
(1990) 07 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 139 of 1990

Abdul Sattar

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 26-07-1990

Acts Referred:

Citation : (1991) 1 AICLR 517 : (1990) 3 RCR(Criminal) 694

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : Sh. D. D. Sharma, S. S. Saron, Advocates for appearing Parties

Judgement

J. S. Sekhon, J.

1. Abdul Sattar detenu, a national of Pakistan, through this writ petition has challenged the detention order Annexure P1 passed by the Under Secretary to the Government, Punjab, Home Department on 29.5.1989 under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short called the Act) with a view to preventing him from engaging in concealing, transporting and importing into India Narcotic Drugs. The detenu was already in custody in violation of the provisions of Import Trade Control JUDGMENT No. 17/55 dated 7121955, as amended, and issued under section 3(1) of the Import and Export Control Act, 1947 read with sections 11 and 77 of the Customs Act. 1967 and section 3 of Narcotic Drugs and Psychotropic Substances Act, 1988. The detention order along with the grounds of detention was served upon the detenu in the jail on 1871989.

2. A brief resume of relevant facts figuring in the grounds of detention Annexure P. 2 served upon the petitioner is that on 18121988, the petitioner alighted from Pakistan at Attari Railway Station from 208 Dn. Train. The petitioner declared before the Customs authorities that he was not carrying any gold, watches or any other contraband goods. The petitioner was then carrying two bags. The nervousness of the petitioner at the time of declaration before the Customs authorities aroused suspicion and resulted in searching the bags thoroughly in the presence of two independent witnesses. As a result of the search the

following items were recovered from bags:

1. Textiles 80 mtrs. of foreign origin of value = Rs. 1600/
2. Pista 5 kgs. of value = Rs. 1000/
3. L.B. Shirts 40 Nos. of value = Rs. 600/
4. Two bags used as containers = Rs. 100/

Besides, the above referred articles, two tins of Talcum Powder were found concealed in two packets of pista in one bag and one tine of Talcum Powder concealed in the textile in the second bag. As these empty bags weighed slightly more than the normal, their base were cut and it was found that these bags had false bottoms made by joining two pieces of plywood by screws. From these false bottoms two polythene packets containing heroin were recovered. From these packets and from the three Talcum Powder tins, 1860 gms of heroin was recovered. All these articles were taken into possession under section 110 of the Customs Act after drawing samples therefrom. The sample was found to be Heroin by the Chemical Examiner. During interrogation by the Customs authorities, the detenu admitted that these goods were given to him by his friend Ghulam Rasool on that very day. Aforesaid Ghulam. Rasool also admitted the concealment and recovery of Heroin from his possession. On further interrogation, the detenu admitted that these goods belonged to one Mr. Hassan who lives at Karachi and that he and Ghulam Rasool were to hand over these goods to Abul Bhai and Gold Hotel, Radio Club, Coloba, Bombay and in return he was to get Rs. 2000/. Under these circumstances with a view to curb the future propensity of the petitioner in dealing in such like prejudicial activities, the order of detention was passed.

3. The petitioner had taken many grounds in the writ petition, but during the course of arguments, the learned counsel for the petitioner had contended that the grounds of detention being verbatim copy of the dossier submitted by the Sponsoring Authority clearly shows that the detaining authority had failed to apply its mind to the facts and circumstances of the case. The petitioner has made averments in this regard in para 9 of the writ petition. In the return filed by Shri S. K. Bhalla, Under Secretary to Government, Punjab on behalf of the respondents in corresponding para 9, these allegations are refuted. On the other hand, it was maintained that the grounds of detention were prepared by the detaining authority with due application of mind and on the basis of his subjective satisfaction. It was further stated that as the material is to be taken from the documents supplied by the sponsoring authority, there is always some similarity in the two.

4. I have gone through the original file of the sponsoring authority. A perusal of the file reveals that vide letter No. C. No. VIII (HQRS) PREV/PD/NDPS/6/88/627 dated 8.3.1989 written by the Customs and Central Excise Collectorate, Chandigarh to the Home Secretary, Punjab Government, Chandigarh, the

proposal for detention under section 3(1) of the Act against Abdul Sattar son of Amir Khan of Karachi alongwith the grounds of detention and documents mentioned therein was sent. A perusal of the proposed grounds of detention leaves no doubt that except for in para No. 1, the parentage of Abdul Sattar is missing in the proposed grounds of detention, the other grounds of detention served upon the petitioner are verbatim copy of the proposed grounds of detention. In para No. 1 parentage of Abdul Sattar is not mentioned but the same is mentioned in the grounds served upon the petitioner. The matter does not rest here as towards the end of proposed grounds of detention, the sponsoring authority has not mentioned its own name but has mentioned the detaining authority as Under Secretary to Government, Punjab, Home Department. Thus, there is no escape but to conclude that it is a clear case of non application of mind by the detaining authority to the facts and circumstances of the case and thus, it cannot be said that the order of detention was passed after due application of mind and on the subjective satisfaction of the detaining authority.

5. The apex Court in *Jai Singh and others v. The State of Jammu and Kashmir* 1985(2) RCR(Cr.) 39 (SC) : AIR 1985 SC 761 while dealing with a similar controversy had observed that it is difficult to find a greater proof of nonapplication of mind than the case where the grounds of detention served upon the detenu are verbatim copy of the proposed grounds of detention of the sponsoring authority and quashed the order of detention on this ground alone.

6 Further, the grounds of detention do not reveal that the detaining authority was aware of the detenu being already in custody or that there was every likelihood of the detenu being released on bail in the immediate future and that there were compelling reasons to order the detention of the petitioner under section 3(1) of the Act in order to avoid his propensity to indulge in similar prejudicial activities after his released on bail. Mr. S. S. Saron, Assistant Advocate General, Punjab pointed out from the original file of the detaining authority that Gurdev Singh dealing hand in the office note dated 2351989 had specifically mentioned about the detenu being in custody and there is every likelihood of his release from custody on bail and his resorting to similar activities in the event of his release and that Financial Commissioner (Home) (Detaining Authority) had made application of mind to these facts. Thus, he maintained that nonfiguring of this matter in the grounds of detention should not be taken as non application of mind on the part of the detaining authority. He had also raised objection that the petitioner has not taken this circumstance as one of the grounds in the writ petition and therefore, no specific reply was given in the return filed on behalf of the respondentState.

7. No doubt, the requirement of law is that the detaining authority should be aware of the detenu being already in custody and that there are immediate chances of his being released on bail in the immediate future and that there were compelling circumstances to conclude that if released on bail, the detenu had the

propensity to indulge in similar activities. Thus, even if such a ground is contained in the original memorandum on the file of the detaining authority, it cannot be inferred that the detaining authority has passed the detention order, after due application of mind to the facts and circumstances of the case. In *Jai Singh's* case (supra), the Supreme Court had also gone through the original record of the detaining authority for ascertaining whether the detaining authority had applied its mind to this aspect of the matter before passing the detention order.

8. For the sake of ready reference a portion of the original memorandum dealing with this aspect of the matter requires reproduction. It reads as under:

"The prejudicial activities show that Abdul Sattar the proposed detenu has been concealing, transporting and importing into India, narcotic drugs. There is sufficient material to satisfy the competent authority that if said Abdul Sattar is not detained he would continue to indulge in the said prejudicial activities in future. State Law Deptt. has also advised accordingly. Abdul Sattar is reported to be in judicial custody, apprehending his release from custody on bail and his resorting to similar activities in the event of his release, his detention under PIINDPS Act, 1988 is necessary."

9. A bare perusal of the aboveresferred memorandum leaves no doubt that there is no indication therein whether the detenu had moved an application for bail or that any bail application was pending from which the detaining authority had apprehended the release of the detenu from custody on bail. On the other hand, during the course of arguments, Mr. S. S. Saron, Assistant Advocate General, frankly conceded that the detenu has not moved any application for bail before the service of the detention order. Thus, it cannot be said by any stretch of imagination that there was possibility of release of the detenu from custody.

10. Their Lordships of the Supreme Court in *Dharmendra Sugan Chand Chelawat through his sister v. Union of India and others*, 1990(1) RCR(Cr.) 446 (SC) : 1990(1) Crimes 634 , after discussing all the previous judgments rendered by the Supreme Court on this point, had observed in paragraph 20 of the judgment as under :

"The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that: (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression 'compelling reasons' in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that: (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, is likely that after his release from custody

he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

11. In the light of the above referred rule of law laid down by the Supreme Court regarding the subjective satisfaction of the detaining authority, it transpires that in the case in hand, the detaining authority has not given any facts from which it can be inferred that there was likelihood of the detenu being released from custody in the near future. As a matter of fact, the detenu had not moved any application for being released on bail in the case in hand and thus (sic) case can be found regarding nonapplication of mind by the detaining authority to the facts and circumstances of the case. The petitioner being already in custody, the sustaining of detention order would amount to punitive in nature rather than preventive one.

12. Lastly, the petitioner contended that the representation filed by the petitioner against his detention was not disposed of with due promptitude and it has resulted in negating the safeguards enshrined in Article 22(5) of the Constitution. Mr. S. S. Saron, Assistant Advocate General contended, on the other hand that the representation was disposed of with due promptitude after obtaining the comments of the sponsoring authority. In the supplementary return dated 29.5.1990 the answering respondent has explained the disposal of the representation on day to day basis. It reads as under :

"In continuation of the submissions made in reply to para 6 of the petition, it is further submitted that a representation dated 29.11.89 submitted by the petitioner was forwarded to the answering respondent by the Supdt. Central Jail, Amritsar vide letter dated 29.11.89, and received on the same day. Parawise comments of Customs authorities on the representation were called for vide State Govt. letter dated 4.12.89 (21.12.89 and 31.12.89 were holidays). Reminder for para wise comments was issued vide State Govt. letter dated 6.12.1989. Asstt. Collector Custom Preventive, Amritsar sent his comments through District Magistrate vide his letter dated 11.12.89 and same was received in the office of the answering respondent on 12.12.89. Thereafter, the case was examined on 12.12.89, 14.12.89, 15.12.89 and 18.12.89 at various levels and put up before the competent authority, who rejected the representation on 18.12.89 after due consideration (16.12.89) and 17.12.89 were holidays). Intimation regarding rejection of the representation was conveyed to the Supdt. Central Jail Amritsar vide letter dated 20.12.89 with the direction to inform the petitioner. Thus, the representation filed by the petitioner was disposed of expeditiously and in accordance with the provisions of Article 22(5) of the Constitution."

A bare perusal of the same leaves no doubt that 2nd and 3rd December, 1989 were holidays and therefore it cannot be said that the State Government has been sitting over the matter by calling for the comments of the detaining authority vide letter dated 14.12.1989, especially when the representation was received on 29.11.1989 only. The comments were received by the State Government on 11.12.1989 and thereafter this representation was dealt with on

12th, 14th and 15th December, 1989, at various levels before the competent authority rejected it on 18th December 1989 (16th and 17th December happened to be holidays). Intimation of the rejection was sent vide letter dated 22nd December, 1989. Under these circumstances, it cannot be said that the representation of the detenu was not disposed of with due promptitude.

13. Consequently, in view of nonapplication of mind by the detaining authority, the order of detention (Annexure P. 1) is quashed by accepting this writ petition.