
(1987) 07 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 553 of 1987

Arjan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 24-07-1987

Acts Referred:

Citation : (1988) 1 RCR(Criminal) 44

Hon'ble Judges : I.S.Tiwana, J

Advocate : S.S. Saran, Harpal Singh, Advocates for appearing Parties

Judgement

I.S. Tiwana, J. (Oral)

1. In these two Criminal Writ Petitions Nos. 553 and 554 of 1987, primarily the same facts and, questions of law are involved and thus these are being disposed of through this common order.

2. Both the petitioners have been ordered to be detained under section 3 of the National Security Act through different but similar orders, both dated December 21, 1986. In the case of Arjan Singh petitioner, the material part of this order reads as follows :

"Whereas, I, S.K. Sinha. IAS, District Magistrate, Patiala, on the basis 9 of the available material coupled with his past activities am satisfied that Sh. Arjan Singh s/o, S. Udham Singh r/o Vill. Kutbanpur PS Samena, District Patiala, now confined in Distt. Jail Nabha in cases FIR No. 112 Dt. 6 686 u/s 307/34 IPC and section 25 Arms Act PS Samana and FIR No. 132 dated 22686 u/s 25 Arms Act PS Samana, sought to be detained, is likely to indulge in a manner prejudicial to the security of the State And maintenance of Public JUDGMENT in case released on bail or otherwise and that with a view to prevent him from acting in any manner as aforesaid in future, it is necessary to detain him."

Similar is the order in the case of the other petitioner i.e., Bandeeep Singh.

3. Besides the other contentions raised in these petitions, one is that these

orders suffer from total nonapplicability of mind by the detaining authority. In support of this it is pleaded and urged that both the petitioners had been allowed bail by the trial Court in the cases referred to in these orders, i.e. FIR No. 112 dated 661986 and FIR No. 132 dated 2261986 in the cast of Arjan Singh, petitioner and FIR No. 131 dated 2261986 in the case of Bandeep Singh petitioner, much earlier to the passing of the impugned orders. The learned counsel for the petitioners has even produced before me the certified copies of the bail orders. What passes comprehension is that in spite of a specific plea having been taken in these two petitions that the petitioners had been bailed out in the cases voted above, the Under Secretary, Home Department of the State Government has even not chosen to plead that they were not so bailed out. It is difficult to imagine a case of greater inapplicability of mind by the authorities concerned than the two in hand. It appears that the impugned orders have just been passed mechanically. Their Lordships of the Supreme Court in their latest pronouncement, i.e, Anant Sakharam Raut v. State of Maharashtra and another, 1988(1) R.C.R.(Criminal) 619 : A.I.R. 1987 SC 137 have almost in a similar situation, observed as follows :

"We do not think it necessary to go into all the grounds urged before us by the petitioner's counsel in support of his prayer to quash the order of detention. The one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time the detention order was made that the detenu had moved applications for bail in the three pending cases and that he was enlarged on bail in 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 cases. that applications for bail were pending and that he was released on three successive days in the three cases. This indicates a total absence of application of mind on the part of detaining authority while passing the order of detention."

Besides this they have also observed that in such cases the detentions cannot be justified and if the petitioner is found disturbing law and order or is misusing the bail granted to him, the authorities are at liberty to move appropriate Court to get the bail orders cancelled.

4. In the light of the discussion above, I allow both these petitions and set aside the impugned orders.