
(1978) 08 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Criminal Writ No. 41 of 1978

Ajaib Singh

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 11-08-1978

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1978) 08 P&H CK 0003

Hon'ble Judges : S.S. Dewan, J

Bench : Single Bench

Advocate : G.S. Grewal, for the Appellant; R.S. Palta, for the State of Punjab,
for the Respondent

Judgement

S.S. Dewan, J.—Ajaib Singh, petitioner has been ordered to be detained under sub-section (1) of section 3 of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called the Act) vide order of the Governor of Punjab, dated January 16, 1978, (Copy Annexure P-1) to the petition). He has challenged the said order by filing a petition under Article 226 of the Constitution of India and prayed for the issue of a writ or order in the nature of Habeas Corpus and for releasing him from custody. Notice of the petition was given to the State of Punjab and the affidavit of Shri Amarjit Singh, Deputy Secretary, Home Department Government of Punjab, has been filed in opposition to the petition.

2. The grounds of detention as conveyed to the detenu u/s 3(3) of the Act, read as under:--

You have been detained on the grounds that you have been smuggling goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods.

3. The petitioner had an opportunity to make a representation to the Advisory

Board. In due course, the detention order was confirmed by the State Government and communicated to the petitioner. Several objections were raised to the detention order. But it is not necessary to deal with all of them, because the petitioner is bound to succeed on the ground that the alleged activity of last smuggling in which the Petitioner was said to have indulged himself, related to as back as November, 1976, whereas the detention order was passed on January 16, 1978. Therefore, the order is vitiated. All the seven activities of smuggling, on which the Government of Punjab purports to have reached the required satisfaction, are based on incidents which took place between July 16, 1976 and November, 1976. It is not clear from the record which activity of smuggling impelled the authorities to prosecute the petitioner. However, that might be, it appears to me that the State Government, could not have been possibly satisfied about the need for detention on January 16, 1978, having regard to the detenu's conduct some one year and two months earlier. Indeed mere delay in passing a detention order is not conclusive but we have to see the type of grounds given and consider whether such grounds could really weigh with an Officer some one year two months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from smuggling goods. It is not explained why there was such a long delay in passing the order. The Governor of Punjab appears almost to have passed an order of conviction and sentence for the offences committed about one year and two months earlier. The authorities concerned must have due regard to the object with which the order is passed and whether the object was to prevent smuggling of goods, also should think that prompt action in such matters should be taken as soon as incidents like those which are referred to in the grounds have taken place. In case SK. Abdul Munnaf Vs. The State of West Bengal, It was observed as under:--

This Court in the case of Lakshman Khatik v. State of West Bengal 1975 S.C.C. (Cri.) 425, writ petition No. 344 of 1972, decided on 26th February 1974=(reported in Lakshman Khatik Vs. The State of West Bengal, held that a delay of seven months in making an order for detention after the incident which led to the making of that order was fatal. As the delay in the present case is for a longer period and no cogent explanation has been given for the delay, there is no escape from the conclusion that the detention of the petitioner is not in accordance with law.

Similar view was reaffirmed in S.K. Serajul v. State of West Bengal 1975 S.C.C. (Cri.) 425.

4. I, accordingly accept the petition, quash the order for the detention of the petitioner and direct that he be set at liberty.