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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(Crl) 1682/2015

% *Judgment dated 13th January, 2016*

LUV KUSH PANDEY

..... Petitioner

Through : Mr. Gaurav Duggal, Advocate

Versus

UNION OF INDIA & ANR

..... Respondents

Through : Mr. Amit Mahajan, CGSC with Mr. Nitya
Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. With the consent of the parties, the writ petition is set down for final hearing and disposal.
2. Challenge in this writ petition is to the order of detention dated 12.02.2015 bearing No. F.No.673/02/2015-Cus. VIII passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as 'COFEPOSA Act'). At the very outset, we may notice that writ petition filed by Mr. Rahul Khanna, co-detenu [W.P.(Crl).1462/2015] stands dismissed by this Court by an order dated 28.10.2015. We are informed that the aforesaid judgment has attained finality as a Special Leave Petition (Crl) No.9952/2015 filed by the petitioner stands dismissed by an order 30.11.2015.

3. Mr. Duggal, learned counsel appearing for the petitioner submits that the petitioner has been illegally detained. He submits that even as per the stand of the Department, the petitioner was only an employee of Shri Rahul Khanna and he had no role to play in the smuggling of gold. Another ground raised by Mr. Duggal is that reading of the detention order would show that strong reliance has been placed upon a show cause notice dated 14.08.2014, whereas admittedly, the petitioner herein was not a noticee and he had no opportunity to reply to the allegations made in the said show cause notice. It is, thus contended that since the detaining authority has relied upon a document, but it was neither served with the show cause nor opportunity to reply to the same was given. Thus, on this ground alone, the detention order is liable to be quashed.
4. Mr. Duggal further submits that although various grounds have been urged in the writ petition, but only following grounds are being pressed:
 - (i) That the detaining authority did not have the benefit of the retraction statement of 28.01.2015;
 - (ii) The documents which were relied upon were not supplied to the petitioner;
 - (iii) Hindi translation of the documents relied upon by the respondent were not supplied; and
 - (iv) Since the detenu has already spent 11 months and he was only an employee of Rahul Khanna, the order of detention should be quashed at this stage.
5. Mr. Duggal further submits that in the detention order, there is only a reference with regard to the retraction statement dated 05.01.2015, but the

detention order does not show that, in fact, the statement was available with the detaining authority at the time of passing the detention order.

6. Mr. Mahajan, learned counsel appearing for the respondents submits that the grounds sought to be urged by the counsel for the petitioner stand rejected by this Court in the judgment dated 28.10.2015 which judgment has attained finality. Mr. Mahajan has relied upon various paragraphs of the detention order to show that at the time of passing the detention order, the detaining authority was fully aware of the retractions made by the petitioner herein. Reference is made to para 20, para 21.2 and para 34 of the detention order. He further submits that this issue also stands decided by this Court in the judgment dated 28.10.2015. As far as the submission of Mr. Duggal with regard to the legible documents is concerned, Mr. Mahajan has drawn attention of this Court to reply to ground 'S' in the counter affidavit, which reads as under:

“S. That the contents of the ground S are wrong and hence denied. It is matter of record that the Hindi version of page nos.224, 259, 274, 375, 276, 277, 278, 279 and 280 in English are available in page nos.213, 244, 262, 263, 264, 265, 266, 267 and 268 of the set in Hindi. Page nos.377(83) and 377(87) do not exist in English set of documents. Further, it is also a matter of record that complete Hindi version of page nos.1, 2, 3, 4, 5, 6, 7, 202, 203, 204, 224, 225, 228, 230, 231, 232, 237, 239, 304, 314 and 315 have been supplied to the detenu and are available in page nos.1, 2, 8, 3, 4, 5, 6, 7, 191, 192, 193, 213, 212, 210, 216, 214, 215, 219, 224, 292, 302 and 303 in the set of Hindi version respectively. Page nos.377(24), 377(69) and 377(70) do not exist in English set of documents. Therefore, the contentions raised are devoid of any merit and deserves to be rejected.”

7. Thus, it is contended by Mr. Mahajan that Hindi version of the pages are available in the record filed by the petitioner himself and two documents at page 377 do not exist in the English set of documents and further complete Hindi version of the documents stand supplied except for a single document at page 239 which is only a covering letter and that document cannot be considered as relied upon either by the detaining authority nor it is the case of the petitioner that any prejudice has been caused to the rights of the petitioner in the absence of such a document. It is also contended by the counsel for the respondent that the stand of the petitioner that translation of some of the documents were not provided is also not a ground available to the petitioner as they only pertain to call records and are only numerical and it is not the case of the petitioner that he cannot decipher between English numerals and the translation thereof should have been provided. With respect to the ground of the petitioner that the petitioner has spent 11 months in detention, Mr. Mahajan submits that even if the petitioner has spent 11 months in detention, that by itself, cannot be a ground to quash the order.
8. We have heard learned counsel for the parties and considered their rival submissions. We have also examined the documents which have been placed on record.
9. The first submission made by Mr. Duggal that the detention order has made reference of a show cause notice dated 14.08.2014 and since the petitioner was not granted an opportunity to reply to the said show cause notice, the detention order should be quashed. This submission, in our view, is without any force for the reason that neither there is any allegation against the petitioner in the show cause notice nor the show cause notice has been addressed to the petitioner, thus, there was no occasion for an opportunity being granted to the petitioner to reply to the same, but the show cause

notice was considered to be a material document while passing the detention order against the petitioner and other co-detenus. The petitioner would have been prejudiced if copy of the show cause notice was not provided to the petitioner along with the detention order, but to say that he was not made a noticee or not granted leave to file a reply to the show cause notice is not acceptable. It is for the detaining authority to reach a subjective satisfaction prior to the passing of a detention order and for which all material documents must be placed before the detaining authority. In our view, had the show cause notice not been placed before the detaining authority, it would have been argued that a vital document was suppressed.

10. Second submission of the learned counsel for the petitioner that the English translation of the documents were not provided is also without any force as in para 'S' of the counter affidavit as extracted above, it has been clarified that Hindi version of pages 224, 259, 274, 375, 276, 277, 278, 279 and 280 in English are available at page nos.213, 244, 262, 263, 264, 265, 266, 267 and 268 of the set provided in Hindi. Two documents does not exist in the English set of documents and no Hindi translation could have been provided. Regarding the following page numbers, *i.e.*, 1 to 7, 202 to 204, 224 and 225, 228, 230 to 232, 237, 239, 304, 314 and 315 have been supplied to the detenu and are available at pages 1 to 8, 191 to 193, 210, 212 to 216, 219, 224, 292, 302 and 303 in the set of Hindi version respectively. There is no denial to these assertions which has been made by counsel for the respondent during the course of hearing.
11. Mr. Duggal has strongly urged before us that in the absence of legible documents being supplied it has caused serious prejudice to the rights of the petitioner. We in the case of **Rahul Khanna**(supra) had rejected this argument of Mr. Duggal on the ground that in the grounds of detention, the

extracted pages of these very documents have been detailed in para 24.1 onwards running into almost nine pages. Since the extracts of the illegible documents already stand extracted, we are of the view that no prejudice would have been caused to the rights of the petitioner. It would be useful to refer to the observations of the Supreme Court in the case of ***State of Tamil Nadu And Another v. Abdullah Kadher Batcha And Another***, reported at (2009) 1 SCC 333, wherein it has been held that it is not a requirement that a copy of each and every document mentioned in the detention order is to be provided, but what is mandatory is that 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. Paras 4 to 7 read as under:

“4. The High Court observed that in view of non supply of the documents a protection available, under Article 22(5) of the Constitution of India, 1950 (in short the ‘Constitution’), was violated. The High Court further held that in the absence of the required documents the detention was rendered illegal and accordingly the habeas corpus petition was allowed.

5. In support of the appeal it has been stated that the documents in question which were requested by the detenu to be supplied had nothing to do with the order of detention. It was pointed out that there is a difference between the narration of facts and the ground of detention. Undisputedly, the copy of the order in the writ petition which was sought was in fact supplied though at a later point of time. It is not understood as to how the order passed in writ petition which was dismissed can be a document about which the detenu had no knowledge. The High Court erroneously came to the conclusion that the relied upon documents were not supplied. Actually, the factual scenario is just to the contrary. As rightly contended by learned counsel for the State the documents were read over and an endorsement to that effect has been made by the detenu.

6. *In Radhakrishnan Prabhakaran v. State of T.N. and Ors.* (2000 (9) SCC 170, it was observed as follows:

"8. We may 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 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. It is admitted by the learned counsel for the petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail. But learned counsel emphasised that the counter filed by the Department was a relevant document, a copy of which has not been supplied to him."

The view in *Radhakrishnan Prabhakaran's* case (*supra*) was reiterated in *J. Abdul Hakeem v. State of T.N. and Ors.* (2005 (7) SCC 70) and *Sunila Jain v. Union of India and Anr.* (2006 (3) SCC 321).

7. The Court has a duty to see whether the non supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non supply of the documents called for had any effect on the detenu and/or whether non supply was prejudicial to the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents. While examining whether non supply of a document would prejudice a detenu the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non supply thereof would prejudice to the detenu. But documents which are merely

referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.”

12. As far as the argument of Mr. Duggal that only one month detention of the petitioner remains and the detention order should be quashed, in our view, that, by itself, cannot be a ground for release of the petitioner from the detention.
13. We find no grounds to interfere. The petition is, therefore, dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 13, 2016
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