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Court : Delhi

Decided On : Aug-18-1986

Reported in : 1986(3)Crimes332; 30(1986)DLT355

Judge : D.K. Kapur, C.J. and; C.L. Chaudhry, J.

Acts : [Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3(1); [Constitution of India](#) - Article 226

Appeal No. : Criminal Writ Appeal No. 50 of 1986

Appellant : Sunil Kumar

Respondent : Delhi Administration and ors.

Advocate for Pet/Ap. : Ram Jethmalani,; Ajay Singh,; R.M. Bagai and;

Judgement :

D.K. Kapur, C.J.

(1) This is a habeas corpus petition relating to the detention of Sunil Kumar. The detention is based on the disclosure made by Shri Chakravarthy Vadrewo after he was detained at Palam Airport on 20th November, 1984. In his various disclosure statements he has also stated that Sunil Kumar was his mentor and guide and had actually been the guiding factor in the smuggling operations done by him. Among other things it was stated that Sunil used to supply money and fake passports on

which Chakravarthy used to travel abroad to import contraband material. Regarding the trip which ended in the apprehension at the airport, it was claimed that it was Sunil who had got those button cells at Bangkok and Sunil had travelled back one day earlier from Bangkok. Thus, Chakravarthy had tried to place the blame on Sunil. There was other material appearing from the statements of certain other persons to whom Chakravarthy used to sell smuggled goods. They also claimed that Sunil used to sell smuggled goods. From Chakravarthy's statement it would appear that Sunil had also been going abroad to smuggle goods.

(2) The search of Sunil's residence had revealed no material at all against him nor was he ever detected and he was never apprehended before the detention order was passed on 12th December, 1985.

(3) Several points have been argued in support of this petition by the learned counsel. It has been urged that there is a non-supply of certain essential documents which make the detention order invalid. A list of those documents has also been examined by us. It includes a red diary which was referred to by Chakravarthy while making his statement. There is a reference to Sunil in that diary. In the grounds, it is mentioned in paragraph 26 that summons were issued to Sunil and he appeared before the Superintendent Customs on 19-10-84. He had made a statement at that time that he had never been abroad and he had never issued any forged landing certificate to Sundip Gupta. The question we have to ask ourselves is if Sunil had never been abroad then how could he be the agency to supply the button cells to Chakravarthy in Bangkok.

(4) We would feel that the mere ground that Sunil was the agency for the smuggling according to some other persons would not lead any reasonable person coming to the conclusion that he was engaged in smuggling unless there was some connected material such as a recovery from Sunil or proof that he had gone abroad at some time. The mere statement that he was going abroad at various times to smuggle goods would be of little value if he never went abroad at all. Leaving this apart, we have to refer to the grounds taken up by the learned counsel.

(5) The first ground, which was added as an addition to the original grounds in support of the petition was the ground of delay. This ground we have already rejected in disposing of the case of Chakravarthy (Crl. W. 80/86).

(6) We see no valid reason for treating this petitioner's case differently from that of Chakravarthy. Hence, we reject that ground of delay. In fact, considering the fact that Sunil has not been examined yet by the Customs officials, we could not consider this to be a stale case.

(7) The next ground urged with great deal of persuasion by the learned counsel is that all the material which was relevant was not given to the petitioner and therefore, there has been deprivation of the constitutional rights of the petitioner under Article 22. A large number of cases decided by the Supreme Court and this Court have been referred to by the learned counsel to submit that the petitioner could not have made an effective representation and hence the detention is invalid because of violation of Article 22(5) of the Constitution.

(8) The law is now well settled. Not only the documents relied upon but also the documents mentioned in the ground of detention have to be supplied. Although there was a representation to the effect that certain documents were not supplied and the date of that representation is 4-2-1986, we find that the case of the petitioner as to the exact documents that were not supplied is not very clear. In the representation dated 4-2-1986 there is a list of documents have allegedly not been supplied. There are :

(A) a red colour diary of which extracts have been reproduced in the grounds; (b) a passport No. K-6092 stated to have been issued in the name of Sunil; (c) an air ticket issued in the name of Naresh Kumar stated to have been given by Sandeep Gupta ; (d) the landing certificate dated 30-10-83 ; (e) Fir relating to forged passport ; (f) Reference to forged landing certificates No. 8663 and 9746 and Fir of that case.

(9) No doubt, a number of documents have been referred to in the grounds of detention but they do not accompany the grounds of detention served on the petitioner. There is some reference in the counter-affidavit that these documents

were directed to be supplied by an order dated 24-2-1986 but we do not know when all these documents were actually supplied.

(10) In this connection, para 6 of the counter-affidavit stated that all the documents relied upon by the detaining authority to form the subjective satisfaction were supplied to the detenu and no vital documents was suppressed.

(11) In paras 10 and 11 of the counter-affidavit, it was stated that he had been supplied all the documents except those mentioned in para 6 of the representation. This is, in feet, correct, because admittedly the diary was not supplied which was the first item, though extracts were supplied. The learned counsel for the petitioner urged that some documents were supplied that but very late and some were not supplied at all.

(12) The real document that matters is, in our view, the diary in which there is a reference to Sunil according to the grounds of detention. A further affidavit was filed on behalf of the petitioner on 31st July, 86 which set out the pages which were not supplied. They were 338, 358, 339, 13 of the red diary. According to the respondents copies of these pages were eventually supplied. So, there is no ground for us to interfere in the retention. We think, this matter is not quite so simple. The red diary was referred to at various places in the grounds of detention. Several extracts were reproduced. Mr. Bagai states that these extracts were reproduced as part of the statement of Mr. Chakravarthy recorded by the Customs Authority and they were not separate references to the diary. We even examined a copy of the statement to verify this. The matter is a puzzling one. The statement of Mr. Chakravarthy was recorded by the Customs officials on various dates. In the course of that statement he was asked to refer to his diary and various questions were asked about entries. It may be that he referred to the diary as a part of his statement. However, when the detention order was served on the petitioner, extracts of that diary were reproduced in the grounds. Nov, this is not the diary of Sunil. It is the diary of Chakravarthy. Chakravarthy may say anything he likes in his diary. As there is no other material worth the name which connects Sunil with any smuggling activity except the statements of various people, we think the diary was of vital Importance because if it was written at some earlier time, it would tend

to confirm the statement of Chakravarthy that Sunil was associated with him. The diary was referred to at so many places in the grounds that it was absolutely necessary that the same should have been shown at least to the detenu in this particular case. It was only then that he could effectively counter what was written there. The diary is a kind of confessional statement of Chakravarthy. As it also refers to Sunil, it tends to corroborate what Chakravarthy states about Sunil. The diary has another importance which has not been noticed by the detaining authority and not even fully emphasised during arguments. In a diary each page refers to a different date. Normally diary will have 365 pages to refer to 365 dates. The order of the entries tend to indicate the date on which a particular occurrence took place. An examination of the diary by the detenu would enable him to make an effective representation about the various dates and times shown in the diary. The detenu in the case of detention of this type has to rely only on the constitutional protection given by article 22(5) of the Constitution. We feel that non-supply of the diary has deprived him of this protection in this case. When there is no other material against him except the statement of Chakravarthy, it is a matter of vital importance.

(13) To view the matter in another way, this is not a case in which any recovery has been made from Sunil, nor has he been detected in any unlawful activity, nor has it been established that he ever went abroad, nor has his passport been found, nor has it been ascertained whether he was in Bangkok at the time when button cells were obtained by Chakravarthy. In short, the entire ground for detention of Sunil is based on the statement of Chakravarthy and this is uncorroborated by any material other than the diary. Therefore, the diary was of vital importance. There was an offer by the learned counsel for the respondent to produce the diary in Court for us to see the same. We think that this would not serve any useful purpose. Relying on the various judgments cited at the bar before us, we think that it is now settled that not only have the grounds to be served on the detenu but documents forming the basis of detention order have to be served. Also the documents referred to have to be served either along with the grounds or very soon thereafter for an effective representation to be made. The production of the diary at this stage would not serve any useful purpose. The real question is whether the diary is such a document which should be vital or was it a document

merely referred to without much significance? We think that in this case it was vital as analysed above. It is not a mere case of chance reference in the grounds. In the circumstances, we would allow this writ petition and make the rule absolute. Sunil, the detinue in question, should be set free immediately unless he is required to be detained in some other case.

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