

Kailash Pandey vs State Of Uttar Pradesh And Ors. on 28 May, 1982

Equivalent citations: AIR1983SC317, 1982(30)BLJR422, 1983CRILJ452, 1982(1)SCALE495, (1984)2SCC397, 1982(14)UJ876(SC), 1983 CRI. L. J. 452, 1984 (2) SCC 397, (1983) ALLCRIR 341, 1984 SCC (CRI) 265, 1982 UJ (SC) 876, (1982) ALLCRIC 227, (1982) ALL WC 550, 1982 CRILR(SC MAH GUJ) 443, 1982 BLJR 422, AIR 1983 SUPREME COURT 317

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Bench: O. Chinnappa Reddy

JUDGMENT

1. Kailash Pandey alias Ram Kailash is detained under the provisions of the National Security Act pursuant to an order made by the District Magistrate of Pratapgarh. The detention is challenged in this petition under Article 32 of the Constitution on various grounds. I do not consider it necessary to set out the several grounds of challenge, as I am satisfied that the detenu is entitled to succeed on the principal ground urged on his behalf by Shri Anil Kumar Gupta, his learned Counsel.

2. Each of the six grounds of detention mentioned in the "grounds given under Section 8 of the National Security Act, 1980" refers to a different incident based upon the confessional statements of one or other of the accused persons involved in those incidents. The grounds are based upon the confessional statements. The confessional statements are the very core of the grounds. Yet copies of those statements were not furnished to the detenu along with the grounds of detention. Thereby the detenu was denied the opportunity of making a proper and adequate representation. In the Writ Petition, the detenu made an express complaint in the following words:

It is submitted that the alleged statement of the aforementioned self confessed criminals referred to and relied on in the grounds and formed part and parcel of the grounds were never supplied to the petitioner. Therefore, complete grounds of detention were not supplied to the petitioner and as such, there is violation of Article 22(5) of the Constitution.

In answer to this allegation, District Magistrate stated in his counter-Affidavit as follows:

The petitioner was supplied with all the necessary supporting material including the copies of F. 1. Rs. and the necessary details of investigation.

3. As the denial appeared to be evasive, I asked Shri Dalbir Bhandari, learned Counsel for the State of U.P. to state whether copies of the confessional statements upon which the grounds were based, had been supplied to the detenu or not? Shri Bhandari consulted the officer, who was sitting by his side and instructing him and stated that a gist of the several confessional statements was furnished to the detenu. As I was not satisfied with the answer, I wanted it to look at the so-called gist, which was said to have been supplied to the detenu. The officer who was instructing Shri Bhandari then had to admit that there was no such separate document in existence, and that what he really meant was that the gist of the confessions had been mentioned in the grounds of detention. It was apparent that the officer concerned was not properly instructing Shri Bhandari. In fact he was misguiding him to make incorrect statements to the Court. To say the least, the conduct of the officer in trying to mislead the Court through his Counsel was most reprehensible. It is indeed a great pity that responsible officers of the Government, who should be interested in upholding truth, justice and the rule of law, should indulge in evasion, deceptive suggestion and misstatement. I do hope the authorities concerned will take appropriate action against him. Shri Bhandari expressed his unqualified apology to me and there the matter rests so far as this Court is concerned. The detenu is entitled to be released in view of the failure to furnish necessary documents to enable him to make a proper representation. Writ Petition is allowed and the detenu is directed to be released forthwith.