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**(1990) 01 DEL CK 0049**

**Delhi High Court**

**Case No:** Criminal Writ Appeal No"s. 568, 686 and 691 of 1989

Ram Avtar

APPELLANT

Vs

Union of India and  
Others <BR> Varinder  
Singh Batra Vs Union  
of India and Others  
<BR> Mahavir Singh  
Saluja Vs Union of  
India and Others

RESPONDENT

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**Date of Decision:** Jan. 9, 1990

**Acts Referred:**

- Customs Act, 1962 - Section 108

**Citation:** (1990) 40 DLT 523 : (1990) 1 ILR Delhi 88

**Hon'ble Judges:** P.K. Bahri, J

**Bench:** Single Bench

**Advocate:** R.M. Bagai, Ratan Lal and Kadambini Sharma, for the Appellant;

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### **Judgement**

Bahri, J.

(1) By this judgment I dispose of three writ petitions filed by codetenus against their respective detention orders made u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974. Petitioner Ram Avtar has been defamed vide order of detention dated July 13, 1989 with a view to preventing him from abetting the smuggling of goods. Petitioner Varinder Singh Batra has also been detained vide detention order of the even date with a view to preventing him from smuggling goods and dealing in smuggled goods otherwise than by engaging in the transporting, concealing and keeping smuggled good"s and lastly Mahavir Singh Saluja also has been detained vide detention order of the even date with a view to preventing him from abetting the smuggling of goods and engaging in keeping smuggled goods.

(2) The facts of these three cases, in brief, are that some secret intelligence had been received by the authorities that Ram Avtar based at Hong Kong was continuously sending contraband gold to India via Kathmandu to Varinder Singh Batra and his brother Satpal Singh Batra, both of them are brothers-in-law of Rani Avtar and the said contraband gold was being clandestinely disposed of in India for the last about two months. It was also revealed that Varinder Singh Batra and his brother Satpal Batra who were earlier based in Nepal, were still keeping a rented accommodation in Kathmandu which was being looked after by their servant Roshan Lal and that Modus operandi adopted was that they used to give instructions to Ram Avtar on telephone in Hong Kong who would dispatch the contraband gold to Kathmandu where Roshan Lal used to receive the same and specific instructions used to be conveyed to Roshan Lal by Varinder Singh and his brother Satpal who would then bring the gold to Delhi and handover the same to Satish Kumar, proprietor of M/S. Smart Tailors, 21, Dayanand Marg, Daryaganj, Delhi or to Mahavir Singh at Saluja Medical Hall, 21, Dayanand Marg, Daryaganj, Delhi for safe custody and for further disposal and Mahavir used to handover the said contraband gold to Varinder Singh or Satpal Singh for further disposal.

(3) In receipt of specific information that Roshan Lal had brought smuggled gold in the above manner from Kathmandu and had secreted the same with Mahavir Singh Saluja at his Saluja Medical Hall, the search of the said clinic of Mahavir Singh was made in presence of two independent witnesses and also in presence of detenus Mahavir Singh and Varinder Singh and it resulted in recovery of foreign marked gold bars, strips and tails from underneath the feet side cushion of the patient examination table, weighing 4,976.200 Gms. valued at Rs. 15,17,741 and certain personal effects of Roshan Lal the brief case containing certain documents belonging to Varinder Singh and Satpal Singh were also recovered. No proof on demand was being furnished by the detenus or Satpal Singh for import/acquisition or possession of the said contraband gold.

(4) In follow up action the residential premises of Varinder Singh and his brother Satpal Singh at AN-2B, Dda Flats, Shalimar Bagh, New Delhi were also searched on July 5, 1989 but nothing was recovered whereas search of the residence of Ram Avtar located at G-56, Ashok Vihar, Phase I, New Delhi resulted in recovery of foreign currency-of various countries, traveller cheques, foreign liquor and incriminating documents which were also seized under the Customs Act. The statement of Satish Kumar, proprietor of M/s. Smart Tailors was recorded who stated that he was introduced by Mahavir Singh to Varinder Singh and Satpal Singh had requested, him to allow them to use the said telephone No. 271062 and they often used the said telephone for, making calls. to Hong Kong and Kathmandu regarding smuggling of the said gold into India. He had further stated that Roshan Lal on getting instructions from them used to bring the contraband gold within two to three days of making the telephone call and Roshan Lal earlier three-four times had kept the said smuggled contraband gold at his shop premises and thereafter he disallowed the use of his shop in the manner and they started keeping the said contraband gold at the Clinic of Mahavir Singh. Mahavir Singh in his voluntary statement

recorded u/s 108 of the Customs Act admitted all these facts and so also Varinder Singh in his statement, recorded on July 5, 1989. Varinder Singh and also disclosed that after disposing of the contraband gold, one Jain is used to help him in making payment by Hawala transactions of the said smuggled gold.

(5) In the grounds of detention served on the said three detenus another fact which had been mentioned in Para 3 is to the following effect :

"THE search of residential premises of Girish khanduja situated at B-2/27 C; D.D.A. Flats, Law- Ram Avtar (CRL.W.No. 568/89) Varinder Singh Batra (CRL.W.No. 686/89) Mahavir Singh Saluja (CRL.W.No. 691/89) Vs. Union of India and Others. rences Road, New Delhi conducted on July 5, 1989 resulted in the recovery of Indian currency amounting to Rs. 30,000.00 , traveller cheques of State Bank of India amounting to Rs. 59,0001.00 all purported to be sale proceeds of contraband gold Along with certain documents details of which are given in Panchnama and the same were seized under the Customs Act, 1962 as being relevant to the enquiries under the said Act".

(6) The detaining authority in all these three cases has mentioned in the grounds of detention that for passing the detention order, the detaining authority has also relied upon documents as per list of documents copies of which were supplied to the three detenus pari pasu the grounds of detention. At Sl. No. 10, there is reference to the Panchnama dated July 5, 1989 in respect of the seizure effected from the residential premises of Girish Khanduja.

(7) One of the common grounds urged in support of the said three writ petitions is that detaining authority has taken into consideration irrelevant material and facts as pertaining to recoveries effected from the residence of Shri Girish Khanduja which have not been at all shown to be connected with any alleged prejudicial activities, of the three detenus and thus the detaining authority has not applied its mind to any certain and proximate material for passing the detention orders against the three detenus. In the counter-affidavit filed by Shri A.K. Batabyal, the officer who had passed the detention orders while replying to this particular ground taken in all these three writ petitions he had mentioned that it is not correct that be bad passed the orders of detention without application of proper mind and had relied upon any irrelevant material. He has averred that residence of Girish Khandnja was searched on the reasonable belief that the contraband goods/documents were secreted at his residence and the same was part of overall intelligence and inspire of the best efforts, Girish Khanduja has not been located as he had gone underground and efforts are still at foot to locate him and get him to join in the investigation.

(8) So, according to the stand taken by the detaining authority, it is only on receipt of some secret information, a reasonable belief has been reached that the contraband gold or the documents connected with the same stood secreted at the residence of Girish Khanduja and the recoveries effected from the said house related to the illegal payments made in respect of the contraband gold. But unfortunately for the respondents there is not

even slightest material either available in the grounds of detention or in the documents relied upon by the detaining authority for passing the detention orders which may show any connection between the recoveries effected from the house of Girish Khanduja with the alleged prejudicial activities of any of the three petitioners (detenus). So, for passing the orders of detention the detaining authority could not have possibly relied upon the factum of seizures effected from the house of Girish Khanduja and could not have relied upon the Recovery Memo in respect of the said seizures as relied upon documents for passing the detention orders against the three detenus. Shri Ratan Lal and Smt. Kadambini appeared in these three petitions on behalf of the respondents and they could not from the original record also point out anything from the relied upon documents or from the grounds of detention to show any connection of the recoveries effected from the house of Girish Khanduja with the prejudicial activities of the three detenus.

(9) So, it is evident that some irrelevant material has been relied upon by the detaining authority for passing the detention orders. The learned counsel for the petitioner has cited Smt. Shalini Soni versus Union of India; (1980) 4 D.V.V. 544(1) where the Supreme Court has laid down the law as follows :

"IT is an unwritten rule of the law constitutional and administrative that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and remote"

It has been further observed in the above-cited case that:

"WHERE there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded, it is necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters Rani Avtar (CRL.W.No. 568/89) Varinder Singh Batra (CRL.W.No. 686/89) Mahavir Singh Saluja (CRL.W.No. 691/89) Vs. Union of India and Others. and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions".

(10) A Single Bench of this Court in Diwan Singh versus Union of India & Ors. 1988 (2) DL 197(2) has considered the same point. In the cited case certain documents have been relied upon in reaching the subjective satisfaction by the detaining authority which had no connection whatsoever with the alleged prejudicial activities of the detenus. It was held that if the detaining authority has really applied his mind and if the subjective satisfaction were really based on proper application of mind, the detaining authority could not have possibly relied upon such set of documents. The Single Judge proceeded to quash the detention order in that case holding that there has been non-application of mind by the detaining authority while passing the detention order.

(11) In Jagdish Mitra versus Union of India & Ors. Criminal Writ No. 207 of 1989 decided on September 26, 1989(3) this Court also followed the said case and held that if some irrelevant material or document is relied upon for passing the detention order, the detention order would become bad as the same could be considered to have been passed by the detaining authority without proper application of mind.

(12) The ratio laid down in the aforesaid cases squarely applies to the facts of the present cases. I, hence hold that the detention orders in the present cases suffer from the malady of non-application of mind by the detaining authority in as much as the detaining authority has relied upon documents and material which are not in any manner shown to be connected with the prejudicial activities of the petitioners.

(13) I allow these writ petitions, make the rule absolute, quash the detention orders and direct that petitioners be set at liberty forthwith, if not required to be detained in any other case.