

(1986) 12 DEL CK 0023

In the Delhi High Court

Case No : Criminal Writ Appeal No. 212 of 1986

Satish Kumar Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-12-1986

Acts Referred:

Citation : (1987) 31 DLT 91

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : Harjinder Singh, B.P.S. Mangat and R.M. Bagai, for the Appellant;

Judgement

M.K. Chawla, J.

(1) In this petition, the order under challenge is dated 1.4.1986 of Shri M.L. Wadhawan, Additional Secretary to the Government of India, by which the present petitioner was detained u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, with a view to preventing him from dealing in smuggling goods otherwise by engaging in transporting or concealing or keeping smuggled goods.

(2) The facts and circumstances under which this order came to be passed in brief are that an information was received in the Directorate of Revenue Intelligence, New Delhi, indicating that 160 smuggled gold biscuits were reaching Delhi in the morning of 14.3.1986 from Punjab sector of IndoPakistan Border by road and the same were likely to be collected by one Riaz Ahmed alias Makhan for Vimal Kapur of Ashok Vihar. In pursuance of the said intelligence, surveillance was mounted at the border of G.T. Road, as also at the residential premises of Shri Riaz Ahmed. However, the vehicle carrying smuggled gold biscuits did not arrive at Delhi till the noon of 14.3.1986. It was further gathered that three persons who had come from Punjab with contraband gold had checked into Hotel Vaishnav, Fatehpuri, Delhi and that Shri Riaz Ahmed was going to meet them at 8 P.M. on the same day for fixing the delivery of the said gold. The officers of the

D.R.I. also checked into the Hotel incognito and identified all the four persons. Surveillance continued throughout the night of 14/15.3.1986 in and around the Hotel and at the residence of Riaz Ahmed. On the spot intelligence also indicated that contraband gold was brought to Delhi in an Ambassador car No. Puo 9480 and the same was parked in a parking lot behind Fatehpuri police checkpost. Vimal Kapur and Riaz Ahmed sent Satish Kumar to take delivery of the smuggled gold in scooter No. Dbf 5997 and gave him a sum of Rs. 20,000.00 to be given to Sohan Singh and Harbhajan Singh who were sitting in the Ambassador car No. Puo 9480. Shri vimal Kumar and Shri Riaz Ahmed followed Shri Satish Kumar on scooter No. Dbm 5886. After the contraband gold had been transferred from Car No. Puo 9480 to scooter No. Dbf 5997 and Rs. 20,000.00 kept in car No. Puo 9480, officers of the Directorate of Revenue Intelligence, New Delhi, pounced on all the three vehicles and five persons and nabbed them.

(3) The vehicles were brought to the office of the Directorate of Revenue Intelligence at Atma Ram House, Tolstoy Marg, New Delhi. As a result of the search of the scooter F 5997, 160 smuggled gold biscuits bearing foreign markings and weighing 10 tolas each were recovered. Rs. 20,000.00 were also recovered from the search of the car. These articles Along with the vehicles were seized under the Customs Act.

(4) In a follow up action, the residential and business premises of Shri Vimal Kapur, Riaz Ahmed, Satish Kumar and Hari Singh were searched but nothing contraband or incriminating c were recovered from the first three persons but 400 Us \$ and incriminating documents were recovered from the residence of Hari Siagh at village Daoke, District Arnritsar. The statements of the persons were also recorded and on consideration of the material before the detaining authority, the orders of the detention of the persons named above were passed.

(5) Shrimati Veena Kapur for and on behalf of her husband Vimal Kapur filed criminal writ no. 230/86 challenging the detention mainly on the ground of non-application of mind by the detaining authority. This writ petition was heard and disposed of by the Division Bench of this Court consisting of Shri R.N. Aggarwal and Shri C.L. Chaudbary, J. on 11.11.1986. The learned Judges took pains to examine the grounds of detention served on the detenu and the contents of the application moved by the Department before the A.C.M.M., New Delhi, for obtaining the remand of the detenu. On comparison of the two applications, it was observed that the grounds of detention were the verbatim copy of the remand application thereby concluding that the detaining authority has not applied its mind while passing the impugned order. Reliance was also placed on the judgment reported as Jai Singh and Others Vs. State of Jammu and Kashmir, . The detention order of Vimal Kapur was quashed and he was set at liberty.

(6) Learned counsel for the petitioner has submitted that the case of Satish Kumar Sharma is exactly the same as that of Vimal Kapur. Here also, the grounds of detention served on the petitioner are based on the contents of the

application moved before the A.C.M.M., New Delhi, for the remand and the judicial custody of the detenu.

(7) I have carefully perused the grounds of detention and the application dated 16.3.1986 submitted by Shri J.S. Arora, Advocate, to the A.C.M.M. New Delhi for obtaining the remand of the detenu to judicial custody and find that paras I to 12 except paragraph 6 of the grounds of detention and for very minor changes here and there, have been copied while framing the grounds of detention. One of the prominent circumstances showing the non-application of mind is that in the grounds of detention served on the detenu, the reference to the detenu Satish Kumar is not direct and specific but is in the narration form and is in the third person.

(8) Learned Counsel for the respondent has not been able to point out any distinction in between the present case and that of Shri Vimal Kapur which was the subject-matter of Cr. Writ no. 230/86.

(9) This fact leaves no option for this court except to hold that the order of detention does suffer from the vice of non-application of mind and seems to have been made in a mechanical manner. This very fact makes the order illegal.

(10) As a result of the above discussion, I hereby accept the petition and quash the order of detention. The petitioner be set at liberty forthwith unless required to be detained under any valid order of competent court or authority.