

P. U. Abdul Rahiman

Vs

Union of India and Others

Criminal Appeal No. 590 of 1990

(Dr. T.K. Thommen, K.N. Saikia, R.M. Sahai JJ)

01.11.1990

### JUDGMENT

1. Special leave granted.

2. This appeal arises from the judgment of the Delhi High Court in Criminal Writ Petition No. 525 of 1989 (reported in 1990 Cri LJ NOC 139) dismissing the appellant's writ petition challenging the order of his detention dated 13-2-1989 made under S. 3(1) and declaration dated 17-4-1989 made under S. 10(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The appellant contends that certain important documents relied upon by the detaining authority had not been supplied to him.

3. The appellant had filed a Review Petition against the aforesaid judgment which was numbered as Cri. Misc. Petition No. 68 of 1990, but the same was also dismissed.

4. The appellant had been arrested on 4-6-1988 under the Narcotic Drugs and Psychotropic Substances Act, 1985. On 9-6-1988 he had moved an application before the Judicial First Class Magistrate, Kasargod for bail. That application was rejected. On 10-6-1988 the appellant moved an application for bail, as C.M.P. No. 104/88, before the District and Sessions Judge, Kasargod. On 17-6-1988 the appellant was released on bail subject to certain conditions. In the two applications for bail the appellant had specifically stated that he had retracted from the statement made by him. The co-accused, who had also made a statement, had retracted from his statement.

5. On 3-3-1989 the appellant was pursuant to order dated 13-2-89 arrested and detained. In the grounds of detention there is a specific reference to the appellant's application for bail which was rejected by the Judicial First Class Magistrate, and to the subsequent grant of bail by the Sessions Court.

6. Counsel for the appellant submits that reference to this vital facts, as a ground of detention, shows that reliance had been placed on the two judicial orders. If the documents relating to those two orders had been given to the appellant, he could have 'lodged an effective representation explaining the circumstances relevant to those two orders. He could have highlighted that it was in the light of the fact that he had retracted from his earlier statement that he was ordered by the District Judge to be released on bail. The denial of an effective opportunity by not giving him the relevant documents, while he was in custody, has resulted in failure of justice.

7. Counsel refers to the principle stated by one of us (K.N. Saikia, J.) in the case of M. Ahamedkutty v. Union of India, (1990) 2 SCC 1, and submits that the facts of the present case are

squarely covered by that decision. In paragraph 27 of that Judgment, this Court after summarising the relevant decisions on the point stated:

"27. Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Art. 22(5) of the Constitution of India rendering the continued detention of detenu illegal and entitling the detenu to be set at liberty in this case."

8. Counsel for the respondent relies upon another decision of this Court in Abdul Sattar Abdul Kadar Shaikh v. Union of India, (1990) 1 SCC 480. In that case, the detenu, after unsuccessfully making two earlier attempts, again contended that certain documents which he had asked for were not given to him and, therefore, there was failure of justice. Rejecting that contention, this Court stated that the documents he had asked for had no relevance to his detention and no injustice had been done to him by refusing to give him those documents on which no reliance whatsoever was placed by the detaining authority.

9. The principle stated by this Court in Abdul Sattar Abdul Kadar Shaikh v. Union of India, (1 990) 1 SCC 480, with regard to the irrelevant documents sought by the detenu, has no relevance to a case such as this, the facts of which are squarely covered by the decision in M. Ahamadkutty v. Union of India, (1990) 2 SCC 1.

10. Accordingly, we set aside the judgment under appeal and the impugned orders of detention and declaration. The detenu shall be released at once.

11. The appeal is allowed in the above terms. No costs.

Appeal allowed.

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