

## Iqrar Ahmad alias Akhlaq Ahmad Vs The Superintendent of Central Jail and Others

**Court:** Allahabad High Court

**Date of Decision:** Aug. 7, 1986

**Acts Referred:** Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 " Section 11, 3(1)

Constitution of India, 1950 " Article 22(5), 22(6), 77

Foreign Exchange Regulation Act, 1973 " Section 35, 37, 40

**Citation:** (1986) 10 ACR 669

**Hon'ble Judges:** S.I. Jafri, J; B.N. Katju, J

**Bench:** Division Bench

**Advocate:** D.S. Misra and S.S. Bhatnagar, for the Appellant; D.G.A. and K.K. Misra, for the Respondent

### Judgement

B.N. Katju, J.

This is a petition for the issue of writ of habeas corpus.

2. Petitioner Iqrar Ahmad alias Ikhlaq Ahmad is detained in the Central Jail Varanasi under the order of Sri K.K. Dwivedi Joint Secretary Ministry

of Finance Department of Revenue, Union Government by his order dated 30-9-85 passed u/s 3(1) of the Conservation of Foreign Exchange and

Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act) with a view to preventing him from acting in a manner prejudicial

to the augmentation of foreign exchange.

3. The Petitioner was arrested on 4-10-85 and the grounds of detention and relevance material were served on him on 5-10-85.

4. The grounds of detention of the Petitioner are as follows:

1. Information was received by the Varanasi Sub-Zonal Office of the Enforcement Directorate that you along with Israr Ahmad are engaged in

unauthorised transactions in foreign exchange by way of making compensatory payments to the persons resident in India by order of the person

resident outside India.

2. On the basis of the aforesaid information, your and Israr Ahmad's house situated at village Mannichha, P.S. Kheta Sarai district Jaunpur, U.P.

were searched u/s 37 of Foreign Exchange Regulation Act, 1973 by the officers of the Enforcement Directorate, Varanasi on 5-1-85. As a result

of the said search, highly incriminating documents, Rs. 1,06,590/- and U.S. 100 were seized.

3. Statements of Israr Ahmad were recorded u/s 40 of Foreign Exchange Regulation Act, 1973 by the officers of Enforcement Directorate,

Varanaai on 26-1-85, 27-1-85, 28-1-85, 29-1-85. In his statement dated 26-1-85 he has inter alia, stated that on 5th January, 1985 your and his

residential premises were searched by the officers of the Enforcement Directorate and that as a result of the said search, the documents were

recovered.

4. While explaining the loose sheets containing pages 1 to 81 Marked "A" he has stated that the pages 5 to 9, 10 to 12 and 13 to 81 relate to the

list of persons and against each name figures and codes both are written and that all these lists were sent by your brother Abrar Ahmad from

Singapore. He has further stated that the persons whose names are written with figures are to be paid the amounts mentioned therein. He has also

decoded the codes as under:

L : one; U : two; C : three; K : four; Y : five; S : six; T : seven; O : eight; R : nine.

5. He has, however, stated that in other sheets the alphabet excepting the above represents zero. He has also admitted that all the payments

mentioned in these lists have been made by him and you under instructions from your brother Abrar Ahmad of Singapore. While explaining page 2

of the seized bunch containing pages 1 to 81 marked "A" he has stated that he and you received Rs. 1,41,26,020/- from various persons in India

under instructions from your brother Abrar Ahmad of Singapore for making payments to various persons in India under instructions from your

brother Abrar Ahmad of Singapore.

6. While explaining loose sheets containing pages 1 to 85 marked " B " he has stated that pages 5 to 21, 23, 25 to 41 and 55 contained the list of

persons in similar order and against each names figures and also codes in English are mentioned and that these lists were sent by your brother

Abrar Ahmad from Singapore. Similarly, there is another list of the same date and numbers which Contains S.No. and code representing the

amounts to be paid to the concerned persons and that list was also received from your brother Abrar Ahmad of Singapore. He has also admitted

that the amount mentioned in these lists have been paid to the persons mentioned therein as per instructions of Abrar Ahmad of Singapore by him

and you.

7. Similarly, he has stated that loose sheets containing pages 1 to 79 marked "G" contains the name of the persons to whom payments have been

made under instructions from your brother Abrar Ahmad of Singapore.

8. In his statement dated 27-1-85, Israr Ahmad has stated that your brother Abrar Ahmad who is residing in Singapore was sending letters from

Singapore to both of you asking you and your brother to make payments to the persons whose names are mentioned in the lists. While explaining

pages 47 to 54 of the seized documents containing pages 1 to 67 marked "D" he has stated that these pages contained the list of the names of the

persons and rupees payable to them in code and that these lists were sent by your brother Abrar Ahmad from Singapore. He has also admitted

that all these payments were made by him or you to the persons whose names were mentioned in the lists under instructions from your brother

Abrar Ahmad of Singapore.

9. While explaining the reverse of page 13 of the loose sheets Containing pages 1 to 67 seized and marked "D" he has stated that this is written in

his own hand and that both he and you have received amounts on 20-8-84, 30-8-84 and 28-9-84 equivalent to Rs. 37,41,307/- from different

persons in India under instructions of your brother Abrar Ahmad of Singapore.

10. While explaining page 27 of the loose sheets containing pages 1 to 67 marked "D" he has stated that according to this page both of you have

received Rs. 14,32,315/- from various persons in India under instructions from your brother Abrar Ahmad of Singapore. Similarly, while

explaining 45 and 46 bunch marked "D" he has stated that he and you have received Rs. 54,02,458/- and Rs. 24,72,755/- respectively from

various persons in India under instructions from your brother Abrar Ahmad of Singapore for making payments to different persons in India under

instructions from Abrar Ahmad of Singapore.

11. While explaining pages 1 to 77 of bunch marked "F" he has stated in his statement dated 28-1-85 that these pages contained the names and

addresses of the persons and amounts in code to be paid to these persons. Under instructions from your brother Abrar Ahmad of Singapore and

that these lists were received by both of you.

12. While explaining pages 15 to 17 of the seized documents containing pages 1 to 78 marked "G" he has stated that these pages contained names

of some people which were sent by your brother Abrar Ahmad of Singapore to whom both of you made payments as per instructions of your

brother Abrar Ahmad.

13. In his statement dated 28-1-85 and 29-1-85 he has stated that the seized note books marked "H" "I" and "L" contain the details of payments

made by him and you under instructions from your brother Abrar Ahmad of Singapore. He has also stated that these note books also contained

the details of payments received by him and you under instructions from your brother Abrar Ahmed of Singapore for making payments to different

persons in India under instructions of your brother Abrar Ahmad of Singapore.

14. Your statements were recorded u/s 40 of Foreign Exchange Regulation Act, 1973 by the Officers of Enforcement Directorate, Varanasi Sub-

Zonal Office on 25-1-85, 26-1-85, 27-1-85, 28-1-85 wherein you have corroborated the statements given by your brother Israr Ahmad.

15. On the basis of documents seized from your residential premises follow up action were initiated against some of the recipients, the details of

which are given in Annexure "A" to the grounds.

16. Both you and Israr Ahmad were arrested u/s 35 of Foreign Exchange Regulation Act, 1973 on 29-1-85 and both of you were produced

before the Chief Judicial Magistrate, Varanasi on the same day. The learned Chief Judicial Magistrate directed that both of you should be

produced before the Chief Judicial Magistrate (Spl.) Allahabad released you and Israr Ahmad on bail on 5-2-85 with the condition that both you

should not leave the country without the prior permission of the Court and that both of you should comply with the orders/directions received from

Enforcement Directorate, Varanasi.

5. It is contended by the learned Counsel for the Petitioner that Sri K.K. Dwivedi, Joint Secretary, Ministry of Finance Department of Revenue

had no power u/s 3(1) of the Act to pass the order of detention against the Petitioner. There is no force in this contention. u/s 3(1) of the Act an

order of detention may be passed by an officer specially empowered by the Central Government not below the rank of Joint Secretary against a

person with a view to preventing him from acting in a manner prejudicial to the augmentation of foreign exchange. The notification dated 20-7-84 of

the Ministry of Finance Department of Revenue is as follows:

S. Order 524 (E)--In exercise of the powers conferred by Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention

of Smuggling Activities Act, 1974 (52 of 1974), the Central Government hereby specially empowers the following officer of the Central

Government namely, Shri K.K. Dwivedi, Joint Secretary to the Government of India, for the purposes of the said section.

It is thus clear that Sri K.K. Dwivedi Joint Secretary to the Government of India was specially empowered by the Central Government to pass an

order of detention for the purposes mentioned in Section 3(1) of the Act It may be mentioned that the Minister of Finance was allocated the power

to pass orders of preventive detection for reasons connected with the conservation of foreign exchange under Clause 14 of schedule I of

Government of India (Allocation of Business) Rules, 1961. The aforesaid clause was added in Schedule I on 17-9-74 when Ordinance 11 of

1974 came into force, It is true that in the aforesaid Ordinance power was only conferred on the Central Government to pass an order of detention

with a view to preventing a person from acting in a manner prejudicial to the Conservation of Foreign Exchange and not with a view to preventing a

person from acting in a manner prejudicial to the augmentation of foreign exchange as provided u/s 3(1) of the Act but this is of no consequence

as Clause 14 mentions preventive detention for reasons connected with Conservation of Foreign Exchange We are clearly of the opinion that

augmentation of foreign exchange is connected with Conservation of Foreign Exchange as it is directly linked with it. Thus orders of detention with

a view to preventing a person from acting in a manner prejudicial to the augmentation of foreign exchange under Section 3(1) of the Act could be

passed by the Finance Minister on behalf of the Central Government under the Government of India (Allocation of Business) Rules, 1961 framed

under Article 77 of the Constitution. The Minister of Finance could thus specially empower Sri K.K. Dwivedi Joint Secretary to pass orders of

detention on behalf of the Central Government u/s 3(1) of the Act with a view to preventing a person from acting in a manner prejudicial to the

augmentation of foreign exchange. In these circumstances Sri K.K. Dwivedi was empowered to pass the order of detention u/s 3(1) of the Act

against the Petitioner with a view to preventing him from acting in a manner prejudicial to the augmentation of foreign exchange.

6. It is next contended by the learned Counsel for the Petitioner that the detention of the Petitioner is illegal as the representation of the Petitioner

dated 27-10-1985 was not disposed of by the detaining authority but by the Finance Minister. There is no force in this contention. In the grounds

of detention furnished to the Petitioner it was mentioned that the Petitioner could make his representation either to the detaining authority or the

Minister or the Advisory Board against the order of detention. The Petitioner made a representation on 19-10-1985 to the detaining authority in

which it was stated that the Petitioner is not conversant with legal technicalities and is also not well read and it was prayed that he may be provided

with legal assistance and also be given thirty five days time to file his representation and it was further prayed that he may not be transferred from

the jail at Varanasi. This representation was rejected by the detaining authority on 29-10-1985 but the Petitioner was permitted to engage a lawyer

and file his representation within the time he chose. Before the rejection of the above mentioned representation of the Petitioner the Petitioner made

another representation on 27-10-1985 to the Advisory Board in which it was stated that the Petitioner had not been given paper and pen to make

his representation. Thus Article 22(5) of the Constitution was contravened and it was prayed that appropriate orders for his release may be

passed. This representation was received by the detaining authority on 30-10-1985. It was mentioned in this representation that no order had been

passed on the first representation made by the Petitioner for being allowed to engage a lawyer. It appears to have been deliberately addressed to

the Advisory Board as the Petitioner felt aggrieved because no orders had been passed on his first representation made to the detaining authorities.

This representation like the first representation was not a representation on merit although this representation mentions that the Petitioner had not

been given an opportunity at the earliest to make a representation against the order of his detention but that was on the ground that he had not been

provided with paper and pen and not on the ground that the grounds of detention had been communicated to him after considerable delay and

relevant material was not supplied to him. As this representation was received by the detaining authority after it had disposed of the first

representation of the Petitioner and had permitted him to engage a Counsel and make a representation within the time he chose, the detaining

authority was justified in not passing final order on this representation as it was not addressed to it and the primary demand of the Petitioner to

engage a Counsel had already been granted by it. It is noteworthy that the record of the case shows that this representation was also considered by

the detaining authority and it was of the opinion that it may be rejected and had noted this opinion and had forwarded this representation to the

Minister of Finance for passing the final orders who subsequently rejected it on 10-11-1985. It may be mentioned that u/s 11 of the Act an order

of detention passed by an officer of the Central Government may be revoked by the Central Government. In these circumstances it cannot be held

that the detaining authority was required to pass final orders of rejection on this representation of the Petitioner. No illegality was thus committed by

the detaining authority in not disposing of this representation of the Petitioner.

7. It was next contended by the learned Counsel for the Petitioner that all the relevant material on which the grounds of detention were based were

not furnished to the Petitioner as a copy of the proposal made by the Directorate of Foreign Exchange Regulation, Varanasi for the detention of the

Petitioner to the Joint Secretary Ministry of Finance was not supplied to the Petitioner along with the grounds of detention and other material.

There is no force in this contention as the record indicates that the detaining authority did not supply a copy of the aforesaid proposal to the Petitioner.

along with the grounds of detention in exercise of its power under Article 22(6) of the Constitution as it considered that it was not in the public

interest to disclose the facts mentioned in the aforesaid proposal to the Petitioner.

8. It was next contended by the learned Counsel for the Petitioner that the detaining authority violated Article 22(5) of the Constitution by not

supplying the copies of the original statements of Mohammad Ayub, Radhey Shyam Gupta, Hisamuddin, Ram Nagina Ram, Santoo Yadav, Raj

Avadh Yadav and Bideshi Yadav which were recorded in Hindi but only supplied their translation in Urdu and in English to him. There is no force

in this contention It is noteworthy that before the detaining authority only English translation of all the relevant documents were placed before it

passed the order of detention. The Petitioner was supplied Copies of all these documents in English together with their translation in Urdu as the

Petitioner knew only Urdu. The statements of the aforesaid seven persons which were recorded in Hindi were admittedly not placed before the

detaining authority. Copies of their statements in Hindi were, therefore, not supplied to the Petitioner. It is noteworthy that neither the Petitioner nor

his Counsel made any application to the detaining authority for being supplied copies of the statements of the aforesaid seven persons recorded in

Hindi so that it could be determined whether their translation in Urdu and English was correct. It is also noteworthy that the Counsel who appeared

on behalf of the Petitioner before the Advisory Board also did not make any application for the supply of the copies of the statements of the

aforesaid persons recorded in Hindi but on the other hand stated that the Petitioner had received all the documents in English and also their

translation in Urdu. It must be presumed that the statements of the aforesaid seven persons recorded in Hindi were correctly translated in Urdu and

in English as it has not been alleged by the Petitioner that there were mistakes in their Urdu and English translation. The copies of the statements of

the aforesaid seven witnesses recorded in Hindi were on the record of the case produced before us but it was not pointed out to us that any

mistake was committed in their Urdu and English translation supplied to the Petitioner. In these circumstances it cannot be held that the Petitioner's

right to make a representation under Article 22(5) of the Constitution was affected by not furnishing the copies of the statements of the aforesaid

seven persons recorded in Hindi.

9. It was next contended by the learned Counsel for the Petitioner that the grounds of detention were stale as documents were seized from the

house of the Petitioner in the search made on 5-1-1985 whereas the order of detention was passed on 13-9-1985. There is no force in this

contention as it was stated in the counter affidavit filed on behalf of the detaining authority that the statements of witnesses were recorded till 17-6-

1985 and a large number of documents were required to be translated in Urdu and English (about five hundred pages of Urdu and English

translation had to be done). In these circumstances it cannot be held that there was unreasonable delay in passing the detention order against the

Petitioner on 13-9-1985.

10. It was next contended by the learned Counsel for the Petitioner that no counter affidavit was filed by the detaining authority and the counter

affidavit filed by A.K. Agnihotri Under-Secretary Ministry of Finance Department of Revenue should not be considered. There is no force in this

contention as it is necessary for the detaining authority to file counter affidavit only in those cases where malafide is alleged or it is alleged that the

order of detention was passed on extraneous considerations As A.K. Agnihotri has filed his counter affidavit on the basis of the record it deserves

consideration by this Court.

11. There is thus no merit in this petition. It is accordingly dismissed.

Petition dismissed.