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UNION OF INDIA
v.
RANU BHANDARI
(Criminal Appeal No. 1468 of 2008)

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SEPTEMBER 16, 2008

[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]

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Preventive Detention – Non-supply of documents – Challenge to – Quashing of detention order by High Court – Interference with – Held: While issuing detention order the Detaining Authority must be provided with all the materials available against the individual and in his favour – When detention order is passed, detenu is to be supplied with all material relied upon by Detaining Authority in issuing detention order to make effective representation against the order – On facts, vital documents having direct bearing on detention order not placed before Detaining Authority including the Order which absolved detenu from criminal proceedings – On account thereof, detenu prevented from making effective representation against detention order – Thus, order of High Court does not call for interference – Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 – s. 3(1).

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Respondent's husband obtained Export Promotion Capital Goods Scheme licences as service provider for the Companies floated by him. He imported vehicles at concessional rate for personal use. He did not use them for tourists purposes as declared for obtaining E.P.C.G. licences. The Foreign Inward Remittance Certificate did not relate to his earnings from use of imported cars. The said activities amounted to smuggling, and as such the respondent's husband was issued detention order u/s. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 to prevent smuggling of goods in future. Respondent filed a Habeas Cor-

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pus petition challenging the detention order on the ground that the non-supply of various documents considered by the Detaining Authority while issuing the detention order, prevented the detenu from making the effective representation to the detention order. High Court allowed the writ petition and quashed the detention order. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1 Since the personal liberty and individual freedom of a citizen is curtailed by an order of preventive detention, the Detaining Authorities must apply their minds carefully and exercise great caution in passing such an order upon being fully satisfied from materials which are both for and against the detenu that such an order is required to be passed in the interest of the State and for the public good. [Para 32] [595,GH]

1.2 While issuing an order of detention, the Detaining Authority must be provided with all the materials available against the individual concerned, both against him and in his favour, to enable it to reach a just conclusion that the detention of such individual is necessary in the interest of the State and the general public. When a detention order is passed all the material relied upon by the Detaining Authority in making such an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not. These have been recognized as the minimum safeguards to ensure that preventive detention laws, which are an evil necessity, do not become instruments of oppression in the hands of the concerned authorities or to avoid criminal proceedings which would entail a proper investigation. [Para 25] [593 E-H]

2.1 In the instant case, it is accepted that notwith-

- A standing the nature of the allegations made, he was entitled to the assurance that at the time when the detention order was passed all the materials, both for and against him, had been placed for the consideration of the Detaining Authority and had been considered by it before the
- B detention order was passed, having particular regard to the orders passed by the Settlement Commission appointed under the provisions of the Customs Act, 1962, which absolved the detenu from all criminal prosecution. Furthermore, if the detenu's representation and writ petition had been placed before the detaining Authority, which
- C according to the detenu contained his entire defence to the allegations made against him, the same may have weighed with the Detaining Authority as to the necessity of issuing the order of detention at all. [Paras 28 and 29]
- D [595 A,B,D]

- 2.2 As some of the vital documents which have a direct bearing on the detention order, had not been placed before the Detaining Authority, there was sufficient ground for the detenu to question such omission. On
- E account of the non-supply of the documents mentioned the detenu was prevented from making an effective representation against his detention. Thus, there is no reason to interfere with the judgment and order of the High
- F Court. [Paras 30 and 31] [595 D,E,F]

- Radhakrishnan Prabhakaran vs. State of Tamil Nadu 2000 (9) SCC 1790; *J. Abdul Hakeem vs. State of T.N. and Ors.* 2005 (7) SCC 70; *Sunila Jain vs Union of India* 2006 (3) SCC 321; *M. Ahamedkutty v. Union of India* 1990 (2) SCC 1;
- G *Mehrunissa v. State of Maharashtra* 1981 (2) SCC 709; *Ashadevi wife of Gopal Ghermal v K. Shivraj* 1979 (1) SCC 222; *Ayya @ Ayub's case* 1989 (1) SCC 374; *Sk. Nizamuddin v State of West Bengal* 1975 (3) SCC 395; *State of U.P. v Kamal Kishore Saini* 1988 (1) SCC 287 – referred to.

Case Law Reference

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2000 (9) SCC 1790	Referred to.	Para 11	
2005 (7) SCC 70	Referred to.	Para 12, 28	
2006 (3) SCC 321	Referred to.	Para 14	
1990 (2) SCC 1	Referred to.	Para 18, 26	B
1981 (2) SCC 709	Referred to.	Para 18, 26	
1979 (1) SCC 222	Referred to.	Para 19, 26	
1975 (3) SCC 395	Referred to.	Para 20	
1988 (1) SCC 287	Referred to.	Para 21	C
1989 (1) SCC 374	Referred to.	Para 26	

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 1468 of 2008

From the final Judgment and Order dated 22.8.2006 of
the High Court of Delhi at New Delhi in Writ Petition (Criminal)
No. 337 of 2006

A. Sharan, A.S.G., Amit Anand Tiwari, T.A. Khan, B.V.
Balram Das and B. Krishna Prasad for the Appellant.

Vikram Chaudhary, Rakesh Dahiya and Himanshu
Shekhar for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. On 15th December, 2005, the Joint Secretary
(COFEPOSA), Government of India, Ministry of Finance, De-
partment of Revenue, New Delhi, issued an order of detention
against Shri Sanjay Bhandari, the husband of the respondent/
writ petitioner, under Section 3(1) of the Conservation of For-
eign Exchange and Prevention of Smuggling Activities Act,
1974, (hereinafter referred to as "COFEPOSA"), to prevent the
detenu from smuggling goods in future.

3. The facts which are said to have led to the passing of
the detention order are briefly summarized hereunder.

A 4. Shri Sanjay Bhandari obtained Export Promotion Capital Goods Scheme (E.P.C.G.) licences as Service Provider in respect of four firms/companies which were floated by him from time to time and imported vehicles at concessional rates for personal use in flagrant misuse of the said licences. The said
B vehicles were never used for tourist purposes as declared for obtaining the E.P.C.G. licences and the Foreign Inward Remittance Certificate shown by him did not relate to his earnings from the use of the imported cars. In addition to the above, all
C the vehicles which were imported under the aforesaid licences were registered as private vehicles.

5. Shri Sanjay Bhandari was found to have violated various provisions/conditions of the Exim Policy, Foreign Trade Policy and Customs exemptions notifications and during the investigations conducted by the Directorate of Revenue Intelligence, 51 out of
D 61 vehicles were seized, though most of them were released provisionally on payment of differential duty and execution of Bonds and Bank Guarantees. Shri Bhandari's said activities were held to amount to smuggling as defined in Section 2(39) of the Customs Act as adopted in Section 2(e) of the COFEPOSA Act, 1974. Considering the nature and gravity of Shri Bhandari's activities
E over a period of time and his high potentiality and propensity to indulge in such prejudicial activities in future, the order of detention was issued against him on 15th December, 2005, under Section 3(1) of the COFEPOSA Act, 1974.

F 6. Aggrieved by the order of detention, the detenu's wife, Ranu Bhandari, filed a Habeas Corpus petition before the Delhi High Court challenging the legality of the same mainly on the ground of non-supply of various documents, which according to the respondent, prevented the detenu from making an effective representation to the detention order. Being satisfied that certain relevant documents which had been considered by the
G Detaining Authority while issuing the detention order had not been supplied to the detenu to make an effective representative against his continued detention, the High Court allowed his Writ Petition and quashed the detention order dated 15th
H December, 2005, which has been challenged in the appeal.

7. The Union of India is in appeal against the judgment and order of the High Court. A

8. Learned Additional Solicitor General, Mr. A. Sharan, questioned the decision of the High Court on the ground that all the documents which had been considered by the Detaining Authority and found to be relevant in issuing the detention order, had been indicated in the detention order and supplied to the detenu. Furthermore, it was pointed out by the learned Solicitor General that the documents which were not supplied originated from the detenu himself. B

9. The learned Additional Solicitor General submitted that the question as to what documents were required to be supplied to a detenu along with the detention order has fallen for consideration of this Court in innumerable cases. The consistent view which has been taken by this Court is that documents which had been relied upon by the Detaining Authority to come to a decision that it was necessary to issue the order of detention, would have to be supplied to the detenu to enable him to understand the grounds on which the detention order had been passed and to make an effective representation in respect thereof, in keeping with Article 22(5) of the Constitution. C D E

10. The learned Additional Solicitor General also submitted that apart from the aforesaid view of general application, two other views had also been taken by this Court. One view was that all documents referred to or mentioned in the detention order would have to be supplied to the detenu and if even one of them was not supplied, the detention order would stand vitiated. The other view was that except for the documents which were relevant and had been relied upon by the Detaining Authority in passing the detention order, other documents mentioned in the detention order or referred to therein were not required to be supplied to the detenu. The learned Additional Solicitor General reiterated that in the instant case all the documents on which the Detaining Authority had relied while issuing the detention order, had been duly supplied to the detenu, who, however, F G H

A insisted that he should have also been provided with certain documents which were within his knowledge. The said documents had been itemised as his representation dated 12.12.2005, the show-cause notice dated 22.7.2004 which had been received by him, his writ petition No.5431 of 2002 and the I.E.C. Code pertaining to the three proprietorship firms belonging to him, which had not been placed before the Detaining Authority. It was submitted that not only did the detenu have knowledge of all the said documents, but they were available with the detenu.

C 11. In support of his aforesaid contention the learned Additional Solicitor General firstly relied on the decision of this Court in Radhakrishnan Prabhakaran vs. State of Tamil Nadu [(2000) 9 SCC 1790], wherein while considering an identical question this Court, inter alia, observed as follows:

D "We make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is more important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him."

F It was also observed that since the bail application of the detenu had not engaged the attention of the Detaining Authority while passing the detention order, the non-supply or non-placement thereof before the Detaining Authority would not vitiate the detention order.

G 12. The learned Additional Solicitor General also referred to and relied upon the decision of this Court in J. Abdul Hakeem vs. State of T.N. and others [2005] 7 SCC 70], wherein after considering some of the earlier decisions of this Court, the learned Judges quoted, with approval, the decision of this Court in Radhakrishnan Prabhakaran's case (supra) and the observations made therein.

H 13. Relying on the aforesaid view, this Court had held that

although the copy of the passport of the detenu had not been supplied to him, though reference had been made to the same in the detention order, what had weighed with the Detaining Authority in issuing the detention order was a statement made by the detenu in his own hand-writing admitting that he had made several visits outside the country. The reference to the passport entries had been made only by way of reference and was not the basis of the detention order. On the facts of the said case, being of the view that non-supply of the passport of the detenu had not prejudicially affected his right to make an effective representation against the order of detention, it was held that the non-supply of the copy of the passport would not vitiate the detention order.

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14. Further reference was made to the decision of this Court in *Sunila Jain vs Union of India* [(2006) 3 SCC 321], wherein also several decisions of this Court were considered, including that of *Radhakrishnan Prabhakaran (supra)*, and it was held that non-placement of a copy of the bail application of the detenu before the Detaining Authority was not sufficient to vitiate the order of detention, since the same was within the knowledge of the Detaining Authority and had been taken into consideration while passing the detention order.

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15. The learned Additional Solicitor General urged that the instant case would fall within that class of cases wherein this Court has held that non-supply of all the documents mentioned in the detention order, which had no relevance in regard to the Detaining Authority's satisfaction in passing the order of detention, would not vitiate the same. It was submitted that the High Court had erroneously proceeded on the basis of the other class of cases wherein this Court had held that even if one of the grounds of detention was found to be vague or defective or any of the documents on which reliance had been placed by the Detaining Authority had not been supplied to the detenu, it would vitiate the detention order, although the same did not apply in the facts of this case. It was submitted that the impugned order of the High Court was contrary to the views expressed by this Court in similar matters and the same was, therefore, required to be set aside.

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- A 16. The judgment and order of the High Court was, however, strongly defended on behalf of the respondent-wife of the detenu. It was submitted by Mr. Vikram Chaudhary, learned counsel appearing for the respondent, that this Court had consistently held that since an order of detention adversely affected
- B the personal liberty and individual freedom of a citizen and struck at the very roots of the fundamental rights guaranteed under Articles 19, 20, 21 and even 22 of the Constitution, the same had to be carefully scrutinized when challenged by the detenu on any of the grounds available to him or her.
- C 17. It was submitted that in the instant case certain vital documents which could have had a bearing on the decision of the Detaining Authority while passing the detention order, had not been placed before the Detaining Authority as the same were in the detenu's favour and upon considering the same the
- D Detaining Authority may not have issued the said detention order. Mr. Chaudhary submitted that the representation which had been made by the detenu on 12.12.2005, the agreement dated 9.11.07 executed between the detenu and his agents for using the resort for which the vehicles had been imported, the relevant portions of the Settlement Commission's order by which the detenu had been absolved of all criminal proceedings, and the writ petition filed by the detenu, would have convincingly placed the case of the detenu before the Detaining Authority had they been before the said Authority for consideration. It was
- E further submitted that non-supply of the said documents, irrespective of whether they had originated from the detenu himself, had prevented the detenu from making an effective representation against the detention order, since without having the documents in front of him, it was not possible for the detenu to remember the contents of the said documents in their entirety, which contained in detail the stand of the detenu. By depriving the detenu of the said documents he was deprived of the right guaranteed to him under Article 22(5) of the Constitution which was mandatory and any breach thereof had been held by this
- F Court to be sufficient to vitiate the detention order.
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18. Mr. Chaudhary derived support for his aforesaid contention from the decision of this Court in *M. Ahamedkutty v. Union of India* [(1990) 2 SCC 1], wherein it was reiterated that the right under Article 22(5) is a right to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu, therefore, had the right to be supplied with the grounds of detention along with the documents which were referred to or relied upon and if there was failure or even delay in furnishing those documents, it would amount to denial of making an effective representation. It was also observed that it was immaterial whether the detenu already knew about their contents or not, but the non-supply of the copies thereof was fatal as was held in *Mehrunissa v. State of Maharashtra* [(1981) 2 SCC 709]. It was emphasised that in order to appreciate this point it would have to be kept in mind that the detenu is in jail and has no access even to his own documents.

19. Learned counsel submitted that in the case of *Ashadevi wife of Gopal Ghermal v K. Shivraj* [(1979) 1 SCC 222], this Court had indicated that if material or vital facts, which could influence the mind of the Detaining Authority one way or the other on the question whether or not to issue the detention order, are not placed before the Detaining Authority or are not considered by the said authority, it would vitiate its subjective satisfaction rendering the detention order illegal.

20. Learned counsel submitted that the said view had thereafter been consistently followed, with minor variations, since the personal liberty of a citizen was prejudicially affected by the passing of a detention order which enabled the State authorities to detain a citizen without a trial. Learned counsel submitted that, in fact, the Detaining Authorities have been held to the rigors of the detaining enactments while passing detention orders as would also be clear from the decision of this Court in *Sk. Nizamuddin v State of West Bengal* [(1975) 3 SCC 395], where the delay of two and a half months in detaining the peti-

A tioner therein pursuant to the orders of detention, was held to cast considerable doubts on the genuineness of the subjective satisfaction of the detaining magistrate and prompted this Court to quash the detention order.

B 21. Learned counsel submitted that the views expressed in Ashadevi's case (*supra*) and in various other similar cases were subsequently referred to and relied upon in *State of U.P. v Kamal Kishore Saini* [(1988) 1 SCC 287], while quashing the detention order impugned in the said case.

C 22. Learned counsel for the detenu lastly contended that when the Settlement Commission set up under the Customs Act, 1962, had absolved the detenu from all criminal prosecution after a settlement had been reached, the Detaining Authority had issued the detention order only with the intention of bypassing the order of the said Commission and rendering the same ineffectual. It was submitted that in such circumstances D no interference was called for with the order of the High Court which had rightly quashed the order of detention issued against the detenu on 12.12.2005.

E 23. Keeping in mind the fact that of all human rights the right to personal liberty and individual freedom is probably the most cherished, we can now proceed to examine the contention advanced on behalf of the parties in the facts and circumstances of this case. But before we proceed to do so, it would be apposite to reproduce herein below a verse from a song F which was introduced in the cinematographic version of Joy Adamson's memorable classic 'Born Free', which in a few simple words encapsulate the essence of personal liberty and individual freedom and runs as follows:

G "Born free, as free as the wind blows,
As free as the grass grows,
Born free to follow your heart.
Born free and beauty surrounds you,
The world still astounds you,
H Each time you look at a star.

Stay free, with no walls to hide you,

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You're as free as the roving tide,

So there's no need to hide.

Born free and life is worth living,

It's only worth living, if you're born free."

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24. The aforesaid words aptly describe the concept of personal liberty and individual freedom which may, however, be curtailed by preventive detention laws, which could be used to consign an individual to the confines of jail without any trial, on the basis of the satisfaction arrived at by the Detaining Authority on the basis of material placed before him. The Courts which are empowered to issue prerogative writs have, therefore, to be extremely cautious in examining the manner in which a detention order is passed in respect of an individual so that his right to personal liberty and individual freedom is not arbitrarily taken away from him even temporarily without following the procedure prescribed by law.

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25. We have indicated hereinbefore that the consistent view expressed by this Court in matters relating to preventive detention is that while issuing an order of detention, the Detaining Authority must be provided with all the materials available against the individual concerned, both against him and in his favour, to enable it to reach a just conclusion that the detention of such individual is necessary in the interest of the State and the general public. It has also been the consistent view that when a detention order is passed all the material relied upon by the Detaining Authority in making such an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not. These have been recognized by this Court as the minimum safeguards to ensure that preventive detention laws, which are an evil necessity, do not become instruments of oppression in the hands of the concerned authorities or to avoid criminal proceedings which would entail a proper investigation.

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A 26. In most cases the decision of this Court have gone in
favour of detenu when even one of the grounds of detention did
not satisfy the rigors of proof of its genuineness as a founda-
tional fact in support thereof. The decisions rendered in
Ashadevi's case (supra), Mehrunissa's case (supra), Ayya @
B Ayub's case [(1989) 1 SCC 374] and Ahamedkutty's case, all
referred to hereinbefore, have relied on the principle that al-
though the State is empowered to issue orders of preventive
detention, since the liberty of an individual was in question, such
power should be exercised by the Detaining Authority on con-
C sideration of relevant material, both against and in favour of the
individual concerned, to arrive at a just conclusion that his de-
tention was necessary in the interest of the public and to pre-
vent him from continuing to indulge in activities which are against
the public interest and the interest of the State.

D 27. This brings us to the next question as to whether even
such material as had not been considered by the Detaining
Authority while issuing the detention order, is required to be
supplied to the detenu to enable him to make an effective rep-
resentation against his detention.

E 28. The decisions cited by the Learned Additional Solici-
tor General in support of his contention that all documents men-
tioned in the detention order were not required to be served on
the detenu, such as in J. Abdul Hakeem's case (supra), takes
note of the earlier decisions in Ahamedkutty's case (supra) and
F Radhakrishnan Prabhakar's case (supra) which had make it
mandatory for the Detaining Authority to supply copies of all docu-
ments which had been relied upon by the Detaining Authority to
the detenu, whether he had knowledge of their contents or not. Of
course, in Radhakrishnan Prabhakar's case (supra) it was also
G made clear that there is no legal requirement that a copy of every
document mentioned in the order has to be supplied to the detenu.
What is, therefore, imperative is that copies of such documents
which had been relied up on by the Detaining Authority for reach-
ing the satisfaction that in the interest of the State and its citizens
H the preventive detention of the detenu is necessary, have to be

supplied to him. Furthermore, if in this case, the detenu's representation and writ petition had been placed before the Detaining Authority, which according to the detenu contained his entire defence to the allegations made against him, the same may have weighed with the Detaining Authority as to the necessity of issuing the order of detention at all.

29. We are inclined to agree with the submissions made on behalf of the respondent that, notwithstanding the nature of the allegations made, he was entitled to the assurance that at the time when the detention order was passed all the materials, both for and against him, had been placed for the consideration of the Detaining Authority and had been considered by it before the detention order was passed, having particular regard to the orders passed by the Settlement Commission appointed under the provisions of the Customs Act, 1962, which absolved the detenu from all criminal prosecution.

30. In the instant case, as some of the vital documents which have a direct bearing on the detention order, had not been placed before the Detaining Authority, there was sufficient ground for the detenu to question such omission. We are also of the view that on account of the non-supply of the documents mentioned hereinbefore, the detenu was prevented from making an effective representation against his detention.

31. In the said circumstances, we do not see any reason to interfere with the judgment and order of the High Court and the appeal is accordingly dismissed.

32. In parting, we may reiterate what we have indicated hereinbefore, that since the personal liberty and individual freedom of a citizen is curtailed by an order of preventive detention, the Detaining Authorities must apply their minds carefully and exercise great caution in passing such an order upon being fully satisfied from materials which are both for and against the detenu that such an order is required to be passed in the interest of the State and for the public good.