

(1991) 05 DEL CK 0042

In the Delhi High Court

Case No : Criminal Writ Appeal No. 430 of 1990

Sanjeev Khanna

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-05-1991

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1991) 45 DLT 40

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : Harjinder Singh and Madan Lokur, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This writ petition under Articles 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure challenges the validity of the order of detention dated 26.6.90 in respect of the petitioner passed by Sh. Mahendra Prasad, Joint Secretary to the Govt. of India u/s 3(1) of the COFEPOSA.

(2) One Meharban Singh was apprehended on 21.3.90 in front of his residence 13/1-A, Moti Nagar, New Delhi by the officers of the Directorate of Revenue Intelligence. On search 118 gold biscuits were recovered from him. The petitioner had gone to meet him. Both of them were taken to the office of the DRI and their statements were recorded u/s 108 of the Customs Act. Later on, the statements were retracted, allegedly being recorded under torture, duress and mal-treatment. Despite his prosecution under the Customs Act the impugned order of detention was also passed against the petitioner.

(3) Although the detention order has been challenged on a number of grounds, this petition can be disposed of on a single ground, which is contained in Clause Xxv at page 31 of the writ petition. It says, "that the detaining authority in the grounds of detention has stated that even though the detenu was in custody and

prosecution proceedings being initiated and adjudication proceedings are likely to be initiated against him, and keeping in view his past antecedent history, and possibility of his being enlarged on bail cannot be ruled out. This satisfaction of the detaining authority is vague and imprecise and has deprived the petitioner of his right of making an effective representation."

(4) In reply to this averment, it is stated in the counter affidavit. "The averments made in Ground Xxv are wrong and denied. It is submitted that the Detaining Authority was subjectively satisfied that it was necessary to preventively detain the petitioner. In view of the facts and circumstances in the around of detention, the Detaining Authority stated that it was evident that the petitioner was engaged in the dealing of smuggled goods otherwise than by transporting, or concealing or keeping smuggled goods. It is denied that the satisfaction of the Detaining Authority is vague and imprecise or has deprived the petitioner of his right of making an effective representation."

(5) Learned counsel for the petitioner submitted that though the words "or otherwise" are not specifically stated in this ground, still the petitioner was within his right to show that the detention order being vague was bad and it disabled him from making any effective and purposeful representation. Learned counsel for the respondent has not been able to challenge this proposition advanced by learned counsel for the petitioner. In fact, he says that the department has not given him any instructions in the matter and rather they have chosen to take away the brief from him. In view of this position and also on the basis of the case of Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, , there is no doubt that such a ground can be urged on behalf of the petitioner. Basically the Court has to see whether actually the order of detention is based on any sufficient grounds or whether an inference of lack of subjective satisfaction can be made from the grounds of detention. There is no doubt that the full ramifications of the words "or otherwise" are not given in the grounds of detention. I had occasion to deal with a similar situation in the case of Surinder Kumar Anand v. Uoi and others. Criminal Writ petition No. 398/90 decided on April 9, 1991. In that case the situation was rather worse in the sense that the respondent indicated in the counter affidavit what was actually in the mind of the Detaining Authority at the time of passing of the detention order while using the words "or otherwise". It was held on the basis of the case of Avtar Chand Kehar v. Uoi and others 1989(3) DL (DB) 374, "It was not possible for the petitioner to know the state of mind of the Detaining Authority that in spite of his being prevented from going abroad, he would smuggle goods "otherwise as well." Therefore, the use of the words "or otherwise" in the grounds of detention were held to be too vague for the petitioner to understand their scope and intent making it impossible" for him to make any effective representation against his detention. The -same situation arises in this case.

(6) In the case of the co-detenu Meharban Singh, the subject matter of Cr. W. 522/90 decided by this Court on 27.5.1991, the detention of Meharban Singh has

been quashed in similar circumstances. I am, Therefore, of the view that the detention order passed in this case cannot be sustained because part of the grounds are too vague, and thus it has taken away right of the petitioner to make an effective and purposeful representation. The rule is made absolute. The detention order is quashed. Petitioner shall be set at liberty, if not wanted in any other case or proceedings.