
(1988) 10 DEL CK 0029

In the Delhi High Court

Case No : Criminal Writ Petition No. 205 of 1988

Sukhdev Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-10-1988

Acts Referred:

Citation : (1988) 36 DLT 407 : (1989) 16 DRJ 176

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : Harjinder Singh, Naveen Malhotra, S.L. Watel and P. Dayal, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) By this petition under Article 226 of the Constitution of India, Sukhdev Singh is seeking issuance of a writ of Habeas Corpus, the detenu is challenging the detention order passed on 12th January, 1988 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called the Cofeposa Act). The impugned order was passed by Shri K.L. Verma, Joint Secretary to the Government of India, specially empowered under the Act, with a view to preventing the detenu from abetting the smuggling of goods. The grounds of detention which also bear the date 12th January, 1988, were served on the petitioner/detent while he was lodged in Central Jail, Tihar, New Delhi.

(2) To appreciate the contentions which have been raised before us, the facts of the case so far as they are relevant to the arguments may be noticed. These facts are disclosed in the grounds of detention.

(3) One Jasbir Singh Sandhu had established a world-wide network through his close associates for smuggling narcotic drugs. One of these associates was stated to be the petitioner herein. On receipt of intelligence reports about this network, officers of the Narcotics Control Bureau kept the conspirators under continuous surveillance. The reports were to the effect that Jasbir Singh, who was co

Dstantly in touch with the petitioner herein, had arranged couriers for smuggling out a large quantity of Heroin to the United States of America and other foreign countries.

(4) On 17th November, 1987 information was received through a highly reliable source that two separate consignments of Heroin had been dispatched from Bombay to the United States and that the members of the syndicate were desperately trying to organise the disposal of heroin in that country. It was further gathered that one of the couriers, Zeenie Ahmed was staying in a hotel in New York and was awaiting instructions from the syndicate as to the disposal of Heroin which she had successfully smuggled. Another courier, one H.S. Gala had also succeeded in smuggling one packet of Heroin. He was staying in another New York hotel awaiting instructions regarding its disposal. The said two couriers, however, were arrested by the U.S. Drug Enforcement Administration agents. One of them, namely Zeenie Ahmed disclosed to the said U.S. agents that she had received the Heroin from Ramesh Aggarwal, a known alias of Narinder Vishnoi, who was stated to be a prominent and active member of the syndicate. Narinder Vishnoi who was staying in Room no.317 of Ashok Hotel, New Delhi, was apprehended. At the time of the search of that room, the petitioner herein was also found present there. As a result of personal search of the petitioner, a packet containing a small quantity of Heroin was recovered.

(5) On the basis of the disclosures made by Narinder Vishnoi, the premises of Surender Shanti Lal Shah @ Suresh Bhai at Bombay were also searched on 22nd November, 1987, which resulted in the recovery of 2.5 kgs of Heroin. For obtaining his remand, Surender Shanti Lal Shah was produced before a Magistrate at Bombay. The applications moved in various courts, including the applications seeking remand of all the accused, find mention in the grounds of detention.

(6) In paragraph 26 of the grounds of detention, the detaining authority observed that :-

"26. I have carefully considered the facts and circumstances of the case, documents, statements and other material available in the subject case. I have also gone through the various applications moved in the court of law by you, on your behalf, by your accomplices and by the Narcotics Control Bureau and the orders passed by the Magistrates on the said application."

(7) The detenu in his representation dated the 1st February 1988 made through the Superintendent, Central Jail, Tihar, New Delhi to the detaining authority sought revocation of the impugned order on various grounds. One of the pleas was that as many as 18 documents which have been relied upon in the grounds of detention, have not been supplied to him and, Therefore, the order was liable to be set aside. However, he prayed that in case the order was not to be revoked, the documents sought for be immediately supplied to him so that he could make a "purposeful representation."

(8) Two of the documents mentioned in paragraph 23 of the representation related to the applications moved in Bombay Court. Those documents are:-

"(O) Copy of the remand application moved in Bombay Court regarding the arrest of Surender Shanti Lal Shah; (p) Copy of the bail applications, retractions and other applications which were moved in the Bombay Court."

(9) Learned counsel for the petitioner submitted that while arriving at the conclusion that the petitioner be detained, the detaining authority perused the various applications moved in the courts not only by the petitioner but also by or on behalf of his accomplices. The authority took also note of the orders passed by the Magistrates on those applications. The facts that remand applications were moved by the Narcotics Control Bureau and orders passed thereon by the Magistrates, have been referred to in paragraph 26 of the grounds. It is urged that detaining authority was duty bound to supply those documents along with the grounds. The plea is that in spite of specific request, the copies of the same were not made available.

(10) Vide memorandum dated the 11th February, 1988, the detenu was informed that his representation after careful consideration by the detaining authority, had been rejected. While dealing with his plea regarding supply of documents, he was informed that the documents mentioned by him in paragraph 23(h), (i), (j) (1), (m), (q) and (r) were not available with the said Bureau and hence could not be supplied. However, some documents were promised to be supplied. It was stated that :

"THE Narcotics Control Bureau is being directed to provide rest of the documents to him. Document at S. No.23(k) has been already supplied to him at SI. No. 102 of the documents relied upon."

(11) In continuation of the above mentioned memorandum, another memorandum dated the 22nd February, 1988 was issued and the detenu was supplied photocopies of 395 documents. As far as documents at items (o) and (p) of the representation were concerned, the petitioner was informed that:

"REGARDING documents mentioned at SI. No. 21(O) and 21(p) of your representation, the same are being obtained from Bombay and will be supplied to you as and when received from Bombay."

(12) The reference in the above memorandum to SI.No."21" is admitted to be a typographical mistake ; infact the reference was to paragraph 23 of the representation dated the 1st February, 1988. "

(13) The petitioner in his representation dated the 23rd February, 1988 to the President reiterated, inter alia, his demand for supply of the documents. This representation was rejected vide memorandum of 4th April, 1988. Vide order of 30th April, 1988, the Central Government in exercise of the powers conferred by Section 8(f) of the Act confirmed the impugned detention order, and directed the detenu to be detained for a period of one year from 21st January, 1988, i.e., the

date of his detention.

(14) Thereafter the present petition was filed. It was listed for preliminary bearing before us on 3rd May, 1988. While noticing the plea that the petitioner had been prevented from making an effective representation we observed that in spite of promise made in the memorandum dated the 22nd February, 1988 documents mentioned at SI. No. 23(o) and (p) had not been supplied to the detenu. We issued notice to the respondents to show cause why rule nisi be sot issued. By our order dated 24th May, 1988, we issued rule nisi. We have noticed in that order that the said documents were supplied to the detenu in the forenoon of 23rd May, 1988. Thus the documents were supplied during the pendency of the present writ petition.

(15) At this stage we may notice that the writ petition of the co-detenu, Jasbir Singh Sandhu (Cr. Writ 204/88), wherein exactly the same points regarding those very documents were raised for consideration, was allowed by us on 5th August, 1988. After noticing the relevant case law, we agreed with the contention that non-supply of documents had contravened the fundamental right of the detenu under Article 22(5) of the Constitution of India to make an effective representation.

(16) Mr. S. Watel, learned counsel for the respondents herein submitted that the Court had proceeded on a wrong assumption and, Therefore, our judgment (in Cr. Writ 204/88) need not be followed. He urged that it was not pointed out to us during arguments in that case that the documents which the petitioner viz., Jasbir Singh had sought, were neither relied upon nor referred to In the grounds of detention by the detaining authority and, Therefore, it was not at all incumbent on the authority to supply them either to that petitioner, Jasbir Singh, or to the present detenu. He, however, admitted that two of the three documents, which were subject matter of the earlier writ petition, are common, i.e., documents mentioned at items (o) and (p). We may note that Mr. Prahlad Dayal, Advocate, who appeared in the said case and is assisting Mr. Watel in the present case has frankly admitted that be had not raised this point. Our earlier judgment thus proceeds on the basis that the three documents sought for by Jasbir Singh, were relied upon by the detaining authority. The submission of Mr. Watel is two fold and we quote him :

"(1)These two documents were neither relied upon nor referred to in the grounds of detention and, Therefore, the detention cannot be challenged on the ground of non-supply or late supply of the documents"; and

"(2)Merely because by letter dated the 22nd February, 1988,the detenu was informed that these would be supplied on receipt from Bombay, this fact by itself does not mean that those documents were referred to or relied upon."

(17) The contention is that the said documents, copies of which were sought, were neither relied upon nor referred to in the grounds of detention. Mr. Watel urges that in the facts and circumstances of the case, it is clear that. those,

documents could not have been placed before the detaining authority. In case they were, there was no need for the detaining authority to ask the sponsoring authority at Bombay to supply those to the detenu.

(18) The further argument of Mr. Watel is that the promise made by the detaining authority in its memorandum of 22nd February, 1988 that the documents sought for by the detenu would be supplied to him, is to be ignored from consideration. According to the counsel, the detaining authority had committed a "mistake" by making such a promise. At the most he submits that it was graciousness on the part of the authority and, Therefore, cannot be held to be binding.

(19) Thus the only question which arises for consideration is whether the said documents were in law required to be supplied to the detenu. The law is well settled. The supreme Court has held in a number of cases that even documents which are casually mentioned in the grounds of detention, have to be supplied if the detenu seeks copies of the same, to enable him to make an effective representation. The supply of those documents to the detenu after the detention order was confirmed, has been held to be a clear contravention of the right guaranteed by the Constitution under Article 22(5).

(20) We do not agree with the submission of Mr. Watel that the facts relating to the search made at the premises of Surender Shanti Lal Shah at Bombay or the applications moved by the Narcotics Control Bureau seeking his remand from time to time, have been casually or incidentally referred to by way of narration in the grounds of detention. We have already quoted paragraph 26 of the grounds. A close reading of the statement of facts stated therein negatives Mr. Watel's contention. At any rate even if the detaining authority was of the view that those documents had not been relied upon or were casually mentioned or referred to, a duty was cast on it to supply the same to the detenu to enable him to make an effective representation.

THE importance of supplying the documents was appreciated by the retaining authority in the present case. That is why after rejecting the representation vide its memorandum of 11th February, 1988, by another order which was in continuation of that memorandum, it promised to supply the same. The issuance of the letter dated the 22nd February, 1988, cannot be considered a mistake. The argument that it was "graciousness" on the part of the detaining authority to have promised to supply the documents, is untenable. The detaining authority after having made that promise cannot take the stand which it has taken before us. The promise was in accordance with law, even if it is to be taken that the mention of those documents is a passing reference.

(21) We are of the opinion that in the facts and circumstances of this case, it has to be held that the documents, copies of which were sought, were referred to by the detaining authority. This fact is clear from the reading of paragraph 26 of the grounds. The supply of those documents during the pendency of the writ petition

has clearly denied to the detenu the opportunity of making an effective representation under Article 22(5) of the Constitution,

(22) As noticed above, the documents were supplied to the detenu on 23rd May, 1988, i.e., after the confirmation of the detention order by the Central Govt. We hold that the continued detention of the detenu is bad and he is entitled to be set at liberty.

(23) The result is that the impugned detention order passed on 12th January, 1988 is quashed. The rule is made absolute and the writ petition is allowed. We direct that the petitioner be set at liberty unless required to be detained under any other valid order passed by a court of any other competent authority.