

Thakor Mulchandani

Vs

Assistant Secretary to the Government of Maharashtra and Others

Writ Petitions Nos. 6468 and 6469 of 1980

(Syed M. Fazal Ali, A.D. Koshal JJ)

13.01.1981

JUDGMENT

FAZAL ALI, J. -

1. These two petitions relate to two detenus Gulab Gopaldas Manghnani and Naresh Harkishandas Manghnani. Each of the detenus was detained by an order of detention dated October 18, 1980 and both of them were arrested on November 25, 1980 and the grounds of detention were also supplied to the detenus the same day. The documents were sent under cover of letters dated November 29, 1980 and December 6, 1980.

2. In support of the rule, Mr Jethmalani has submitted that the most important document which is the sheet-anchor of the allegations against the detenus had not been supplied to them even upto today even though it was relied upon in the order of detention. This document is in the nature of a slip which was recovered from detenu, Gulab Gopaldas Manghnani and was said to have been written and handed over to him by the other detenu Naresh Harkishandas Manghnani. In one of the grounds of detention it is clearly stated that a summary made by detenu Gulab Gopaldas Manghnani of the account in respect of the article smuggled was recovered from him and was admitted by him before the Customs Officer during the adjudication proceedings. The relevant portion of the ground of detention may be extracted thus :

You have admitted in your statement that you had brought some foreign currency for being handed over to Naresh and that you were taking the account given by Naresh for being handed over to Vishnu at Dubai.

It is, therefore, clear that until the actual account which was seized from Gulab Gopaldas Manghnani and was attested by two witnesses, was supplied to the detenu, it was not possible for the detenus to make an effective representation against the order of detention to the detaining authority. Mr Rana appearing for the respondent submitted that although the slip of paper containing the accounts was seized from the possession of one of the detenus, it was not necessary to supply a copy of the same to them because in the statement which the detenu made before the Customs Authorities the details of articles being smuggled were already given there. This argument is, however, not sufficient to meet the requirements of law because that statement made by the detenu is not admitted and in absence of the detailed account, the statement itself is not quite intelligible. In these circumstances, we are of the opinion that Mr Jethmalani is right in contending that the slip containing the accounts was material document which was undoubtedly referred to and relied on by the detaining authority and should have been supplied to the detenus pari passu the grounds of detention. For these reasons, the orders of detention are void. Accordingly, the petitions are allowed

and the detenus are directed to be released forthwith.

</html