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**Narbada Devi Vs. Administrator, Union Territory of Delhi and ors.**

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**Court : Delhi**

**Decided On : Jan-24-1986**

**Reported in : 29(1986)DLT291**

**Judge : Dalip K. Kapur, C.J. and; N.N. Goswamy, J.**

**Acts : [Constitution of India](#) - Articles 22, 22(5) and 226; [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 2 and 3(1)**

**Appeal No. : Criminal Writ Petition No. 256 of 1985**

**Appellant : Narbada Devi**

**Respondent : Administrator, Union Territory of Delhi and ors.**

**Advocate for Def. : R.M. Bajaj and ; M.K. Gupta, Advs.**

**Advocate for Pet/Ap. : O.P. Soni and; Kamlesh Dutta, Advs**

**Judgement :**

**N.N. Goswamy, J.**

1. Sagar Mal resident of G-3/86, Model Town, Delhi has been detained by virtue of an order date 10-10-1985 passed by the Administrator of the Union Territory of Delhi under Section 3(1) read with Section 2(f) of the [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) with a view to

preventing him from acting in any manner prejudicial to the augmentation and conservation of Foreign Exchange and also preventing him from abetting the smuggling of goods viz-a-viz gold and foreign currency. The detention and continued detention has been challenged by Smt. Narbada Devi, the wife of the detenu by this petition under Article 226 of the [Constitution of India](#) on diverse ground.

2. According to the grounds of detention, action on a specific information, a watch was kept on the passengers disembarked from domestic flight No. IC 185 from Bombay at Delhi on 07-09-1984. (Sic) Gopal son of Sarwan Kumar arrived by the said flight from Bombay. After collecting their baggage comprising of two televisions and two small suit cases they deposited their luggage at Left Luggage Facility at Old International Departure Hall. They were intercepted there by the Customs Preventing Officer and were brought to International Arrival Hall along with the baggage. They were questioned about any contraband items in their baggage or body. They denied having any such items with them. morning of 8-9-1984 to independent witnesses were called in the lunch Room and in their presence, they were, once again, asked whether they were carrying any gold or foreign currency or any other contraband items concealed inside their baggage or body to which they again replied in the negative. Apprehending concealment of gold inside rectum the Customs Officers accompanied by the above said witnesses took both the passengers to the first aid room located inside the International Arrival Hall. The Doctor on duty, Shri Goel, was contacted who advised that passengers may be given Enema as this will help in flushing out the contraband inside the body. Enema was given to those two persons and finally condoms bags were recovered from these two persons. The said bags contained foreign currency in the nature of US dollars 30,000/-. On demand both those persons failed to produce any authorization or any evidence documentary or otherwise for lawful acquisition or import of the said currency recovered from their rectum and as such the same along with the rubber condoms and thread used for packing and wrapping were seized under Section 110 of the Customs Act, 1962 on a reasonable belief that the same are liable to confiscation under the Act. Statements of both the persons were recorded under Section 108 of Customs Act. In their statements, they involved various persons including two sons of the detenu

Sagar Mal. According to them, Prior to their departure for Hong Kong they had meeting at the residence of the detenu . It was disclosed in their statements that this foreign currency came in their possession at Bombay as a result of their selling the gold which they had brought into country from Hong Kong. The grounds of detention which are in the nature of narration of facts and deal with various persons including the detenu run into 20 pages (pages 11 to 30 of the petition). The only ground against the detenu is at page 20 of paper book which is to the following effect :

'Statement of Shri Sagar Mal was also recorded under section 108 of the Customs Act, 1962 on 8-9-1984 wherein he inter-alia stated that his sons Ashok (23) and Anoop (20-21) lives with him in his house at G-3/86, Model Town. He further stated that on 24-3-1984. Om Prakash came to his house with three other persons and Daya Shanker and with his sons they made their programme; that his son Ashok told him that he and Om Prakash along with four other persons who are expert in concealing valuables like gold, currency etc. are going to Hong Kong; that when this plan was being hatched in his house, he had been guiding Ashok and Anoop; that all those persons who were to go to Hongkong with his son Ashok stayed that nigh at his house; that he knows Om Prakash since long as he lives very close to hi in-laws' house and that he knows that Om Prakash maker ornaments.'

3. The question for consideration in this petition is whether the afore-said fact/ground is sufficient and can be considered to be a material for detaining Sagar Mal. We have given our careful consideration to this fact. We are of the opinion that the detenu's statement only leads to the conclusion that a meeting did take place between several persons in his house on 24-3-1984. The only line in the statement which can possibly involve the detenu is 'that when this plan was being hatched in his house he had been guiding Ashok and Anook.' It is not state anywhere in the grounds as to the nature of guidance given by the detenu to his sons. A father can guide his children for any activities which may not be prejudicial to the augmentation of Conservation of Foreign Exchange. It is not even stated in the grounds of detention that the detenu, in particular, guided his sons and encouraged them to do the smuggling. In these circumstances, it is not possible to

hold that the said ground was clear and enough to enable the detenu to make effective representation. Making of an effective representation is a fundamental right of a person which cannot be denied. On the ground reproduced above which is completely vague and lacks in material particulars, it is not possible for any body to make an effective representation. In the circumstances, we have no hesitation in holding that the detenu has been denied his fundamental right guaranteed under Article 22(5) of the [Constitution of India](#) from making (Sic) effective representation.

4. For the reasons recorded above, we make the rule absolute and direct that Sagar Mal be released forthwith unless he is wanted under any other valid order of a Court or Authority.

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