

(1986) 04 DEL CK 0011

In the Delhi High Court

Case No : Criminal Writ Appeal No. 284 of 1985

Yashwant Kumar Sidhwani

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-04-1986

Acts Referred:

Citation : (1986) 30 DLT 104

Hon'ble Judges : N.N. Goswamy, J; D.K. Kapur, J

Bench : Division Bench

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

Judgement

N.N. Goswamy, J.

(1) Yashwant Kumar Sidhwani. resident of Flat No. 1 "Ankur" Mid Chowki" Marwa Road, Sai Baba Park, Maland. Bombay, has been detained by virtue of an order dated 26th July, 1985 passed by the Administrator of the Union Territory of Delhi u/s 3 read with section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing him for abetting the smuggling of gold into India. The detention and continued detention has been challenged by the petitioner on diverse grounds in this petition under Article 226 of the Constitution of India.

(2) According to the grounds of detention on 23rd July, 1984 one Mohan Lal son of Shri Bhola Ram of Kanpore arrived from Dubai by Air India flight No. AI-860. After collecting the baggage he opted for green channel. He was intercepted by the Superintendent, Air Customs, who during the course of inquiry found his movements suspicious and Therefore, diverted his baggage for detailed examination before two independent witnesses. Before the witnesses, Mohan Lal was specifically asked whether he was having. V.C.R., gold or watches etc. to which he replied in the negative. Thereafter, his baggage consisting of one blue colour zipper suitcase and two hand bags were examined. As a result of

examination, two steam presses, 10 films, 2 pieces of textile and one bottle of whisky and one carton of cigarettes collectively valued at Rs. 950.00 were recovered in excess of free allowance. The steam presses recovered from his baggage were found exceptionally heavy and were got opened. On opening the water chamber of one steam press, it was found to contain 19 gold biscuits of 10 tolas each bearing foreign markings concealed in the water chamber. The other press was also got opened and found to contain 19 gold biscuits of 10 tolas each with foreign markings and one stone studded gold ring concealed in the water chamber. On demand he could not produce any evidence documentary or otherwise for the lawful import of the above said gold in the form of 38 gold biscuits and one gold ring collectively valued at Rs. 7,61,000.00 . These goods were, Therefore, seized under the Customs Act as also under Fera on the reasonable belief that the same have illegally been smuggled into India and are, Therefore, liable for confiscation. Mohan Lal in his voluntary statement dated 24th July 1984 recorded u/s 108 of the Customs Act while admitting the recovery of the gold etc., stated inter-alia that one Kishan Lal working in the State Bank of India. Kanpur had suggested him to go abroad. He had given him letter addressed to the petitioner stating that he would arrange for his employment. Accordingly Mohan Lal gave his passport and letter to the petitioner at Bombay. the petitioner arranged for his ticket as also two more tickets, one for Bhagwan Dass and the other for Smt. Dharma. The petitioner also gave some foreign exchange to Bhagwan Dass. All these three persons reached Dubai on 9th March, 1984 and they reached the shop of Ishwar Dass and the driver of Ishwar Dass picked them up from the Airport. Mohan Lal returned from Dubai on 13th March, 1984. Ishwar Dass had given him one Video, one T.V. and some new clothes and had told him to take care of those goods. He had further told him that any person of the petitioner who may come to receive him at the airport, the goods should be handed over to him. On his arrival at Bombay Airport a person employed by the petitioner had received him. That person did not have enough money to pay the custom duty and as such the T.V. and the Video were left in the Customs which were got released after 8 or 10 days on paying the custom duty of Rs. 14,500.00 . In (urn Mohan Lal got air ticket, boarding/lodging expenses besides a watch and some clothes from that person According to him, he again went to Bombay and around 14th July, 1984. At that occasion, the petitioner was not in Bombay and Ishwar Dass's brother-in-law met him and he arranged for booking a seat for him to Dubai on 18th July, 1984. He also arranged for foreign currency. He came back from Dubai to Delhi on 23rd July, 1984 by Air India Flight No. AI-860. It is on this trip that he was apprehended and gold was recovered.

(3) The grounds of detention run into as many as 25 pages and are in the form of narration of facts. Various people were interrogated and had made statements u/s 108 of the Customs Act. Many of them have tried to involve the petitioner but in none of the statements there is a mention of smuggling of any gold.

(4) The petitioner has been detained with a view to preventing him from abetting

the smuggling of gold into India. The smuggling of gold is attributed only to Mohan Lal and in rest of the 25 pages of grounds of detention there is no mention of smuggling of gold by anybody else. As regards Mohan Lal the only incident is of 23d July, 1984 relating to his trip to Dubai commencing from 18th July, 1984 and ending on 23rd July, 1984. According to the grounds of detection, the petitioner was nowhere in the picture as far as this trip is concerned inasmuch as neither he had met Mohan Lal nor had he arranged for his tickets, nor was the petitioner present to receive Mohan Lal. In fact Mohan La] also does not connect him with this incident. It is also an admitted fact that in the complaint filed against Mohan Lal, there is no mention of any conspiracy in which the petitioner is involved. May be that the petitioner is a member of the ring but the grounds of detention are so vague that it cannot be inferred that there is any specific ground regarding the abetting of smuggling of gold into India by the petitioner.

(5) The question, for consideration, in this petition, is whether the facts/grounds of detention are sufficient and can be considered to be "material" for detaining the petitioner. We have given our careful consideration to these facts. We are of the opinion that the principal fact/ground mentioned in regarding the recovery of 38 gold biscuits found concealed in the bottom to two steam presses and the grounds are too vague to connect the petitioner with the same. In rest of the grounds, there is comaterial allegation regarding the smuggling of gold with which the petitioner is involved though certain persons, mentioned in the grounds, have tried to involve the petitioner in their statements to the extent of their having brought certain goods which were released by the petitioner or his associates. However, there is no mention that they had brought gold and the petitioner was instrument in abetting the smuggling thereof. In the circumstances, we are of the opinion that the grounds are absolutely vague and lack In material particulars. In these circumstances, it is not possible for anybody to make an effective representation. The making of an effective representation is a fundamental right guaranteed under Article 22(5) of the Constitution which in the circumstances, has been denied to the petitioner.

(6) For the reasons recorded above, we make the rule absolute and direct that the petitioner, Yashwant Kumar Sidhwani, be released forthwith unless he is wanted under any other valid order of a Court or Authority.