

DELHI HIGH COURT

Sat Pal Manchanda

Vs.

M.L. Wadhawan (Delhi)

Crl. Writ No. 333 of 1986

1986(11) DRJ 324

(B.N. Kirpal, J.)

30.10.1986

JUDGMENT

B.N. Kirpal, J.

1. This judgment will dispose of Criminal Writ No. 333/86 filed by Sat Pal Manchanda and Criminal Writ No. 334/86 filed by his brother Raj Pal Manchanda.

2. In these writ petitions the challenge is to the orders of detention dated 19th March 1986, passed by Shri M.L. Wadhawan, Additional Secretary to Government of India under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA). The ground on which the order has been passed is that the detention is necessary with a view to prevent the petitioners from abetting the smuggling of goods.

3. In the orders of detention it is mentioned that the detents were also furnished with the grounds on which the detention orders were passed. The perusal of the grounds discloses that apart from other material, which was relied upon by the detaining authority while passing detention order, the detaining authority also took into consideration the statements which were recorded, under Section 108 of the Customs Act of Pawan Kumar and Balwinder Kumar. Both these persons are stated to be the nephews of the detunes and they were also, likewise, detained by similar orders dated 19th March 1986.

4. After the orders of detention were served, and the detenus were detained,

request was made in letters by the counsel for the detenus for supply of certain information. That request was addressed to respondent NO. 1. The information asked for in the letters was not supplied to the petitioners as, according to the respondent, the same was not required for making any effective representation. The rejection of the request for information was communicated to Satpal Manchanda by memorandum dated 7th July 1986 and to Rajpal Manchanda by memorandum dated 21st July 1986.

5. The detenus also filed their representations to the Central Government against their detention. One of the contentions which was raised in the representations was that the advisory board on 2nd June 1986 had ordered the release of Pawan Kumar and Balwinder Kumar According to the detenus. the opinion of the advisory board, as well as the proceedings before the advisory board in the case of Pawan Kumar and Balwinder Kumar, were material and relevant for deciding the representations of the detenus. The detaining authority was requested to call for the files of Pawan Kumar and Balwinder Kumar and to consider the impact of the advisory Board's opinion on the continued detention of the petitioners herein.

6. It is admitted case of the parties that the representations of the detenus against their continued detention was rejected by order dated 7th August 1986 in the case of Rajpal and 8th August 1986 in the case of Satya Pal.

7. Aggrieved by the aforesaid rejections and their continued detention, the present petitions have been filed under Article 226 of the Constitution of India.

8. Though a number of contentions have been raised in the writ petitions and urged before us by Mr Ram Jethamalani, learned counsel for the petitioners, we do not consider it necessary to deal with them in view of the fact that we are of the opinion that the continued detention of the petitioners, for one of the reasons which we are presently going to state, is illegal.

9. As already mentioned herein above, one of contentions which had been raised before the detaining authority was that the proceedings and the opinion of the advisory board in the case of Pawan Kumar and Balwinder Kumar was relevant in order to decide about the continued detention of the petitioners herein. At our behest the learned counsel for the respondents has shown us the orders passed by the detaining authority on the representations filed by the petitioners. The perusal of the file placed by the said counsel before us does not

show that the aforesaid papers and documents, relating to the proceedings before the advisory board and its opinion with regard to the continued detention of Pawan Kumar and Balwinder Kumar, were ever placed before the detaining authority.

10. The learned counsel for the respondents also could not draw our attention to any document or mention in the file which could in any manner indicate that the advisory board's opinion regarding Pawan Kumar and Balwinder Kumar were seen by the detaining authority when it was considering the representations of the detenus.

11. In our opinion the aforesaid proceedings and the opinion of the advisory board in the case of Pawan Kumar and Balwinder Kumar was relevant material. As already noted in the grounds of detention, the statements of Pawan Kumar and Balwinder Kumar were taken into consideration while ordering the detention of the petitioners herein. Those two persons, namely, Pawan Kumar and Balwinder Kumar were ordered to be released by the advisory board. It must follow that the said decision could have a material bearing on the continued detention of the petitioners herein and, in our opinion, it was obligatory on the detaining authority to have seen the said opinion. The departmental file discloses that there are two identical notes put up for the considerations of the detaining authority on the representations received from the petitioners. There is a reference that Pawan Kumar and Balwinder Kumar had been ordered to be released by the advisory board but it is stated in the said notes that the said release is of no relevance to the present case and there is nothing to indicate in the said notes that any of those documents, as already mentioned, were ever placed before the detaining authority. It may be that, after perusing the opinion of the advisory board, the detaining authority might still have come to the conclusion that it was necessary to continue with the detention of the petitioners herein, but it is not correct to say that the decision of the advisory board, which led to the release of Pawan Kumar and Balwinder Kumar, and who were ordered to be detained along with the petitioners and on whose statements under Section 108 reliance has been placed, was not a relevant circumstance. We have no doubt that the aforesaid relevant material has not been taken into consideration by the detaining Authority while disposing of their representations and the petitioners' fundamental right under Article 22 of the constitution has thus been violated.

12. For the aforesaid reasons, the writ petitions are allowed. It is ordered that the petitioners be released forthwith unless they are required to be detained under any other law.

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