

(1983) 10 DEL CK 0008

In the Delhi High Court

Case No : Criminal Writ Appeal No. 90 of 1983

Vinod Kumar Arora @ Vinod Kumar

APPELLANT

Vs

Administrator, Union Territory of Delhi and Others

RESPONDENT

Date of Decision : 14-10-1983

Acts Referred:

Citation : (1984) CriLJ 1344 : (1984) ILR Delhi 497

Hon'ble Judges : Prakash Narain, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : R.L. Mehta, Sunil Mehta and R.M. Bagai, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) By our order passed on 27th September, 1983, we had quashed the impugned detention order dated 22nd February, 1983. While making the Rule absolute we had directed that the petitioner . Vinod Kumar Arora be set at liberty forthwith unless required to be detained under any other valid order passed by a Court or an authority. We now proceed to set out the reasons for quashing the detention order.

(2) Mr. R. L. Mehta, learned counsel for the petitioner, in support of the rule issued in this writ of habeas corpus, urged mainly one point. He submitted that the petitioner was not supplied copies of relevant documents on which reliance was placed by the Administrator in the grounds of detention. The plea is that as the petitioner was prevented from making an effective representation against the detention order, the protection of fundamental right guaranteed under Articles 21 and 22(5) of the Constitution was denied to him.

(3) To appreciate the submission it is necessary to notice a few facts.

(4) The detention order was passed on 22nd February, 1983, by the Administrator of the Union Territory of Delhi in exercise of powers conferred by section 3(1) read with section 2(f) of the Conservation of Foreign Exchange and

Prevention of Smuggling Activities Act (hereinafter referred to as "the Act") with a view to preventing the petitioner from abetting the smuggling of goods, viz., Hashish out of India. The order of detention was served on the petitioner on 23rd July, 1983, and the grounds of detention were served on him is the Central Jail, Tihar. New Delhi, on 25th July, 1983, where he was lodged.

(5) In paragraphs (i) and (ii) of the grounds of detention, a number of documents have been noticed by the detaining authority. According to Mr. Mehta those documents have been relied upon by the authority. Mr. R. M. Bagai, learned counsel for the respondents, however, submits that those documents are not the basis of the detention order; there is merely a passing or a casual reference in the grounds to those documents. It is useful to quote the said paragraphs:

"(I)that in pursuance of a specific information that two persons namely Mr. Klaus Peter Lorenz a German National and Mr. Warner Zubler, a Swiss National, - would be carrying hashish with them from Delhi to Geneva by Panam Flight 001 on 13-4-1982 which they would change at Frankfurt for a Lufthansa flight, the officers of the Directorate of Revenue Intelligence Along with Custom authorities of Delhi airport kept surveillance over the international departure area of Delhi Airport, Palam from the evening of 12-4-82 which resulted in the interception of a blue Vip suitcase with Panam Tag No. 216245 showing the itinerary Delhi-Frankfurt-Geneva, from the conveyor belt in the Customs enclosure. As no claimant for the said suitcase came forward even after the passengers had boarded the aircraft, a thorough check of the itineraries of all the passengers on board the said Panam 001 flight from Delhi revealed that only the aforesaid Lorenz and Zubler were to follow the route Delhi-Frankfurt-Geneva, i.e., the itinerary indicated on the said blue Vip suitcase. These persons were, Therefore, offloaded from the aircraft and brought back to the Customs Examination Hall an.. were questioned about the ownership of the said suitcase. Personal search of Mr. Warner Zubler resulted in the recovery of one Vip Key-purse containing two keys with which he opened the suitcase in question on being asked to do so by the officers The examination of the suitcase resulted in the recovery of hashish weighing 20 kg. packed in eight polythene bags which were wrapped with a striped cloth, which was seized together with the hashish. u/s 110 of the Customs Act 1962 in the reasonable belief that the same were liable to confiscation under provisions of the Act *ibid*. The Chemical Examiner's report has since confirmed the goods under seizin's as "hemp" covered under the Dangerous Drugs Act, 1930.

(II)that enquiries made from Klaus Peter Martin Ernst Lorenz and Waner Zubler and other persons concerned revealed that in June, 1981, the said Mr. Lorenz and other persons namely Satya Prakash Behl @ Kapoor, Robert Sebestain D'Souza and Alvero Marchon had entered into a conspiracy as Bo'mbay to illegally smuggle hashish out of India to Europe and in. pursuance of this conspiracy Mr. Lorenz had further discussions with Robert D'Souza at Bombay in

November, 1981, and that it was then decided that Lorenz would stay in Goa and when hashish was made available Robert D'Souza would send a coded telegram asking Lorenz to come to Bombay. It was also decided amongst Lorenz, Robert D'Souza and S. P. Behl @ Kapoor that Swiss Francs 8000 each would be paid to Lorenz and the carrier (engaged by him) in Switzerland and for carrying hashish out of India, hotel expenses and air fares etc., being borne in addition by Robert D'Souza, S. P. Behl @ Kapoor and you (referred to as Mr. Kumar). Accordingly, Lorenz went to Goa and stayed there. On 21-3-1982 as per arrangement aforesaid Lorenz received the coded telegram from Robert D'Souza and returned to Bombay on 25-3-82. Lorenz stayed in Hotel Ascot, Garden Road, Bombay, where he received a telephone call from S. P. Behl @ Kapoor informing that Kapoor would give money to Lorenz for buying air tickets for Delhi, Lorenz kept himself in touch with Robert D'Souza and S. P. Behl @ Kapoor from 25-3-82 onwards. Lorenz sent a telegram to his friend in Goa asking Warner Zubler who was then staying in Goa to come to Bombay, and in compliance thereof Zubler arrived at Bombay on 30-3-82 and joined Lorenz in Hotel Ascot. Lorenz had persuaded Zubler to act as a carrier for contraband hashish. On Robert D'Souza request, Lorenz and Zubler shifted to Hotel Sea Rock, Bombay on 8-4-82 where you were staying from 6-4-82 onwards. Further, that Robert D'Souza paid the Hotel bill of Lorenz and Zubler for their stay at hotel Ascot for the period from 31-3-82 to 8-4-82 and also paid Rs. 2,000/- to Lorenz for buying air tickets for their travel from Bombay to Delhi. That on 8-4-82 around 8.00 p.m. you called Lorenz on telephone to your room No. 1540 in Hotel Sea Rock and handed over to Lorenz a brown leather suitcase containing hashish which Lorenz brought to his own room in (No. 1933) in the said hotel. That you also asked Lorenz that while at Delhi, Lorenz and Zubler should stay at Chanakya Guest House, C-4 Panchsheel Enclave, New Delhi. That accordingly, Lorenz and Zubler brought the said brown leather suitcase containing hashish from Bombay to Delhi on 9-4-82 and they stayed at Chanakya Guest House as instructed by you. That you also returned to Delhi from Bombay by a separate flight in the evening of the same day and talked to Lorenz and Zubler over the phone on 9-4-82. That you personally visited Chanakya Guest House on 10-4-82 and collected passport of both Lorenz and Zubler and money changing certificates of Lorenz and purchasing air tickets for them for their journey from Delhi to Geneva. That on 10-4-82 (afternoon) you again visited Chanakya Guest House and delivered two identical blue Vi P suitcases to Lorenz and Zubler instructing them to pack hashish in one and keep Zubler's clothes etc. in the other. That on 11-4-82 (morning) you visited Chanakya Guest House and took one blue Vi P suitcase which contained hashish. That you paid turn boarding and lodging of Lorenz and Zubler at the Chanakya Guest House. That you through your sustained and persistent efforts got air tickets for Lorenz and Zubler issued by the Lufthansa Airlines despite the fact that Zubler did not have the requisite foreign exchange or the encashment certificates evidencing conversion of foreign exchange into Indian rupees to cover the amount of air fares payable and the fact that both (Lorenz and Zubler) did not have the necessary clearance either from the Income

Tax department or the Foreigners Regional Registration office which clearance were necessary in their case as their stay in India had exceeded three months period. That subsequently through your own resources and influence you got the Lufthansa airlines tickets of Lorenz and Zubler endorsed for their travel on Panam 001 flight of 13-4-82 by which flight you had arranged the surreptitious shipment of the Vip blue suitcase containing hashish which you had collected from Chanakya Guest House on 11-4-1982 (morning) as aforementioned. That it is you who paid for the air tickets of Lorenz and Zubler for their journey Delhi-Frankfurt-Geneva, etc. at the Universal Travel Services (Regd.) New Delhi. That between 23.00 hrs. and 24.00 hrs. of 12-4-82 you visited Chanakya Guest House in your car and took Lorenz and Zubler to Palam Gues't Air Port in your car. That Lorenz and Zubler checked out from Chanakya Guest House and at that time you finally settled the Guest House bill in respect of stay "there of both Lorenz and Zubler. That while leaving the Guest House at that time you also entrusted the empty brown leather suitcase, in which hashish had been given you (by) you to Lorenz in Hotel Sea Rock at Bombay and again in which suitcase hashish had been brought by Lorenz and Zubler from Bombay to Delhi to the custody of Shri B. B. Sharma Lt. Col. (Retd.) owner of Chanakya Guest House, telling the latter that arrangement would be made by you to have the same collected from the Guest House later. That you informed Lorenz and Zubler that you had made the necessary arrangement for shipment of the blue Vip suitcase containing the hashish by the same flight, i.e. Pa 001 on 13-4-82 by which they were also bound to travel and that they would be able to get the same suitcase at Geneva airport. That you also instructed them (Lorenz and Zubler) to sit and wait near the Cheffair Coffee shop in the international departure lounge at Delhi airport till you gave them an O. K. Signal by dropping a packet of cigarettes or a match box and picking up the same in front of them and that they should check in at the airlines counter only thereafter. That as per prior planning, Zubler was to pick up the blue Vip suitcase containing hashish, at Geneva Airport leaving behind the other similar suitcase containing 1. is clothes etc., and walk off. That as per arrangements already agreed upon amongst the various conspirators aforementioned. Lorenz Zubler were to hand over the suitcase containing hashish to Mr. Alvaro Marchon at Geneva and also to convey to him the bank account number of a Bank in Deira Subai held by Robert D'Souza in which bank account the sale proceeds of the contraband hashish were to be credited. That at Delhi Airport Lorenz and Zubler actually checked in at the airlines counter only after receiving from you the pre-arranged O. K. signal.

(6) The petitio"ner made a representation on 4th August, 1983, to the Administrator seeking revocation of the detention order and alternatively he sought that he be supplied with the copies of documents and other material referred to in the grounds to enable him to rebut the allegations made against him. In paragraph 11 of the representation he submitted that the applicant was "handicapped in making an effective representation because of failure of the detaining authority to furnish the applicant with the following copies of the

material relied upon and referred to in the grounds of detention by the detaining authority". In all 13 documents were specified. Vide items 3 and 5 of the said list the petitioner sought copies of the passports of Lorenz and Zirbier and also copies of the air tickets issued by the Lufthansa airlines" for Panam 001 flight dated 13th March, 1982. in their names. In paragraph 18 of the respondent it was reiterated that "unless complete copies of the documents, statements and other material relied upon by the Administrator are supplied to the applicant, the applicant would not be able to" give complete and effectual representation".

(7) At this stage it may be noticed that Panchanama whereunder the hashish as also the Lufthansa ticket Nos. 220044 2388404 for Paris-Frankfurt-Delhi and Lufthansa ticket No. 2204421 238931 Delhi-Frankfurt-Paris were taken into possession. has been relied upon by the detaining authority. It is document No. I in the list of documents relied upon and attached with the grounds of detention.

(8) The argument of Mr. Mehta, learned counsel for the petitioner, is that the Panchnama, copy Annexure "C" to the petition clearly shows that the air tickets which were taken into possession by the officers of the Customs, Delhi, airport on 13th April, 1982, from Lorenz and Zubler were for the journey, Delhi-Frankfurt-Paris, thereby negating the case of the respondents that these two persons were to disembark at Geneva as alleged in ground No. I, quoted above, or their itinerary was Delhi-Frankfurt-Geneva. The argument is that to enable the petitioner to make an effective representation it was incumbent upon the respondents to have supplied at least copies of air tickets as those have clearly been relied upon by the respondents, in the grounds" of detention. Alternatively, it is submitted that even if it is held that the air tickets have not been relied upon, copies have to be supplied as the detenu has specifically requested for the same.

(9) The argument on behalf of the respondents is two-fold (1) that none of these documents was relied upon by the detaining authority in the grounds of detention and as such there is no obligation cast on the respondents to supply copies, and (2) the documents are not relevant, Therefore the detaining authority has rightly declined the request of the petitioner for supply of their copies. Admittedly the representation of the petitioner was rejected, vide memorandum dated 12th August, 1983. Mr. Bagai has urged that there is merely a casual or a passing reference to the air tickets in paragraphs (i) and (ii) of the grounds of detention. He submits that what is stated in these two paragraphs is a narration of facts. He has drawn our attention to the opening sentence of sub-paragraph (iii) of the grounds which reads, "that the foregoing narration of facts brings it out clearly that you are an important member of an organized gang of international smugglers, playing an active role in organising the instant smuggling operations, including delivering the contraband drugs in the suitcase to the carriers at Bombay Sea Rock Hotel, arranging. . He, Therefore, submits that none of the documents to which reference has been made can be said to have been relied upon. Further Mr. Bagai submits that the 13 documents

including the air tickets in the name of Lorenz and Zubler or their passports copies of which were sought, were not produced before the Administrator. He urges, that as those documents have not been relied upon by the Administrator, those are not relevant and, Therefore, the question of supply of their copies does not arise.

(10) It is" not necessary to deal with all the 13 documents sought by the petitioner in his representation as in our opinion non-supply of copies of air tickets has vitiated the continued detention of the petitioner. In the facts of the present case it is not necessary to go into the question whether the air tickets have been relied upon or there is a casual or passing reference to them in the grounds of detention. Admittedly, the air tickets were taken into possession vide the said Panchnama. In our view the documents which have been taken in possession and by which a reference is made by the detaining authority although not relied upon yet ought to be supplied to a detenu when he makes a specific request for the supply of the same so as to enable him to make an effective representation. We are fortified in our view by a judgment of the Bombay High Court in Mohd. Hussain Vs. Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay and others, . After surveying the case law, it was held : "We may Therefore summarise the law laid down by the Supreme Court on the point as follows :

(A)the copies of all the documents which are relied upon in or which form the basis of, the grounds of detention must be supplied to the detenu along with the grounds of detention; (b) the documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually or incidentally as and by way of narration of facts in the grounds of detention need not be supplied to" the detenu; (c) however, even such documents, if the detenu requests for the same, have to be supplied to him, for whether they are relevant to his defense or not is for the detenu to decide and not for the detaining authority to judge."

(11) The contention of Mr. Bagai that the finding of the detaining authority that such a document is" not relevant and, Therefore, not open to challenge, appears to be misconceived. It is for the detenu to decide whether a document is relevant to his defense or not. In the present case it is the plea of the petitioner that the air tickets have not been issued for Delhi-Geneva but for Delhi-Frankfurt-Paris as is borne out from the Panchnama. Mr. Bagai's" reliance on Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others, . In support of his contention that the question of relevance was to be judged by the detaining authority, is misplaced. In the said case the plea of the detenu that the two documents referred to in the order of detention were not supplied to him, was rejected by the High Court on the ground that the documents were merely referred to and not relied upon by the detaining authority. This finding was arrived at by the High Court after examining the documents. The Supreme" Court observed, "with due respect to the Judges we are unable to agree with the view taken by them. In the

first place, it was not open to the Court to have waded through the confidential file of the Government in order to fish out a point against the detenu. Secondly, the question of relevance was not to be decided by the Court but by the detaining authority which-alone had to consider the representation of the detenu on merits and then come to the conclusion whether it should be accepted or rejected. As the reasoning of the High Court was legally erroneous .the order of the High Court cannot be allowed to stand is hereby quashed."

(12) From the above observations it cannot be said that it is open to the detaining authority to decide that a document in its possession having been seized during the course of investigation of that very case is not relevant for the defense of a detenu.

(13) In the view which we have taken it is not necessary to decide whether failure to furnish copies of the other documents to which reference is made in the grounds of detention by the detaining authority is an infringement of Article 22(5) of the Co'nstitution. We may, however, note that in Kirit Kumar's case (supra) it has been held that "once the documents arc referred to in the grounds of detention it becomes the bounden duty of the detaining authority to supply the same to the detenu as part of the grounds or *pari passu* the grounds of contention. There is no particular charm in the expression "relied on", "reference to" or "based on" because" ultimately all these expression signify one thing, namely, that the subjective satisfaction of the detaining authority has been arrived at on the documents mentioned in the grounds of detention. The question whether the grounds (documents) have been referred to, relied upon o'r based on is merely a matter of describing the nature of grounds (documents)."

(14) On the other hand Mr. Bagai relies on Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, , wherein it has been held that failure to furnish a copy of the document to which reference is made in the grounds of detention u/s 3(1) of the Act is not an infringement of Article 22(5). Chinnapa Reddy, J.. speaking for the Court, while noticing the curlier cases negated the contention that merely because a document was mentioned in the grounds, it establishes that it was relied upon for making the order of detention. It was held "Ina our view it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention".

(15) However, we have proceeded on the basis that in a case like the present, on the request of the detenu seeking copies of those documents to which a reference has been made so as to enable him to make an effective representation, the failure of the detaining authority to supply copies of seized documents, amounts to an infringement of the provisions of Article 22(5) of the Constitution.

(16) In view of our discussion above, the continued detention of the petitioner is

illegal. The detention order is consequently quashed. The rule is made absolute and the petition is allowed.