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**(1985) 06 DEL CK 0004**

**In the Delhi High Court**

**Case No :** Criminal Writ Appeal No. 22 of 1985

Yashpal Bhatia

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 11-06-1985

**Acts Referred:**

Constitution of India, 1950 — Article 22(5)

**Citation :** (1985) 28 DLT 246 : (1985) 9 DRJ 177 : (1985) 2 RCR(Criminal) 303

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

**Bench :** Division Bench

**Advocate :** Harjinder Singh and R.M. Bagai, for the Appellant;

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## **Judgement**

Prakash Narain, C.J.

(1) The petitioner has been detained by virtue of an order dated June 28, 1984 passed by the Additional Secretary to the Government of India, (who was duly authorised to pass the ordination in respect of the petitioner u/s 3(l) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. The petitioner has challenged the said order and his continued detention by a petition under Article 226 of the constitution of India.

(2) Briefly stated the facts of the case are these : An information was received in December 1983 in the Delhi Zonal Office of the Enforcement Directorate, New Delhi that the petitioner along with his father Thakar Dass and brother Pramod Kumar have been indulging in illegal sale and purchase of foreign exchange in India and was also undertaking "Hawala Monetary Transactions" between India and Afghanistan. Premises belonging to the petitioner, his father and brother were searched on December 13, 1983 by the officers of the Enforcement Directorate. As a result of the searches, certain documents were recovered and seized from the two premises. Indian currency amounting to Rs. 2,94,900.00

was also seized from the residential premises. On the same date the petitioner is purported to have made a statement in his own handwriting before the Enforcement officers u/s 40 of the Foreign Exchange Regulation Act, 1973 in which he is purported to have stated that he had been doing the business of dry fruits and kiriyana under the name and style of M/s Chhabil Das Yash Pal since 1969 and had also been doing the business of brokerage of dry fruits and brokerage in money lending. Explaining the money seized, he is purported to have stated that it was the savings of the family. He could not produce any writing to support his statement with regard to seized currency. He is further purported to have stated that there were no regular books of account of the aforesaid firm and that the only ledger seized had entries up to March 31, 1982, and that no cash book or ledger was maintained for the period subsequent to March 31, 1982. He is purported to have explained some documents seized during the raid on the two premises. The statement of petitioner's father was also recorded. Notice for appearance was given to the petitioner u/s 40 of the Foreign Exchange Regulation Act, 1973 for January 16, 1984. On that date the petitioner did not put in appearance. Summons were again sent to the petitioner requiring his appearance but he failed to appear. This happened on several dates. The petitioner leveled charges against the officers of the Directorate. Finally, both petitioner and his counsel appeared on May 10, 1985 before the officers of the Directorate of Enforcement when his statement was recorded. He is again purported to have explained some documents that had been seized from the aforesaid two premises. Grounds of detention containing all the particulars of what happened were served on the petitioner on his being detained by virtue of the aforesaid order u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. He was also informed that he had a right to make a representation in view of the provisions of Article 22(5) of the Constitution of India. Along with the grounds, documents as mentioned in the list attached thereto were also served on the petitioner. These, inter alia, included copies of certain entries in a note book that had been seized from one of the two aforesaid premises, which were raided, as noticed earlier.

(3) The petitioner has challenged his detention on diverse grounds. The same grounds have been taken in the petitions under Article 226 of the Constitution of India, which have been filed by Thakar Dass, Nand Lal Bhatia and Manohar Lal. In the view, that we are going to take in this case, it is not necessary to either set out or discuss the various grounds on which the petitioner challenges his detention. In our view, the continued detention of the petitioner has to be held to be illegal inasmuch as the fundamental right guaranteed by Article 22(5) of the Constitution of India stands violated in the case of the petitioner. We hold this for the reason that some of the documents supplied to the petitioner are in a language which is not known to him at all. Since he cannot read those documents or understand them, he cannot make any effective representation. It was the bounded duty of the detaining authority to have given translations of these documents to the petitioner so that he could make an effective

representation. Inasmuch as the same were not given, the rights under Article 22(5) of the Constitution have been violated and the continued detention of the petitioner becomes illegal.

(4) In ground Viii on paragraph 14 of the petition the petitioner states that he was denied the opportunity to make an effective representation to the detaining authority as well as to the Advisory Board as also to the Central Government because most of the documents, copies of which were supplied to him were in "parsi language". He has stated on oath that he does not understand these documents as he does not know the language in which the said documents are written. In the return to the rule nisi an affidavit was filed sworn by Shri A.K. Agnihotri Under Secretary to the Government of India in the Ministry of Finance, Department of Revenue, New Delhi. Replying the aforesaid ground Viii of paragraph 14 of the petition, Shri Agnihotri has stated as under :-

"IT is wrong and denied. It is denied that any of the documents is in parsi language. The same are in Urdu language with which the petitioner is well conversant. The documents have been supplied to the petitioner in the language known to him. Even otherwise, the petitioner had himself explained those documents and the true photo copies of the same have been supplied to the petitioner. Further the petitioner has made 2 representations against his detention and as such it cannot be said that he was deprived of his right to make any effective and purposeful representation."

(5) We have examined some of the documents in respect of which the petitioner makes the complaint that he could not read or understand the same. These documents are written in the same script which is used in writing the Urdu language. The figures are also Arabic figures as are written while writing Urdu Language. But that is where the documents being in Urdu come to an end. The language used is neither "Urdu" nor "Parsi". It is also not "Persian". With the help of counsel we were able to read the documents, but we ourselves could not understand them as what is written in the documents, apart from the figures, appears to be in "Pushto" language, commonly used as a language in Afghanistan. The petitioner, in fact, does not even know Urdu much less "Pushto". In this view of the matter, no effective representation could be made by the petitioner at least vis-a-vis these documents. The documents seemed to be not only relevant but most important. The allegations against the petitioner are that he has been indulging in illegal money transactions in violation of the Foreign Exchange Regulation Act. If the entries cannot be explained by the petitioner, he being unable to read them or understand them the question of his making an effective representation, even if he had made some representation, does not arise. The law of preventive detention is clear. No one can be allowed to be held without trial by virtue of the Preventive Detention law unless, amongst others, the right under Article 22(5) of the Constitution is assured and ensured. The petitioner has been denied this right.

(6) We, Therefore, accept the petition, make the rule absolute and direct that the

petitioner be set at liberty forth-with.