
(1984) 03 DEL CK 0021

In the Delhi High Court

Case No : Criminal Writ Appeal No. 5 of 1984

Y. Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-03-1984

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 2
Constitution of India, 1950 — Article 21(5)

Citation : (1984) CriLJ 1350 : (1984) 2 Crimes 18 : (1984) 26 DLT 182 : (1984)
2 ILR Delhi 420 : (1984) 2 RCR(Criminal) 345 : (1984) 2 RCR(Criminal) 181 :
(1985) RLR 6

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

Bench : Division Bench

Advocate : Kapil Sibal, U.K. Sharma, Urmil Khanna and R.M. Bansal, for the
Appellant;

Judgement

Charanjit Talwar, J.

(1) This is a second petition under Article 226 of the Constitution of India seeking issuance of a writ of habeas corpus for the release of the petitioner, Yudhishster Kumar, who had been detained by the order of detention passed on 22nd April, 1983. The first writ petition being Criminal Writ Petition No. of 1983, was dismissed by our order passed on 12th September, 1983.

The Administrator of Union Territory of Delhi passed the impugned order u/s 3(1), read with section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (herein called "the Act") on being satisfied that the detention of the petitioner was necessary with a view to preventing him from acting in any manner prejudicial to the conservation and augmentation of foreign exchange and preventing him from smuggling goods as also preventing him from engaging in transporting, concealing and keeping smuggled goods.

(2) It may be noted here that the two co-detenus of the petitioner, namely, Deepak Kumar and Dinesh Kumar had also been detained by the order of the Administrator of the Union Territory of Delhi passed on the same date u/s 3(1), read with section 2(f) of the Act. The three orders of detention were practically identical and the grounds of detention were also similar. The writ petitions of the co-detenus (Criminal Writ Petition Nos. 84 and 77 of 1983) were allowed, vide our order passed on 28th November, 1983. While quashing the impugned detention orders we made the rule absolute. In those petitions after going through the record we found that the joint representation made on behalf of Yudhishster Kumar, petitioner herein, Deepak Kumar and Dinesh Kumar. for supply of documents, some of which had been relied upon by the detaining authority, had been rejected by it, vide memorandum dated 24th June, 1983. We further found that a copy of the said memorandum was sent to each of the three detenus. On behalf of the respondents it was admitted in those petitions that along with the letter of the 2nd June, 1983 a letter written by an Advocate „for supply of documents on behalf of the co-detenus, a copy of the letter sent by him on behalf of all the three detenus earlier for supply of copies had been enclosed. On this aspect we observed :

"MR.Bagai, learned counsel for the respondents initially submitted that there was no request made by the petitioner for supply of documents. Later on in view of the copy of letter dated 2nd June, 1983,. written by the Advocate for the petitioner (Annexure "Y" to the writ petition) wherein it is clearly mentioned that although a letter for supply of documents on behalf of Sarvshri Y. Kumar, Deepak Kumar and Dinesh Kumar had already been submitted so as "to enable them to make a detailed, effective and meaningful representation against their detention; yet no reply had been received so far". The prayer was that copies be arranged to be sent at an early date to enable him to file "representation within the meaning of Article 22(5) of the Constitution of India". By a memorandum dated 24th June, 1983, addressed to Shri R. K. Khanna, the said Advocate, the request made on behalf of Y. Kumar, Deepak Kumar and Dinesh Kumar was rejected, and a copy of the said memorandum was sent to each of the three detenus (Annexure Z). Mr. Bagai after checking from his record informed us that in fact with the letter of 2nd June, 1983, a copy of the earlier letter seeking copies of documents had been received by the respondents"*.

(3) Further we found that "as noticed above, the application made for supply of documents was a common application on behalf of all the three detenus. The copies of the documents recovered, from the residence of the petitioners and also from Y. Kumar, which have been referred to in the grounds of detention, were also requested to be supplied".

(4) In the earlier writ petition of the present petitioner, Mr. Sibal, his learned counsel, in support of his argument that protection of Fundamental Right guaranteed to the petitioner under Articles 21 aad 22(5) of the Constitution was denied to the petitioner, did urge that copies of documents on which reliance was

placed by the Administrator for his subjective satisfaction were not supplied to the detenus. However, it is obvious from a reading of the judgment that he was unable to support his contention from the record of the writ petition (No. 86 of 1983). He now urges that the first application made by Shri R. K. Khanna, Advocate, on behalf of all three detenus wherein copies of documents recovered from the residence of the present petitioner were sought to be supplied could not be brought to our notice as the petitioner did not have a copy of the same. He relies on our observation in the other judgment that it was Mr. Bagai, learned counsel for the respondents, who after checking the record informed us that a letter was written on behalf of all the three detenus to the respondents for supply of documents, so that an effective representation against the detention could be made by the three detenus. Thus, it is submitted that as far as the petitioner is concerned the application or representation made by Shri R. K. Khanna, Advocate, on his behalf, is fresh evidence. Earlier on the petitioner was mixable to substantiate his contention that he had ever sought supply of documents which were recovered from his residence. Mr. Sibal further submits that it was because of this handicap that he had referred to only one document, i.e. the credit card of Mr. Wight. While dismissing the writ petition on this aspect we found "In support of the second contention Mr. Sibal urged that the production of the credit card of Mr. Wight would have shown who had paid for the journeys and not the petitioner. This submission has also no force. It appears from the petition that the petitioner admits having accompanied the Wight on the previous twelve occasions to Hongkong. His reason was that Mrs. Wight had become fond of him. Thus, the association of the petitioner with Mr. and Mrs. Wight is clearly admitted. The goods were smuggled by them at the behest of the petitioner who had also accompanied them. It is axiomatic that the petitioner had paid for the air journeys performed by Mr. and Mrs. Wight for the purpose of smuggling goods on the earlier trips. Thus, the non-production of the credit card is of no consequence. In any case the credit card could not have been produced as Mr. Wight and his wife had in the meantime left this country."

(5) Mr. Sibal, learned counsel for the. petitioner conceded before us that he had not referred to any other document except for the credit card as he was not in a position to support his contention of non-supply of documents as no material was placed before the Court showing that an earlier representation had been made and that it had been rejected by the respondents.

(6) The writ petitions of Deepak Kumar and Dinesh Kumar were accepted on the ground that it was not open to the authority to decline the request for supply of copies of documents which were available with it having been seized during investigation of that very case. Following our earlier decision in Vinod Kumar Arora @Vinod Kumar v. Administrator, Union Territory of Delhi and others (1) (Criminal Writ No. 90 of 1983) decided on 14th October, 1983, we held that "that the effective right of representation against the detention would be set at naught if the copies of those documents by which the detenu could show his innocence or atleast he feels he could do so is denied to him". The submission

made on behalf of the respondents that detenue ought to have given some reasons for seeking copies of, the documents was rejected. We came to this decision after having found that the joint representation on behalf of the three detenus. for supply of copies of documents had been illegally rejected by the respondents.

(7) In this view of the matter, it seems, Mr. Bagai learned counsel for the respondents did not urge, and rightly so, that our finding in the writ petitions of co-detenus regarding non-supply of documents recovered from the present petitioner was open to review or that the petitioner was not deprived of his right of effective representation. However, it was strongly urged that the present petition was barred by the doctrine of constructive res judicata as this very ground of non-supply of copies of documents to the petitioner had been rejected by us in the earlier writ petition filed by him. It is urged that subsequent petition for issuance of a writ of habeas corpus under Article 226 of the Constitution is thus not maintainable. In support of his contention Mr. Bagai cited *Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others*, . The reliance seems to us to be misconceived. The proposition of law declared therein is that "the position that emerges from a survey of the above decisions is that the application of the doctrine of constructive res judicata is confined to civil actions and civil proceedings. This principle -of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under Article 32 of the Constitution on fresh grounds, which were not taken in the earlier petition for the same relief". However, according to Mr. Bagai, one of the grounds of attack to the order of detention in the earlier petition of the petitioner was that copies of documents on which reliance was placed by the Administrator for his subjective satisfaction were not supplied to the detenu. He urges that the present petition in spite of our findings in the petitions of the co-detenus that the documents seized from the residence of the petitioner, were not supplied to him. is not liable to be allowed as this very ground has been rejected by us earlier .

(8) Ill the case before the Supreme Court which was a second petition before it for the issuance of a writ of habeas corpus it was urged that the petitioner therein had come to know about the non-supply of documents from the copy of the judgment of the High Court passed in the allied writ petition filed on behalf of the other detenus who were alleged to be associates of that petitioner. It appears that discovery of this fact was treated as fresh evidence and made the basis to urge additional grounds in the second petition. Thus in paragraph 16 of the reported judgment it is observed that in the previous petition the ground regarding delay in supply of copies of documents relied on by the detaining authority in passing the order of detention had been taken but respectful ground was taken that the documents covering about 236 pages which were relied upon by the detaining authority in passing the detention order were suppressed and not supplied to the petitioner. The order of detention of the petitioner in that case was quashed on the ground that the material which evidently had influenced the

mind of the detaining authority in passing the detention order had not been supplied to the detainee.

(9) It is true that in the earlier writ petition on behalf of the present petitioner a general ground of non-supply of documents was taken but it could only be pressed to the extent of non-supply of one document. It is the case of the petitioner that he was unable to specifically contend that the representation on his behalf for supply of documents had been made or rejected by the authorities. This fact has emerged from the judgment of this Court in the writ petitions of the co-detenu who were alleged to be the associates of the present petitioner. Thus it is urged that the finding that an application by the petitioner seeking copies of documents which were seized from his residence and its a legal rejection constitute fresh evidence or ground in support of the contention that the fundamental right guaranteed to the petitioner under Articles 21 and 22(5) of the Constitution was denied to him. We agree. In our view, the findings which were given in the writ petitions of the co-detenu entitle the present petitioner to move this Court afresh for issuance of a writ of habeas corpus.

(10) We, Therefore, reject the objection taken on behalf of the respondents. We hold that the petitioner's effective right of representation against his detention was set at naught by non-supply of copies of documents by which he could show his innocence or atleast he felt he could do so.

(11) Consequently for the above reasons we quash the detention order dated 22nd April, 1983, and make the rule absolute. It was for these reasons that after hearing the learned counsel for the parties vide our short order dated 21st March, 1984, we directed that the petitioner be set at liberty forthwith unless required to be detained under any other valid order of detention or an order of a Court.