

Anoop Kumar Vs. Delhi (Administration)

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Court : Delhi

Decided On : May-16-1986

Reported in : 1986CriLJ2102; 1986(3)Crimes113; 1986(11)DRJ110

Judge : D.K. Kapur and; N.N. Golwamy, JJ.

Acts : [Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3; [Constitution of India](#) - Article 22(5)

Appeal No. : Criminal Appeal No. 55 of 1986

Appellant : Anoop Kumar

Respondent : Delhi (Administration)

Advocate for Pet/Ap. : O.P. Soni,; Kamlesh Dutt,; Neelam Ailawadi,;

Judgement :

N.N. Goswamy, J.

(1) Anoop Kumar son of Sagar Mal resident of G-3/86, Model Town, Delhi has been detained by virtue of an order dated 10-10-85 passed by the Administrator of 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. gold and foreign currency. The detention and continued detention has been challenged by Smt. Narbada Devi, the mother of the detenu by this petition under Article 226 of the [Constitution of India](#) on diverse grounds.

(2) According to the grounds of detention, acting on a specified information, a watch was kept on the passengers disembarked from domestic flight No. IC 185 from Bombay at Delhi Airport, New Delhi on 7.9-1984. Sarvshri 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 Preventive Officer and were brought to International Arrival Hall along with their baggage. They were questioned about any contraband items in their baggage or body. They denied having any such items with them. In the morning of 5-9-1984 two 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 the passengers to the first aid room, located inside the International Arrival Hall. The Doctor on duty, Shri Goel, was contacted who advised that the 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 condom bags were recovered from these two persons. The said bags contained foreign currency in the nature of US dollars 30,000.00 . On demand both those persons failed to produce any authorisation 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 the Customs Act.

(3) In their statement they involved various persons. Gopal did not involve the detenu but Dev Chand Soni in a statement under Section 108 of the Customs Act involved Sagar Mal as also his two sons including the detenu. The said Dev Chand Soni, inter-alia, stated that he was introduced to Om Prakash and Gopal at his village by Ramavtar nephew of Om Parkash ; that Om Parkash told him that he had his friends Ashok Kumar and Anoop Kumar at Delhi and that he (Dev Chand) should accompany to Delhi where they will meet Ashok Kumar and Anoop Kumar and will do some profitable job with them ; that he reached Sagar Mal's house at G-3/86, Model Town, Delhi on 14-8-1984 ; that Om Parkash, Gopal and Sagar Mal's both sons Ashok and Anoop were already present there ; that they all planned that they will go to Hongkong and will smuggled gold in India ; that Om Parkash told him that he will be paid both ways fare, actual expenses and Rupees 1500.00 ; that he agreed to the proposal ; that Om Parkash told them to bring gold from Hongkong in rectum ; that Sagar Mal was also associated in the plan ; that on 25th August Om Parkash gave him a packet containing foreign currency which was wrapped in Nirodh and he put the same in his rectum ; that they all left Palam Airport and reached Bangkok ; that on 1-9-1984 they all left for Hongkong ; that he was given money to buy one Sony Tv By Ashok ; that on 5-9.1984 Ashok gave him seven gold biscuits with foreign markings which were wrapped in tape by Ashok himself and on his directions he gave two gold biscuits to Gopal and remaining five pieces he put in his rectum ; that those five pieces were weighing approximately fifty tolas ; that they all reached Bombay the same day; that he got his Tv detained for payment of duty later on ; that on 6-9-1984 Ashok Kumar and Om Parkash took gold from him and Daya Shanker and directed them to reach airport to collect their TVs from Customs ; that money was paid by Om Parkash for payment of Customs duty and they got their TVs released ; that he did not know to whom gold brought by them from Hongkong was given by Ashok ; that Ashok Kumar gave him and Gopal three packets of American dollars he had put in Nirodh and told them that Om Parkash had obtained them by selling gold brought by them from Hongkong ; that Ashok Kumar directed them to put three packets each in their rectum ; that Ashok Kumar told them to hand over those packages to Om Parkash after reaching his (Ashok's) house in Delhi ; that Ashok had given him 15000 Us dollars and had told him that they will carry the same to Hongkong next

time for buying told ; that they reached Delhi by Ic 185 ; that after collecting their TVs. and other baggage items from conveyor belt they went to deposit them with Left Luggage facility as Ashok Kumar had told them in Bombay to do.

(4) Thus the only allegation in the grounds of detention which are common to so many detenues against whom the orders of detention have been passed is to the effect that Anoop Kumar was present in the house when the meeting took place. No other part is assigned to Anoop Kumar in the entire grounds of detention which run into as many as 20 pages. It is not clear as to what part was played by Anoop Kumar because admittedly he never left the country and never took part in any smuggling operation. He has no connection with the particular incident of recovery of Us dollars from Gopal or Dev Chand Soni.

(5) The question for consideration in this petition is whether the aforesaid fact/ground is sufficient and can be considered to be a material for detaining Anoop Kumar. We have given our careful consideration to this fact. The relevant part of the statement of Dev Chand Soni only goes to the extent that Anoop Kumar was present when they reached the house of Sagar MalanJ. a meeting did take place between certain persons. It is not stated by anybody regarding part played by Anoop Kumar. In fact even the statement of Anoop Kumar has not been recorded under Section 108 of the Customs Act. The allegation against Anoop Kumar is so vague that it is not possible for anybody to make an effective representation against the order of detention. This Court has repeatedly held that a person detained has a fundamental right guaranteed under Article 22(5) of the [Constitution of India](#) to make an effective representation. That right has clearly been denied to the detenu in the present case inasmuch as the allegation is so vague that no effective representation could be made Since the detenu has been denied his fundamental right to make an effective representation, we have no hesitation in holding that the detention and continued detention is invalid.

(6) For the reasons recorded above, we make the rule absolute and direct that Anoop Kumar be released forthwith unless he is wanted under any other valid order of a court or authority.

