

Mohd. Zakir

Vs

Delhi Administration and Others

Writ Petition No. 1206 of 1981

(Syed M. Fazal Ali, A. Varadarajan JJ)

02.04.1981

ORDER

1. In this writ of habeas corpus filed by the detenu, the detenu was arrested on November 29, 1980 and the grounds of detention were served on him on December 1, 1980. A representation was sent by the detenu on December 30, 1980 which was rejected by the Government on January 6, 1981. A prayer for further documents was made by the detenu on January 5, 1981 which were supplied to him. We are not concerned with the other events in the case because this petition must succeed on a short point.

2. Mr Ashok Sen appearing for the detenu submitted that in para (1) of the grounds of detention, which is extracted at pages 24-25 of the paper-book, the grounds clearly mentioned certain information and documents which have been relied upon for the purpose of detaining the petitioner and formed the subject-matter of the subjective satisfaction of the detaining authority. These documents would show that one Mr D.H. Anand had a passport dated February 12, 1975 and had flown to Hong Kong by flight No. T602 and declared 90 kgs. of silver. It was also alleged that the detenu having passport dated October 4, 1978 travelled from Delhi on flight No. PA 002 and declared 50 kgs. of silver. There was Darshan Lal Anand also who had returned from Bangkok and declared 117 kgs. of silver. It was further stated that necessary enquiries from the Customs Department confirmed the information received from Hong Kong regarding the declaration of silver. Perusal of the grounds of detention would show that the pivotal ground on the basis of which the detenu was detained was the allegation that he smuggled out huge amount of silver from India to foreign countries. The documents regarding the facts mentioned in the grounds of detention referred to above and relied upon by the detaining authority were not admittedly furnished to the detenu at the time when the grounds were served on him or pari passu the same. On the other hand, these documents were supplied to him much later, i.e. on January 5, 1981. This infirmity therefore is clearly violative of the constitutional safeguard enshrined in Article 22(5) of the Constitution as held by this Court in a series of cases. Mr Hardy appearing for the respondents tried to support the order of detention on the ground that some documents had been supplied along with the grounds, but these documents were given to him only when the same were demanded by him. In the view that we have taken in a number of decision starting from *Ichhu Devi Choraria case (Ichhu Devi Choraria v. Union of India, (1980) 4 SCC 531 : 1981 SCC (Cri) 25 : AIR 1980 SC 1983)* to the case of *Kamla Kanyalal Khushalani (Kamla Kanyalal Khushalani v. State of Maharashtra, (1981) 2 SCC 748 : 1981 SCC (Cri) 287 : (1981) 2 SCR 459 : AIR 1981 SC 814)*, it is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. In the instant

case, the detenu did make a representation promptly on December 30, 1980 but was seriously handicapped in making an effective representation because the aforesaid documents which were of vital importance were not supplied to him.

3. For these reasons, therefore, the continued order of detention of the detenu is rendered void. We, allow this petition and direct the detenu to be released forthwith.

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