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(1996) 02 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 996 of 1995

Amarjit Singh — APPELLANT

Vs

Secretary to Government of Punjab — RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Citation : (1996) 2 AICLR 389 : (1996) 2 RCR(Criminal) 572

Hon'ble Judges : V.S.Aggarwal, J

Advocate : DD Sharma, Vikas Cuccria, A.S. Sandhu, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.

1. By this common judgment the two writ petitions can conveniently be disposed of because facts in both the petitions are identical.

2. It is alleged by the State that on a specific information Customs and Border Security Force Staff, Amritsar held a picket at Madhopur on the intervening night of 4/5.1.1995. At 6.50 hours on 5.1.1995 a suspected vehicle was seen coming from Samba side. When the said truck came close to the Customs party, it was signalled to stop. Instead of stopping the truck, the driver of the truck sped away. It was chased and overpowered near village Malikpur on JammuPathankot Highway at about 7.00 A.M. Two occupants of the truck tried to run away but were apprehended. In view of security reasons, the truck was escorted to Customs House at Amritsar. At Customs House, Amritsar in presence of two independent witnesses, the rummaging of the truck was carried. 24 packets of Brown powder (Heroin) were recovered from the false fuel tank of the truck. The recovered Heroin was tested positively with the drug testing kit in the presence of all. Certain documents were also recovered. 24 packets of Brown powder were bearing certain marks. The packets were separately wrapped after these were weighed besides the samples having been drawn.

3. Petitioner Amarjit Singh made voluntary statements before the Superintendent

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Customs, Amritsar. He admitted recovery of 24 packets of Brown powder from the false round box (Fuel tank) which was fitted with the diesel tank of the truck and that on 2.1.1995 petitioner talked to Niamat Ali a resident of Lahore. Niamat Ali told petitioner Amarjit Singh to meet him at the border of Sukhochak Sector near Samba on the night of 2.1.1995. Accordingly, petitioner Amarjit Singh alongwith Mukhtiar Singh driver of the truck went towards Samba side. Mukhtiar Singh was asked to stop the truck near Hira Nagar. Petitioner Amarjit Singh went alone towards the border. Nobody met him. He again contacted Niamat Ali on telephone. Niamat Ali told Amarjit Singh petitioner to come on 4.1.1995 night. At that time three persons across the Pakistan Border had already arrived there. The recovered Heroin was given to petitioner Amarjit Singh. They told the petitioner to take Gurvinder Singh alongwith him. Gurvinder Singh was one of those persons who had come from Pakistan. Alongwith Gurvinder Singh, Amarjit Singh came and went with the truck. The said packets were concealed in the false fuel tank. They are screwed with nuts and bolts.

4. Petitioner Mukhtiar Singh in his separate statement made voluntarily also admitted that he had been serving with petitioner Amarjit Singh and had been taking him with the truck towards Samba side.

5. On 6.7.1995 the petitioners were directed to be detained under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 for engaging in transportation and possession of narcotic drugs and with a view to prevent in the above said prejudicial activities.

6. Petitioners seek quashing of the detention order dated 6.7.1995 on the ground that order of detention was passed after six months of the alleged incident and four months from filing of the complaint in the competent court. There is inordinate delay and there is no proximity between the alleged activity and the detention. It is also alleged that situation expressed is not real but is mechanical and casual. Petitioners were in judicial custody and there is no subjective satisfaction in passing of the order. The representation alleged to have been made was also contended to have not been considered promptly and properly.

7. In the reply filed by the Superintendent, Central Jail, Amritsar, it is not disputed that petitioners were admitted in Central Jail, Amritsar on 9.1.1995. The petitioners submitted a representation on 29.8.1995. It was sent to the concerned authorities on 29.8.1995. It was rejected by the Punjab Government. The petitioners were informed. The petitioners submitted 10 copies of the representation to the answering respondent. Four copies were sent to the Secretary to Government of Punjab, Home Affairs and Justice through special messenger. Copies of the same were sent to the Secretary to Government of India, Ministry of Finance, Advisory Board, Punjab and Haryana High Court, Director General of Police, Intelligence, Senior Superintendent of Police and District Magistrate, Amritsar respectively.

8. On behalf of the Government of Punjab, reply was filed in the form of affidavit

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of Amrita Atwal. It was admitted that Heroin was seized on 5.1.1995. Detention order was passed on 6.7.1995. It was denied that there is any delay. There was no undue delay that was caused and that there was proper application of mind. It was detailed that proposal was received on 5.4.1995. It was approved on 4.7.1995.

9. In the reply filed by the Union of India, it was contended that the representation was received on 12.9.1995. The comments were called. Despite repeated reminders, these were received on 19.12.1995. The representation was rejected on 21.12.1995.

10. The first and foremost question agitated was that there has been an inordinate delay in passing the detention order because the incident is of January, 1995. The complainant was filed on 4.3.1995 but still the detention order was passed after an expiry of four months. According to him this shows that there is unexplained delay. In support of his contention reliance was placed on the decision of the Supreme Court in the case of Pradeep Nilkanth Paturkar v. S. Ramamurthi and others, 1992(3) RCR 402 . It was a decision under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drugs Offenders Act, 1981. Herein detention order was passed after more than five months after registration of the case and four months from submission of the proposal. It was held that in view of the inordinate delay, the order required to be quashed. Same view prevailed with this Court in the case of Sucha Singh v. State of Punjab and others, 1992(3) RCR 610 . Herein the detention was under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. Proposal to detain was initiated after four months of the activity and order was passed after three months. Because of inordinate delay, it was quashed.

11. It is true that delay ipso facto too in passing an order of detention after an incident is not fatal. What is required by law is that delay must satisfactorily be explained. No hard and fast rule can be formulated. In the present case in hand the proposal was initiated on 5.4.1995. Admittedly, the file kept tossing between the legal agency and the sponsoring authority. It is not understandable as to what prompted of such delay. There was obviously an inordinate delay in this regard. The decision from Delhi High Court in the case of Surinder Kumar v. Union of India and another, 1994 Cri.L.J. 291 makes the position clear. The detention order was under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Therein also the defence offered was that there was administrative delay. It took six months. The order was quashed and in paragraph 10 it was held as under :

"This is the only explanation given by respondent No. 2 for the delay in passing the detention order. To say the least the explanation is extremely vague and fails to give any cogent reason for the delay. Moreover, the counter affidavit does not disclose as to what investigations were carried out after the date of the incident and what material was gathered against the petitioner as a result thereof. Most of the documents accompanying the grounds of detention are of December 1991.

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The fact that the petitioner had gone abroad twenty times was revealed from his passport on the date of the incident itself. In any event criminal complaint against the petitioner was filed on March 7, 1992, which presupposes that all investigations must have been completed by the said date. yet it took another three months for the detention order to be slapped on the petitioner. It is submitted by the learned counsel for the respondent No. 2 that proposal to detain the petitioner reached the Home Department only on April 27, 1992 and acting on the said proposal the detention order was passed on June 22, 1992. That may be so but the time lag of about two months between the receipt of proposal for detention of the petitioner and the passing of the order of detention has not been properly explained."

The position herein is identical.

12. Another link of the argument was that there was further delay in disposal of the representation. It has already been pointed that the representation was sent and admittedly sponsoring authority took three months to send the comments to the Government of India. Indeed it becomes unnecessary to multiply precedents. The Supreme Court in the case of Mahesh Kumar Chauhan alias Banti v. Union of India and others, 1990(2) RCR 639 was concerned with the similar situation. There was 17 days'' delay took by the Sponsoring Authority in sending the comments. After scanning through various precedents, the Supreme Court held:

"Reverting to the facts of the present case submitted by the learned counsel, except merely mentioning that the representation was forwarded to the concerned sponsoring authority on 25.8.1989 and the comments from the sponsoring authority was received by the Departments on 11.9.1989, there is absolutely no explanation as to why such a delay had occurred. Therefore, in the light of the proposition laid down in Rama Dhondu Board''s case (AIR 1989 SC 1861) (albeit), we have no other option except to allow this appeal on the ground that this undue and unexplained delay is in violation of the constitutional obligation enshrined in Article 22(5) of the Constitution of India rendering the impugned order invalid."

13. In the present case referred to above, there was delay of more than three months. The same is unexplained. In fact despite repeated pronouncements, precious little is being done to avoid the delay. The liberty of the petitioners was at peril and, therefore, it requires promptness. It was ignored. In these circumstances, the impugned orders cannot be sustained.

14. For these reasons recorded above, the petitions are allowed and the detention orders are quashed.

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