining authority is vague and imprecise".

(6) From a bare reading of the allegations and the reply, it is abundantly clear that no attempt at all has been made even in the counter to explain as to what was meant by the words "or otherwise". It is, thus, clear that the petitioner was unaware of the mind of the detaining authority as to in what connection these words have been used. This very question came up for consideration before this Court in a number of cases, where a finding has been recorded that the use of words "or otherwise" without any further Explanation is vague, thereby effecting the right of the detenu of making an effective representation. Reference in this regard can be made to the cases of Rafikuddin @ Rqfi v. Union of India & Ors. Criminal Writ No. 292 of 1990. decided on 18th January, 1991 and Meharban Singh v. Union of India & Ors. Criminal Writ No. 522 of 1990, decided on 27th May, 1991, and Sanjeev Khanna v. U.O.I. & Ors. Criminal Writ No. 430 of 1990, decided on 31.5.91 Learned Counsel for the respondent has not been able to point out any judgment to the contrary.

(7) In these circumstances, following the aforesaid judgment, I hold that the petitioner has been deprived of his right of making an effective representation on account of the ground being vague and so the detention order cannot be sustained.

(8) As a result, Writ petition is allowed. Rule is made absolute. Continued detention of the petitioner cannot be sustained. Petitioner shall be released forthwith, if not required in any other case.