
(1987) 03 DEL CK 0053

In the Delhi High Court

Case No : Criminal Writ Appeal No. 53 of 1987

Sushil Kumar Ahuja

APPELLANT

Vs

Tarun Roy and Others

RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Citation : (1987) 12 DRJ 315 : (1987) 1 RCR(Criminal) 668 : (1987) RLR 342

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : Harjinder Singh, Sunil Mehta, R.M. Bagai and A.C. Aggarwal, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) In pursuance of the detention order dated" 30/9/1986, the petitioner was taken into detention on 8/10/1986. The detention order was passed with a view to preventing the petitioner from acting in any manner prejudicial to the augmentation of foreign exchange.

(2) The detention order is based in respect of an incident dated 30/5/1986 when one V.K. Gaur, an employee of the State Bank of India was caught with U.S. \$ 800.00 and Saudi Riyal 8350.00 which he was carrying on his person. He made a confession that he was delivering Foreign Exchange to present petitioner who was also employed with the State Bank of India posted at Padam Singh Road, Karol Bagh Branch, New Delhi. He had also given the home address of the petitioner.

(4) The detenu has a right to examine the witnesses in rebuttal, has been recognized in A.K. Roy v. Union of India 1982 S.C. 710 and this right has now been recognized as a constitutional right in the subsequent judgment of the Supreme Court. That it is not necessary for the detenu to make a oral request after the same has been made in the written representation is also recognized in the case of Surinder Kumar Arora v. Union of India, in Criminal Appeal No. 55 of

1986, Supreme Court, decided on 14/1/1986. Mr. Bagai has not disputed this right of the petitioner.

(5) In my view, Therefore, all that remains to be determined is whether such a request was made and if made the manner in which it was made and whether the request was genuinely made or it was only made with a view to create evidence for challenging the detention order. Before I examine this aspect of the matter I may notice that Mr. Harjinder Singh, contends on the basis of the reply in counter affidavit on this point, that the Advisory Board even if the evidence to be tendered by his witnesses was considered to be irrelevant, had to record the evidence. He further urges that Advisory Board may not act upon it but it was bound to record evidence. The reason for so doing according to him is that the decision either to confirm or revoke the detention order is to be taken essentially by the appropriate Government and it was all the more necessary that the evidence of the detenu in rebuttal ought to have been recorded and forwarded to the Central Government Along with other record in order to enable the appropriate Government to take a decision. Mr. Harjinder Singh contends that the Advisory Board has a limited function advisory in nature. It can either say that there is no sufficient cause for detention in which event no further authority to detain rests with the appropriate Government but should the Advisory Board find that there is sufficient cause for detention the appropriate Government's discretion either to revoke the order or confirm it, remains unfettered ..

(6) I am in full agreement with the contention of Mr. Harjinder Singh that the entire power to revoke or to confirm the detention rests with the appropriate Government, and should the appropriate Government decide to confirm the detention order, it has to apply its mind to the material. The material would mean the material which was forwarded to the Advisory Board by the Detaining Authority and it would also mean the material which may be placed before the Advisory Board by the detenu in rebuttal of the grounds of detention. In that view of the matter, to my mind, Mr. Harjinder Singh is right that the Advisory Board should made a record of the evidence tendered by the detenu in rebuttal of the .grounds of detention. It may not act upon it, if it finds it irrelevant but then entire material Along with this report, should be forwarded to the appropriate Government.

(7) Having said so, I may however point out that in spite of granting the contention of Mr. Harjinder Singh it does not help the present detenu Mr. Bagai has produced the report of the Advisory Board in original before me and according to this report, the Advisory Board has a different story to tell in respect of the seriousness of the petitioner to lead evidence in rebuttal. The petitioner according to the Advisory Board was represented by Mr. Sunil Mehta Advocate. Two representations dated 15/10/1986 and 4/11/1986 had been filed on his behalf. The Advisory Board made a note of the fact that before Mr. Mehta concluded his arguments he never raised the point in respect of leading rebuttal evidence, and while going out of the conference room, he immediately came

forward again to file the representation dated 3/12/1986 on behalf of the detenu. It seems that since the Board is consisting of high ranking Judges who are aware of the law they made a cursory remark if the representation contains any request for permission to examine any witness. Mr. Mehta is supposed to have replied in affirmative. No doubt, this rightly surprised the members of the Board particularly when earlier to this there was no request not even during the course of arguments that the detenu wanted to lead any evidence. The Board came to the conclusion Therefore that the request was not bona fide. There is no reason for me not to trust the observations of the Board which clearly go to show that the detenu was never serious about the making of such request and this representation was sought to be placed on record after concluding the arguments. Obviously this has been done with a view to create ground for filing a writ petition against the detention order.

(8) After this point was argued, I started dictating judgment in the open Court. For sometime the counsel set quietly but as soon as the result on this point was about to be known Mr. Harjinder Singh got up to submit that he may be heard on other points raised in the petition. In the circumstances in which Mr. Harjinder Singh made the submission Mr. Bagai raised a serious objection that this practice should not be permitted. Ordinarily, I have no serious objection to the submission made by Mr. Harjinder Singh but then it is not for me to set an unprecedented precedent. Under these circumstances, I am of the view that Mr. Harjinder Singh cannot be allowed to argue any further point. He can, however, file a writ petition on the points which were neither argued nor considered by this Court. The result is that in my view the petitioner during the course of arguments before the Advisory Board never expressed a desire to examine witnesses in rebuttal. It was only done after the arguments were concluded. Obviously the representation had been kept ready only for bringing it on the record of the Advisory Board with a view to create evidence for challenging the detention on this point. The petition as such is dismissed.