

Kailash Pandey

Vs

State of U. P. and Others

Criminal Writ Petition No. 478 of 1982

(O. Chinnappa Reddy JJ)

28.05.1982

JUDGMENT

CHINNAPPA REDDY, J. -

1. Kailash Pandey alias Ram Kailash is detained under the provision of the National Security Act pursuant to an order made by the District magistrate of Pratapgarh. The detention is challenged in this petition under Article 32 of the Constitution in various grounds. I do not consider it necessary to set out the several ground of challenge, as in an satisfied that the detenu is entitled to succeed on the principal ground urged on his behalf by Shri Anil Kumar Gupta, his learned counsel.

2. Each of the six grounds of detention mentioned in the 'grounds given under Section 8 of the National Security Act, 1980" refers to a different incident based upon the confessional statements of one of or other of the accused persons involved in this incidents. The grounds are based upon the confessional statements. The confessional statements are the very core of the grounds. Yet copies of those statements were not furnished to the detenu along with the grounds of detention. Thereby the detenu was denied the opportunity of making a proper and adequate representation. In the writ petition, the detenu made an express complaint in the following words :

It is submitted that the alleged statement of the aforementioned self-confessed criminals referred to and relied on in the grounds and formed part and parcel of the grounds were never supplied to the petitioner. Therefore, complete ground of detention were not supplied to the petitioner and as such, there is violation of article 2(5) of the Constitution.

In answer to this allegation, the District Magistrate stated in his counter-affidavit as follows :

The petitioner was supplied with all the necessary supporting material including the copies of FIRs. and the necessary details of investigation.

3. As the denial appeared to be evasive, I asked Shri Dalveer Bhandari, learned counsel for the State of U.P. to state whether copies of the confessional statements upon which the grounds were based, had been supplied to the detenu or not ? Shri Bhandari consulted the officer, who was sitting by his side and instructing him and stated that a gist of the several confessions statements was furnished to the detenu. As I was not satisfied with the answer, I wanted him to look at the so-called gist, which was said to have been supplied to the detenu. The officer who was instructing Shri Bhandari then had to almost that there was no such separate documents in existence, and that what he really meant was that the gist of the confessions had been mentioned in the grounds of detention. It was apparent that the officer concerned was not properly instructing Shri Bhandari. In fact he was misguiding him

to make incorrect statements to the Court. To say the least, the conduct of the officer in trying to mislead the Court through his counsel was most reprehensible. It is indeed a great pity that responsible officers of the Government, who should be interested in upholding truth, justice and the rule of law, should indulge in evasion, deceptive suggestion and mis-statement. I do hope the authorities concerned will take appropriate action against him. Shri Bhandari expressed his unqualified apology to me and there the matter rests so far as this Court is concerned. The detenu is entitled to be released in view of the failure to furnish necessary documents to enable him to make a proper representation. Writ petition is allowed and the detenu is directed to be released forthwith.

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