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W.P(Crl.)No. 131 OF 2003
ITEM NO.101

COURT NO. 5

SECTION X

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Writ Petition (Crl.) No.131 of 2003

Nandoli Mohamed RafeeqAppellant (s)

Versus

Union of India & Ors.

Respondent (s)

(With Office Report)

Dated:20/01/2004: This petition was called on for hearing today.

CORAM

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE S.B. SINHA

For Appellant (s)Mr. KK. Mani, Adv.
Mr. Kumar Kartikay, Adv.

For Respondent (s)Mr. S. Prasad, Adv.
Ms. Prachi Bajpai, Adv.
Mr. R. Gopalkrishnan, Adv.
Mr. SN. Jha, Adv.

Mr. Uday U. Lalit, Adv.
Mr. TV. Ratnam, Adv.
Mr. K. Subba Rao, Adv.
Mrs. OSG. Prasuna, Adv.

UPON hearing counsel, the Court made the following
O R D E R

The Writ Petition is allowed in terms of the signed order.

(S. Thapar) (V.P. Tyagi)
PS to Registrar Court Master

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT APPEAL (CRL.)NO.131 OF 2003

Nandoli Mohamed Rafeeq Petitioner (s)

Versus

Union of India & Ors. Respondent (s)

O R D E R

The petitioner has been detained in exercise of the powers conferred by Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, with a view to prevent him from smuggling goods in future in terms of the order of detention dated 28th May, 2003. The order of detention is under challenge in this petition under Article 32 of the Constitution of India.

The petitioner was apprehended at Chennai Airport on 20th April, 2003 when he arrived from a flight from Dubai. For non-declaration of electronic goods over six lacs, the petitioner was arrested under the provisions of the Customs Act, 1962. A voluntary statement given by the petitioner was recorded on the same day. In the said statement the petitioner, inter alia, stated that he used to sell the goods at Chennai with the help of a person Khader Moideen. In the statement of Khader Moideen recorded on 28th April, 2003, he denied his involvement. Another statement of Khader Moideen was recorded on 6th August, 2003. The order of detention was confirmed by the confirming authority on 14th August, 2003.

In support of the challenge to the constitutional validity of the order of detention various grounds have been urged, one of it being the effect of non supply of statement of Khader Moideen recorded on 6th August, 2003, to the petitioner in the language known to him. It is not disputed that the earlier statement of Khader Moideen recorded on 28th April, 2003 was neither supplied to the petitioner nor was it placed by the sponsoring authority before the detaining authority but it is not necessary to examine its effect for the view we are taking hereinafter. After the order of detention, the statement of Khader Moideen that was recorded on 6th August, 2003, it is not in dispute, is in Tamil language. Further, it is also not in dispute that petitioner only knew Malayalam and somewhat English. The grounds of detention, inter alia, record that 'that you know how to read, write Malayalam and somewhat English also'. The statement dated 6th August, 2003 along with certain other documents, was supplied by the sponsoring authority to the petitioner under a covering letter dated 7th August, 2003, addressed by Assistant Commissioner of Customs to the petitioner - a COFEPOSA detenu. The sponsoring authority is the Customs Department, Government of India, Ministry of Finance - Respondent No.1 in this writ petition.

The contention urged is that non-supply of statement of Khader Moideen dated 6th August, 2003, to the petitioner, in the language known to him, has deprived the petitioner of his constitutional right to make effective representation and, therefore, detention and continued detention of the petitioner is illegal.

The supply of the aforesaid statement along with letter dated 7th August, 2003, above referred, is not in dispute. Respondent No.2, in the counter affidavit, has taken a stand that the documents supplied to the detenu along with the letter dated 7th August, 2003 were supplied for the purpose of reference only and were not relevant. Unfortunately, respondent No.1 has not filed any affidavit. It further appears that neither the letter dated 7th August, 2003 nor documents referred therein were sent by respondent No.1 to respondent No.2. The said letter does not bear any endorsement to that effect. Further, there is no indication in the said letter as to the purpose for which the documents were supplied to the detenu, after the order of detention. The documents were sent by the sponsoring authority direct to the detenu. The authority which is in a position to state as to the purpose of supplying the documents, is respondent No.1. It is not for respondent No.2 to state that the said documents were supplied for reference only. This Court has repeatedly laid down that the aspect of personal liberty of an individual cannot be treated lightly. Like many other detention cases, in this case too, the Ist respondent despite grant of number of opportunities, has failed to file any counter affidavit. We are thus at a loss to understand the purpose of supply of the aforesaid document to the detenu except that it was supplied to facilitate the right of the detenu to make effective representation against the order of detention. It has to be presumed to be so in the face of the letter dated 7th August, 2003 and in the absence of any explanation forthcoming from the Ist respondent. The document supplied was, however, in Tamil language which petitioner could not read and write. It was not supplied to him in the language known to him.

For the aforesaid reasons, we are of the view that the continued detention of the petitioner is violative of Article 22(5) of the Constitution of India as he has been deprived of the right to make an effective representation. The Rule is, therefore, made absolute. The detention of the petitioner is quashed and he is directed to be released forthwith, if not required in any other case.

The petition is allowed accordingly.

.....J
(Y.K. Sabharwal)

.....J
(S.B. Sinha)

New Delhi,
January 20, 2004