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RAMCHANDRA A. KAMAT

v.

UNION OF INDIA AND ORS.

February 20, 1980

[S. MURTAZA FAZAL ALI, P. S. KAILASAM AND A. D. KOSHAL, JJ.]

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Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, Section 3—Delay by detaining authority in furnishing copies of statements and documents referred to in the order of detention—Detention whether vitiated.

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The petitioner was directed to be detained by an order dated August 31, 1979 under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and in pursuance thereof was arrested on September 5, 1979. He was served with the grounds of detention on the same day. The petitioner's advocate wrote a letter dated September 7, 1979 to the detaining authority—second respondent stating that it was not possible to make an effective representation without the copies of statements and documents referred to in detention order. The detaining authority did not take any action on the letter but forwarded it to the Deputy Secretary to the Government of India who by a communication dated September 10, 1979 acknowledged its receipt and requested the advocate to contact the Deputy Director, Directorate of Enforcement, Bombay regarding the supply of copies of statements and documents. As no further communication was received, the advocate addressed a letter dated September 14, 1979 to the Deputy Director to supply him copies of the statements and documents. The Deputy Director in his communication dated September 22, 1979 requested the advocate to see him on September 24, 1979 to take inspection of the documents. On inspecting the documents the advocate was not satisfied and insisted on supply of copies of documents, which were supplied on three days, September 26, 1979, September 28, 1979 and September 29, 1979. On October 5, 1979 the petitioner made his representation against the detention.

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In the writ petition, it was contended on behalf of the petitioner that as there was unreasonable delay in furnishing of the statements and documents referred to in the grounds of detention and the right to make an effective representation was denied, the detention could not be said to be according to the procedure prescribed by law. On behalf of the detaining authority it was contended that the constitutional right of the petitioner to make an effective representation had not been infringed and that it was not incumbent upon the detaining authority to supply copies of all documents relied upon in the grounds of detention and that the grounds of detention were sufficiently detailed so as to enable the petitioner to make an effective representation against the detention.

Allowing the petition,

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HELD : 1. The detaining authority failed to act with reasonable expedition in furnishing the statements and documents referred to in the grounds of detention. The detention is therefore not in accordance with the procedure contemplated under law, and the continued detention is not warranted. [1077G]

2. It is settled law that the appropriate authority is bound to give an opportunity to the detenu to make representation and to consider the representation

of the detenu as early as possible. There should not be any delay in the matter of consideration. [1074G] A

Jayanarayan Sukul v. State of West Bengal, [1970] 3 SCR 225, referred to.

3. (i) The right to make a representation is a fundamental right. The representation thus made should be considered expeditiously by the Government. In order to make an effective representation, the detenu is entitled to obtain information relating to the grounds of detention. When the grounds of detention are served on the detenu he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. [1075E] B

(ii) When the Act contemplates the furnishing of grounds of detention within five days of the order of detention, the intention is clear that the statements and documents which are referred to in the grounds of detention and which are required by the detenu should be furnished with reasonable expedition. [1076B] C

4. If there is undue delay in furnishing the statements and documents referred to in the grounds of detention the right to make an effective representation is denied. It is the duty of the detaining authority to satisfactorily explain the delay, if any, in furnishing of the documents. [1076A, 1075G]

5. It may not be necessary for the detaining authority to supply copies of the documents relied upon in the grounds of detention at the time when the ground are furnished to the detenu but once the detenu states that for effective representation it is necessary that he should have copies of the statements and documents referred to in the grounds of detention it is the duty of the detaining authority to furnish them with reasonable expedition. The detaining authority cannot decline to furnish copies of the documents on the ground that the grounds were sufficiently detailed to enable the petitioner to make an effective representation. [1077D-E] D

ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 1323 of 1979.
(Under Article 32 of the Constitution.)

Ram Jethamalani and Harjinder Singh and M. M. Lodha for the Petitioner. E

U. R. Lalit, A. V. Rangam and M. N. Shroff for the Respondent.

The Judgment of the Court was delivered by F

KAILASAM, J.—The Petitioner Ramchandra A. Kamat has preferred this petition under Art. 32 of the Constitution of India praying for the issue of writ of Habeas Corpus directing his release by quashing the order of his detention dated 31-8-1979 passed by second respondent, Additional Secretary to the Government of India, Ministry of Finance. G

The petitioner was directed to be detained by an order dated 31st August, 1979 under S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. In pursuance of the order, the petitioner was arrested on 5-9-1979. He was served with the grounds of detention on the same day. The Petitioner through his advocate by a letter dated 7-9-1979 wrote to the second H

- A** respondent stating that it was found that the detaining authority relied upon a number of statements of various persons including the detenu as well as documents referred to in the grounds, but the detenu was not furnished with the copies of the same. The Advocate stated that detenu desires to make a representation against the order of detention but found that without the copies of documents referred to in the grounds of detention order it is not possible to make an effective representation. A reply to his letter was sent to the Advocate by Mr. Thawani, Deputy Secretary to the Government of India, wherein he acknowledged the receipt of the letter of the Advocate dated 7-9-1979. By this letter the Deputy Secretary requested the Advocate to contact the Deputy Director, Directorate of Enforcement, Bombay, who it was stated, had been suitably advised regarding supply of copies of statements and documents, relied upon in the detention order dated 31-8-1979. It may be noted that the detaining authority, the second respondent did not acknowledge the letter from the detenu's advocate or take any action by himself but directed the Deputy Secretary to address the communication dated 10-9-1979 referred to above. Though the letter states that the Deputy Director, Bombay has been suitably advised regarding the request for supply of copies of statements and documents relied on in the detention order nothing further was done by the Deputy Director of Enforcement, Bombay. On the 14th September, 1979, the advocate not having received any communication, addressed a letter to the Deputy Director enclosing a copy of the letter which he received from the Deputy Secretary and requested the Deputy Director to supply him on behalf of his client copies of the relevant statements and documents referred to and relied upon in the order of detention at an early date. In reply to the letter of 14-9-79 by the Advocate, the Deputy Director in his communication dated 22-9-1979 requested the advocate to see the Deputy Director on 24-9-1979 at 1430 hours to take inspection of the documents. On inspecting the documents the advocate was not satisfied and insisted on supply of copies of documents and ultimately copies were supplied on 3 days, namely, on 26-9-79, 28-9-79 and 29-9-79. The representation was made by the detenu on 5-10-79.

- G** It is settled law that the appropriate authority is bound to give an opportunity to the detenu to make representation and to consider the representation of the detenu as early as possible. There should not be any delay in the matter of consideration.

- H** The Constitutional Bench of this Court in *Jayanarayan Sukul v. State of West Bengal*⁽¹⁾ has held that the fundamental right of the detenu to have representation considered by the appropriate Govern-

(1) [1970] 3 S.C.R. 225.

ment will render meaningless if the Government will not deal with the matter expeditiously. The Court observed :

"It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

The same view has been expressed by this Court in a number of cases vide Seervai's Constitutional Law of India, Vol. I, page 542, paragraph 12.82.

The right to make a representation is a fundamental right. The representation thus made should be considered expeditiously by the Government. In order to make an effective representation, the detenu is entitled to obtain information relating to the grounds of detention. When the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. The detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds of detention and would be ordinarily available with him—when copies of such documents are asked for by the detenu the detaining authority should be in a position to supply them with reasonable expedition. What is reasonable expedition will depend on the facts of each case.

It is alleged by the detenu that there had been unreasonable delay in furnishing of the statements and documents referred to in the grounds of detention. It is the duty of the detaining authority to satisfactorily explain the delay, if any, in furnishing of these documents. We are in this context not referring to the statements and documents not referred to in the grounds of detention for it may be that they are not in the possession of the detaining authority and that reasonable time may be required for furnishing copies of the relevant documents, which may not be in his possession.

- A** If there is undue delay in furnishing the statements and documents referred to in the grounds of detention the right to make effective representation is denied. The detention cannot be said to be according to the procedure prescribed by law. When the Act contemplates the furnishing of grounds of detention ordinarily within five days of the order to detention, the intention is clear that the statements and documents which are referred to in the grounds of detention and which are required by the detenu and are expected to be in possession of the detaining authority should be furnished with reasonable expedition.

- B** It will have to be considered on the facts of the case whether there was any unexplained delay in furnishing the statements and documents relied on in the grounds of detention. The detenu was arrested on 5-9-1979 and his advocate by a letter dated 7-9-1979 Annexure 'C' to the writ petition wrote to the detaining authority stating that for making an effective representation, he must have copies of statements and documents referred to in the detention order. He prayed that the copies of the statements and documents may be furnished to him.
- C** This letter was received by the detaining authority on the 10th of September, 1979 and a communication was addressed not by the detaining authority but by Mr. Thawani, Deputy Secretary on the same date. It is not clear whether the detaining authority applied his mind and realised the necessity for furnishing of the documents to the detenu expeditiously. The communication was addressed by the
- D** Deputy Secretary to the Advocate of the detenu informing him that the Deputy Director of Enforcement at Bombay had been suitably advised regarding the request for supply of copies of statements and documents relied on in the detention order. One would have expected that the detaining authority or the Deputy Secretary acting on his behalf, to have directed the Deputy Director of Enforcement, Bombay
- E** to furnish the necessary documents expeditiously to the Advocate as requested or to the detenu himself. The direction in the communication from the Deputy Secretary was not immediately complied with. The Advocate for the detenu wrote again on the 14th September, 1979 reminding the Deputy Director of the communications, he had received from the Deputy Secretary. The Advocate requested that the copies
- F** of the relevant statements and documents referred to and relied upon in the detention order may be supplied to him. This letter was replied by the Deputy Director on the 22nd September, 1979 in which the Advocate was asked to have inspection of the documents in his premises between 1430 hours on 24-9-1979. The copies of the statements and documents requested by the Advocate for the detenu and directed
- G** by the Deputy Secretary to be furnished to the Advocate were not furnished to him instead the Deputy Director asked the Advocate to
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have inspection at the Deputy Director's office. After inspecting the documents on 22/24/25-9-1979, he insisted of having copies which were supplied on the 26th, 27th and 28th of September, 1979.

The explanation given by the detaining authority regarding the delay in furnishing copies as seen in his counter affidavit is that the constitutional right of the petitioner to make effective representation had not been infringed. According to the detaining authority "it was not incumbent upon the detaining authority to supply copies of all the documents relied upon in the grounds of detention to the petitioner alongwith the grounds within 5 days of detention as petitioner has contended. In this context it would be relevant to state that the grounds were sufficiently detailed so as to enable the petitioner to make an effective representation against the detention." He further stated that all steps were taken to comply as expeditiously as possible. It may not be necessary for the detaining authority to supply copies of all the documents relied upon in the grounds of detention at the time when the grounds are furnished to the detenu but once the detenu states that for effective representation it is necessary that he should have copies of the statements and documents referred to in the grounds of detention, it is the duty of the detaining authority to furnish them with reasonable expedition. The detaining authority cannot decline to furnish copies of the documents on the ground that the grounds were sufficiently detailed to enable the petitioner to make an effective representation. In this case, the detaining authority should have taken reasonable steps to provide the detenu or his advocate with the statements and documents as early as possible. The reply to the detenu was not sent by the detaining authority and it is not clear whether he appreciated the necessity to act expeditiously. As noted already, a communication was sent by the Deputy Secretary to the Deputy Director, who did not comply with the direction and furnish copies of the statements and documents. After a lapse of 12 days i.e. on 22-9-1979, the Deputy Director offered inspection.

Taking into account the facts and circumstances of the case and explanation furnished by the detaining authority, we are of the view that the detaining authority failed to act with reasonable expedition in furnishing the statements and documents referred to in the grounds of detention. On the facts of the case, therefore, we are satisfied that the detention is not in accordance with the procedure contemplated under law. The continued detention is not warranted. The order of his release has already been issued by this Court.

N.V.K.

Petition allowed.