
(1989) 12 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 2918 of 1989

Amar Singh

APPELLANT

Vs

Secretary to Government Punjab and anr.

RESPONDENT

Date of Decision : 07-12-1989

Acts Referred:

Citation : (1990) 1 AICLR 448 : (1990) 1 RCR(Criminal) 518

Hon'ble Judges : S.D.Bajaj, J

Advocate : S. S. Saron, J.S. Punn, Amar Singh Sandhu, Advocates for appearing Parties

Judgement

S.D. Bajaj, J.

1. For prejudicial activities attributed to detenu petitioner Amar Singh in the grounds of detention Annexure P. 1/A for the period from first week of March to 23rd April, 1988, detention order Annexure P. 1 was clamped by the detaining authority upon him on 1st June, 1989, under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, for, preventing, him from engaging in the concealment transportation and interState import of narcotic drugs. In Criminal Writ Petition No. 2918 of 1989 the validity of detention order Annexure P. 1 have been assailed by the detenu petitioner on the grounds of its having been passed by the detaining authority is a mechanical manner without application of mind to the peculiar facts and circumstances of the case against him, much less on its subjective satisfaction, there is no nexus between the prejudicial activities and the order of detention passed 13 months thereafter and served on the petitioner 14 months after that the Act was enforced on 4th July, 1988, and action on its basis was taken retrospectively qua the prejudicial activities of March/April 1988 and that the representation dated 30th August, 1989 was not decided by the authorities concerned earnestly and with due promptitude in Article 22(5) of the Constitution India.

2. Respondent State urged in reply that the impugned order was passed by the detaining authority after due application of mind on its subjective satisfaction

that the factum of the petitioner being already on bail in punitive jurisdiction was no bar to the detaining authority ordering his preventive detention as well. It was conceded that the prejudicial activities attributed to the petitioner were of March/April, 1988 and it was assertion order against the petitioner was initially delayed on account of its being in custody till 28th, October 1988 and thereafter for nonreceipt of comments from the quarters concerned. It was also stated that the representation was received from the Superintendent, Central Jail Patiala, on 5th September, 1989 and rejected on 6th Oct. 1989. Detention order Annexure P. 1 was admittedly conveyed to the petitioner on 12th October, 1989. Detention order Annexure P. I was stated to have been made under section, 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1989, in terms of section 15 of Act No. 46 of 1988.

3. I have heard Shri A. S. Sandhu, Advocate, for the petitioner, Mr. S. I Saron A. A. O. Punjab for the respondents and have carefully gone through the record.

4. All the four grounds of illegality vitiating the order of detention Annexure P.1 dated 1st June, 1988 are being discussed hereinafter at factum:

(i) Nonapplication of mind and want of subjective satisfaction of the detaining authority : A bare reading of the detention order Annexure P. 1 and the grounds of detention Annexure P. 1/A wholly makes out that the factum of the petitioner having been admitted to conditional bail on 28th October, 1988 was not adverted to therein by the detaining authority. Commenting on this aspect of the matter in *Anant Sakharam Raut v. State of Maharashtra and another*, AIR 1997 Supreme Court 137, their lordships of the Supreme Court observed "The one contention strongly pressed before us by the petitioner counsel is that the detaining authority was not made aware at the time the detention order was made that the detenu had moved application for bail in the three pending cases and that he was enlarged on bail on 1311986, 1411986 and 1511986. We have gone through the detention order carefully. There is absolutely no mention in the order about the fact that the petitioner was an under trial, prisoner that he was arrested in connection with the three case that application or bail when pending and that he was released on three successive days in the three came. This indicates total absence of application of mind on the part of detaining authority while, passing the order of detention. In our view this is the short manner in which the two cases can be disposed of. If the petitioner is found disturbing law and order or misusing the bail grant to him, the authorities would be at liberty to move the appropriate Court to get the bail orders cancelled. One does not know how the detaining authority would have acted if he was made aware of the above details. We are not satisfied that this is, a fit case to resort to preventive detention. We refrain from referring to the other grounds urged before us and from examining them. The petitioner is entitled to succeed on the first ground. We hold that there was clear nonapplication of mind on the part of the detaining authority about the fact of the petitioner was granted bail when the order of detention was passed.

(ii) Want of nexus or proximity between the judicial activities and the order of

detention. There is a time lag of 13/14 months in the prejudicial activities attributed to the petitioner and the date of order of detention viz. 1st June, 1989. Detention order was served upon the petitioner on 6th July, 1989. While examining this aspect of the matter in *Amrik Singh alias Mika v. State of Punjab*, 1987(1) Recent C.R. 443 and *Swinder Singh alias Mohinder Singh v. State of Punjab*, 1988(2) Chandigarh Law Reporter 557 this Court observed. It has repeatedly been ruled by the final Court that when there is unexplained delay between passing of the detention order and the ground which led to the passing of the same, there could be no rational satisfaction with the detaining authority for passing of the detention order. Some of these cases are reported as *Jagan Nath Biswas v. The State of West Bengal*, AIR 1985SC 1516; *Lakshman Khatik v. The State of West Bengal*, AIR 1974 SC 1264 and *Harnek v. The State of Punjab and others*, AIR 1982 SC 682: 1982(1) CLR 517. In these cases, the delay in passing of the order from the date of last one of the activities attributed to the detenus ranged between six months to one and half years it may be true, as is sought to be urged by Mr. D.S. Brar, that mere delay in passing the detention order may not be conclusively fatal but in that case the detaining authority is under an obligation to take the Court into confidence and to disclose how its mind had been working from the date of gaining knowledge of the detenu's prejudicial activities. In the instant case, the activities attributed to the petitioner on the basis of which his detention is sought to be justified, were carried out, as already indicated, for a period of about six months i.e. from September, 1984 to February 7, 1985 and these stood abandoned or at least have not been shown to be continuing for about 9 1/2 months i.e. from 7.2.1985, the date of last activity to 22.2.1985, the date of passing the impugned order. The order appears to be punitive rather than preventive. It has repeatedly been laid down by this Court as well as the final Court that the purpose of passing detention orders is not to punish the detenu for his activities in the distant past but is rather to prevent him from carrying on the activities which are otherwise found to be prejudicial.

(iii) Restrospective enforcement of Act No. 46 of 1988 in respect of the prejudicial activities of earlier period of March/April 1988 Dealing with this aspect of the matter in *Banta Singh v. Punjab, Government and another*, 1989(1) All India Criminal Law Reporter 758, this Court observed, "Then again the Narcotic Drugs and Psychotropic Substances Act, 1988 (Central Act No. 46 of 1988) came into force on 4th July, 1988 while the last prejudicial act attributed to the petitioner is of 17th November, 1987. It does not stand to reason as to how could the detaining authority invoke the provisions of this Act while ordering detention of the petitioner. It also indicates want of application of mind on the part of the detaining authority to the facts and circumstances obtaining in the present case and, therefore, invalidates the detention order."

(iv) Delay in disposal of the representation dated 30th August, 1989 decided on 6th October, 1989 and its rejection conveyed to the petitioner on 12th October, 1989. Dealing with similar delay of a month and 10 days in the disposal of representation of the detenu their Lordships of the Supreme Court observed in

Piara Singh v. State of Punjab, 1987(2) Recent Criminal Reports 473 (SC): AIR 1987 Supreme Court 2377 , as follows :

"Times out of number, this court has emphasised that where the liberty of an individual is curtailed under a law of proven the representation, if any, made by him must be attended to dealt considered with watchful care and with and considered reasonable promptitude lest the safeguards provided, in Article 22(5) of the Constitution and the statute ponceriled, should be, stultified and rendered meaningless.

In the light of these decision in the present case it must be held that the delay in dealing with the representation of the petitioner which was admittedly received by the Government on 14th January, 1987 and rejected at late as on 26th February, rejected 1987 must be considered as inordinate delay in dealing with the representation. No explanation is given in the counter affidavits to why the representation could not have been dealt with and disposed of earlier and hence it must be held that the order or detention of the petitioner is vitiated by reason of delay in dealing with this representation."

5. In this view of the matter Criminal Writ Petition No. 2918 of 1989 succeeds and is allowed. Detention order Annexure P. 1 based on grounds of detention Annexure P. I/A is quashed and the detenu petitioner Amar Singh is ordered to be released forthwith, if not required in any other case.