

In Re: Sm. Puspa Soni

In Re: Sm. Puspa Soni

SooperKanoon Citation : sooperkanoon.com/877090

Court : Kolkata

Decided On : Mar-22-1996

Reported in : 1996CriLJ2801

Judge : S.B. Sinha and ;S.N. Chakrabarty, JJ.

Acts : [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Section 3(1) and 3(3); ;[Constitution of India](#) - Article 22(5)

Appeal No. : Nil

Appellant : In Re: Sm. Puspa Soni

Advocate for Def. : B.R. Ghosal and ;Prantosh Mukherji, Advs.

Advocate for Pet/Ap. : Pradip Kumar Ghosh and ;Sudhir Kumar Mehta, Advs.

Disposition : Application allowed

Judgement :

ORDER

1. This application for Writ of Habeas Corpus has been filed by one Sm. Puspa Soni, wife of the detenu Sri Murari Lal Soni who had been detained under the provisions of [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#), in terms of an order of detention dated 1-11 -95 issued by the Joint Secretary to the Government of India, as contained in Annexure 'A' to the writ

application.

2. According to the petitioner, the detenu had read up to Class II and does not know English. The authorities appear to have also accepted the said fact and along with the documents relied upon in the order of detention Hind translation thereof had been served upon the detenu. In the writ application, the petitioner has raised various contentions, but keeping in view the facts and circumstances of this case, we are of the opinion that this writ application can be disposed of only on one ground.

3. It is admitted that the detenu was served with the grounds of detention in Hindi language as well as in English language on 13-11-95. According to the detenu, many pages in the grounds of detention both in Hindi and English were illegible and there existed a lot of discrepancy in the English grounds of detention and Hindi grounds of detention. It was the further contention of the petitioner that Hindi grounds of detention served upon the detenu was not complete.

4. Mr. Ghosh appearing on behalf of the writ petitioner has taken us through many documents and submits that a bare perusal thereof would show that even a correct translation thereof had not been served upon the detenu. Learned counsel submits that in terms of Article 22(5) read with Sub-section (3) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, an order of detention would stand vitiated in the event the detenu had not been communicated with the grounds so as to enable him to make an effective representation. It is now well settled that the communication so made, must be in a language which can be understood by the detenu. In the case of Ibrahim Ahmad Batti v. State of Gujarat reported in : [1983]1SCR540 the Supreme Court held at Page 1503; of AIR;

In other words, mere service of the grounds in Urdu accompanied by copies of material documents and statements in English, Hindi or Gujarati on the petitioner on July 7 is no sufficient compliance of the duty to communicate contemplated by Article 22.(5) according to counsel and he insisted that only on July 15,1982 when Urdu translations of the bulk of documents and statements were served it could be said that the grounds were communicated to the detenu i.e. after 13 days of his

detention without there being any exceptional circumstances and even on that date all Urdu translations were not furnished and this has happened notwithstanding the revocation of the earlier order precisely for failure to supply Urdu translations. It is in this manner that the constitutional safeguards conferred on the petitioner under Article 22(5) read with Section 3(3) of the COFEPOSA have been denied to him and, therefore, the continued detention of the petitioner is illegal.

5. In *Lallubhai Jogibhai Patel v. Union of India*, reported in : 1981 CriLJ288 the Apex Court observed that the word 'communication' is a strong word which means that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands. The Apex Court emphasised that if the grounds are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. In *Mrs. Tsering Dolkar v. Administrator, Union Territory of Delhi* reported in : 1987 CriLJ988 the Apex Court held at page 991 of Cri LJ :

There can be no two opinions that the requirement of law within the provisions of Article 22(5) of the Constitution is that the detenu has to be informed about the grounds of detention in a language which he understands. The fact that the detenu's wife knew the language in which the grounds were framed does not satisfy the legal requirement. Reliance was placed by the learned Additional Solicitor General on, a decision of this court in *Prakash Chandra Mehta v. Commr. & Secy. Government of Kerala*, in support of his contention that unless the detenu was able to establish prejudice on account of the fact that the grounds of detention and the documents accompanying the grounds were not in a language known to the detenu the order would not be vitiated. There is no clear indication of the test of prejudice being applied in that case. On the facts relevant before the court, a conclusion was reached that the detenu was merely feigning ignorance of English and on the footing that he knew English, the matter was disposed of. We must make it clear that the law as laid down by this Court clearly indicates that in the matter of preventive detention, the test is not one of prejudice but one of strict compliance with the provisions of the Act and when there is a failure to comply

with those requirements it becomes difficult to sustain the order. (See Bablu Das v. State of W. B., Khudiram Das v. State of W. B., Fogja v. State of W.B.').

6. In the instant case, having gone through the English version as also the Hindi translation thereof, we find that in many documents, proper translation had not been made. Some of the copies are wholly illegible which fact has been accepted in the Hindi translation. Purpose for which such documents have been annexed would not be justified by rendering Hindi translation thereof, in as much as, material particulars thereof were not supplied. By way of example, we may state that in the instant case by annexing certain documents the detaining authority intended to identify one Nisit Jain having an alias name of Bapi Jain. Various mark sheets, records of the Income Tax and Sales Tax Department have been annexed for the purpose of showing that a person by the name of Nisit Jain exists, but in the Hindi translation, neither the name nor the marks obtained by him appear. In those documents, other material particulars are also absent. Moreover, we have compared the detention order served upon the detenu in English and also in Hindi. The order which was served upon the detenu in Hindi, has been translated in English and for our purpose it would be sufficient if we examine the same side by side.

Portion of detention order Portion of order in Hindi in English translated in English
Whereas, I.K.L. Verma, Joint Secretary to the Government of India, specially empowered in exercise of the authority conferred under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended), am satisfied with the following order to prevent respect to the person known as Shri Murari Lal Soni son of Shri Shri Murarilal Soni, S/o. Shri Puranmal Soni, address: 112 Puranmal Soni, address: 1/2, Jagabandhu Boral Lane, 3rd floor, Jagabandhu Baral Lane, 3rd floor. Upper Chitpur, Calcutta - 700 007; and (ii) 17, Hanspukuria Street, Calcutta from acquiring in future in Calcutta, that with a view to illegal manner preventing him in future from acting in any manner prejudicial to the augmentation of foreign exchange.

7. A bare perusal of the said two documents would show that whereas in the English order of detention it has been stated that the detenu is being detained with a view to prevent him from acting in any manner prejudicial to the augmentation of foreign exchange in future; in the Hindi order of detention, it has been mentioned that the detenu is being detained with a view to prevent him from earning by illegal means. Such discrepancy in the English order and the order which had been supplied to the detenu in Hindi cannot be said to inconsequential as has been sought to be urged by Mr. Ghosal relying on or on the basis of the decisions reported in 1990 Cri LJ 1617 (sic) and 1987 Cri LJ 1787. We also cannot accept the contention of Mr. Ghosal that from a perusal of the representation by the petitioner to the Advisory Board as contained in Annexure 'H' to the writ application it would appear that therein the petitioner had not stated that the contents of the said representation had been explained to him in Hindi and he had understood the contents thereof. It is not for the detenu to prove the said fact. Moreover, the detaining authority in the order of detention himself stated:

While passing the detention order under the [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#), I have relied upon the documents mentioned in the enclosed list. A copy of these grounds of detention and copies of relied upon documents translated into Hindi, a language known to you are being supplied to you.

8. The said statements clearly go to show that the detaining authority has proceeded on the basis that the detenu knows only Hindi, a language known to him as otherwise the question of supplying the documents having been translated into Hindi would not have arisen. Apart from any other document, if there had been such a clear discrepancy in the English version and Hindi version in the detention order itself, we have no other option but to hold that the detenu has gravely been prejudiced thereby and the procedural safeguards required under Article 22(5) have not been complied with. It is now well settled that once a Rule is issued in a Writ of Habeas Corpus, it is for the detaining authority to produce the records and satisfy this court that the order of detention is valid.

9. It is well known that the preventive detention is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of detenu even though the detention may have been valid till the breach occurred and regardless of the social cost involved in the release of a possible renegade.

10. We are not unmindful of the fact that the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act is for the purpose of prevention of smuggling but this Court in exercise of power of judicial review must see to it that all the procedural safeguards laid down under Article 22(5) are complied with. Reference in this connection may be made to the case of *Pratic Kumar Sen v. Union of India* reported in 99 CWN 953.

11. For the reasons aforementioned, we have no other option but to allow the writ application.

12. Let a Writ of Habeas Corpus do issue.

13. The Superintendent of Presidency Jail, Alipore, is directed to release the detenu forthwith, if he is not wanted in connection with any other case.

14. Before parting with this case, we may observe that it is absolutely unfortunate that the appropriate authorities of the Union of India proceeded in the matter with such lackadaisical attitude while translating the documents from English to any other language. We are astonished that even the order of detention has not been correctly translated. Such lackadaisical attitude on the part of the authorities cannot but be condemned.

15. Let this order be communicated to the concerned respondents by Special Messenger at the costs of the petitioner and the costs be deposited by tomorrow.