

Sunil Dutt

Vs

Union of India and Others

Writ Petition (Criminal) No. 1793 of 1981

(V.D. Tulzapurkar JJ)

12.05.1981

JUDGMENT

TULZAPURKAR, J. -

1. By this petition for issuance of a writ of habeas corpus, the petitioner has challenged his father's continued illegal detention under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'the COFEPOSA Act') and has sought his release.

2. A few facts giving rise to the petition may be stated. Bakshi Balraj Dutt, the detenu, was arrested and detained on July 11, 1980 pursuant to a detention order passed by the Administrator, Delhi Administration on July 9, 1980 under Section 3(1) of the COFEPOSA Act. On the very date on which he was detained i.e. on July 11, 1980, grounds of detention running into eight closely typed pages were supplied to him. However, copies of the documents and the statements relied upon by the detaining authority, on the basis of which the grounds of detention were made out, were served upon the detenu as late as on July 19, 1980. The detenu made an incomplete representation on July 26, 1980 - incomplete because copies of documents referred to in the grounds were served on him on August 4, 1980. The detention was confirmed by the Central Government on August 23, 1980 after obtaining the Advisory Board's opinion. It appears that on September 12, 1980 the detenu filed a writ petition by way of habeas corpus seeking release but the same was dismissed by this Court in limine on September 24, 1980. Thereafter another representation was made by the detenu through his wife to the detaining authority (the Administrator) in January 1981 and that representation was disposed of by rejection on April 25, 1981. The present petition seeking release of the detenu has been filed by the petitioner on April 3, 1981.

3. It is well settled that the dismissal of the earlier writ petition of habeas corpus on September 24, 1980 will not operate as a bar to the maintainability of the present writ petition and no point in that behalf was raised before me by counsel for the respondents.

4. Counsel for the petitioner has raised two contentions in support of the writ petition. In the first place he has contended that all the documents, whether relied upon or referred to in the grounds of detention, had not been supplied to the detenu along with the grounds of detention and such failure constituted a breach of the guarantee under Article 22(5) of the Constitution and since such failure has affected the right of the detenu to make a proper and effective representation any further detention in breach of the safeguard would be illegal. Secondly, it is contended that there has been an undue and unexplained delay of more than four months in the matter of consideration of the representation which the detenu had sent through his wife and further that the said representation

has been disposed of by the detaining authority (the Administrator) by not applying its independent mind but after getting influenced by the Central Government's decision in the matter. It is unnecessary for me to consider the second contention urged by counsel for the petitioner as, in my view, the first contention is sufficient to dispose of this habeas corpus petition.

5. It was not disputed before me that along with the grounds of detention which were served on the detenu on July 11, 1980, none of the documents, either relied upon or referred to in the grounds, were served upon him. Admittedly, the service of such documents was delayed up to July 19, 1980. It is obvious that those very documents must have formed the basis of making out the grounds of detention and ex hypothesi these documents were in existence and available for being served upon the detenu along with grounds of detention. Further, documents referred to in the grounds were served as late as on August 4, 1980, with the result that the detenu was required to send his incomplete representation which he did on July 26, 1980. Clearly the safeguard guaranteed under Article 22(5) of the Constitution was violated. In *Kamla Kanyalal Khushalani v. State of Maharashtra* ((1981) 1 SCC 748 : 1981 SCC (Cri) 287) this Court has observed as follows : (SCC head-note)

It is of the utmost importance that all the necessary safeguards laid down by the Constitution under Article 21 or Article 22(5) should be complied with fully and strictly and any departure from any of the safeguards would void the order of detention. The law of preventive detention has now to satisfy a two-fold test : (1) that the protection and the guarantee afforded under Article 22(5) is complied with, and (2) that the procedure is just and reasonable. If a procedure under Article 21 has to be reasonable, fair and just, then the words 'effective representation' appearing in Article 22(5) must be construed so as to provide a real and meaningful opportunity to the detenu to explain his case to the detaining authority in his representation. In this view of the matter, unless the materials and documents relied on in the order of detention are supplied to the detenu along with the grounds, the supply of grounds simpliciter would give him not a real but merely an illusory opportunity, to make a representation to the detaining authority.

6. It is true that under sub-section (3) of Section 3 of the COFEPOSA Act it is provided that for the purpose of Article 22(5) of the Constitution, the communication to a person detained in pursuance of the detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention. This provision under which five days' period in normal circumstances and fifteen days' period in exceptional circumstances has been provided relates to the supply or communication of the grounds on which the order of detention has been made to the detenu. It has no reference to the documents and material on the basis of which the detention order has been made and it is quite clear that there is no reason why the documents and materials in support of the grounds on the basis of which the detention order has been made, the same being ex hypothesi in existence at the time of the issuance of the detention order and framing of the grounds, should not be supplied to the detenu along with the grounds. Non-supply of such material and documents along with the grounds would clearly amount to a violation of the safeguard guaranteed under Article 22(5) of the Constitution. Since in the instant case that safeguard afforded to the detenu has been violated, further detention of the detenu would be illegal and void.

7. In the circumstances the writ petition succeeds and the detenu is directed to be released forthwith.

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