

(1993) 04 DEL CK 0034

In the Delhi High Court

Case No : Criminal Writ Appeal No. 33 of 1993

Shakoor Ahmed

APPELLANT

Vs

Administrator, Union Territory of Delhi and Another

RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 3 Crimes 925 : (1993) 50 DLT 687 : (1993) 2 RCR(Criminal) 372

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

Bench : Single Bench

Advocate : Urmil Khanna, U.K. Sharma, B.P. Aggarwal, Jyoti Singh and P.S. Sharma, for the Appellant;

Judgement

R.L. Gupta, J.

(1) By this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of detention Order No. 5/67/92-Home (P-II) dated 6.8.1992 and his continued detention under COFEPOSA. The order of detention was passed by the first respondent i.e. the Administrator, National Capital Territory of Delhi.

(2) The brief facts necessary for the disposal of this petition are that the petitioner was apprehended at the Indira Gandhi International Airport on 24.4.1992 with 203 grams of gold in the form of toffees, valued at Rs. 58261.00. His statement was recorded u/s 108 of the Customs Act. He was produced for remand on 25.4.1992 before the learned ACMM. when he retracted his statement. A complaint under the Customs Act was filed against him on 30.4.92. The impugned order of detention was passed against him on 6.8.1992 and served on 30.9.92, while the grounds of detention were served upon him on 2.10.1992. He filed a representation dated 24.11.1992 addressed to the Hon'ble Advisory Board. However, the same did not find favor with the Board and it recommended confirmation of further detention of the petitioner. On the basis of

that recommendation and materials on record the Administrator issued an order dated 14.12.1992 whereby he was pleased to confirm the further detention of the petitioner.

(3) The detention order has been assailed by the petitioner on various grounds. However, during the course of arguments, learned Counsel has confined her arguments to ground P in the petition. In this para it is stated that petitioner's representation dated 24.11.92 had not been considered by the Detaining Authority or by the Central Govt. till the filing of the present writ petition. It may be noted that since the detention order was passed by the Administrator of Delhi, it has been conceded before me that the representation could have been considered only by the determining Authority i.e. the Administrator and not by the Central Government. In reply to this para, the Deputy Secretary (Home) Govt. of National Capital Territory of Delhi states that the representation was addressed to the Central Govt. or to the Govt. of National Capital Territory of Delhi. The same was considered by the Detaining Authority along with other papers sent by the Advisory Board with its opinion before confirmation of the detention order

(4) I have heard arguments advanced by Learned Counsel for the petitioner and the first respondent i.e. the Administrator of the Govt. Of National Capital Territory of Delhi on this ground. In fact, the contention raised in this para has been settled by now by a number of authorities. The first case in this respect is that of Smt. Gracy v. State of Kerala and Another 1991 Scc (Cri) 467. in that case it was admitted that the Advisory Board had considered the detenu's representation before sending its opinion to the Central Govt. along with the entire record including the representation submitted by the detenu. It was further admitted that the Central Govt. made the order of confirmation dated 24/04/1990 on receipt of the opinion of the Advisory Board" but there was no independent consideration of the detenu's representation by the Central Govt. at any time. In the counter affidavit it was not disputed that the Central Govt. did not at any time consider independently the detenu's representation addressed and given to the Advisory Board. It was held in that case that detenu's right to have the representation considered by the Govt. under Article 22(5) is independent of the consideration of the detenu's case and his representation by the Advisory Board. Following the aforesaid view it was then held by this is Court in the case of P.K. Madhavan v. Union of India, 1991(2) C.C. 341 (wherein the facts were similar) that this representation of the detenu having not been considered independently by the appropriate Govt., there was a violation of the requirements of the Constitution as contained in Article 22(5) as one of the safeguards provided to the detenu. Thereafter I also took the same view in the cases of Satish Verma v. U.O.I. & Ors., 1993(1) Cri 883 : I (1993) Ccr 667 and Kamal Agarwal. Agarwal. U.O.I. & Ors., 1993(1) Cri591. In the present case also it can be said that confirmation order regarding the petitioner suffers from the same vice. The impugned detention order, therefore, order, therefore, is hereby quashed. Petitioner will be set at liberty if not wanted In any other case or

proceedings.