
(1986) 05 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 82 of 1986 & Criminal Miscellaneous No. 32 of 1986

Bakhshish Singh S/o Sh.Mangal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 13-05-1986

Acts Referred:

Citation : (1987) 1 AICLR 68

Hon'ble Judges : M.M.Punchhi, J

Advocate : D.S. Brar, A.S. Sandhu, Advocates for appearing Parties

Judgement

M.M. Punchhi, J. (Oral)

1. The petitioner was detained under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (hereinafter referred to as the 'COFEPOSA') The following were the grounds of detention :

(1) "That in the month of July, 1984, you contacted Gian Singh son of Desa Singh, resident of Bharopai and you prevailed upon him to indulge in smuggling terms, you told him that you have your known acquaintance Javeed, resident of Ghurki and you have smuggling dealings with him. You made Gian Singh abovesaid to agree and work as carrier @ Rs. 700/ per trip. You also told him that opium is to be smuggled to India in exchange for Indian currency.

(2) That on 20.7.1984, at night, you and Gian Singh above said, crossed IndoPak Border with Rs. 10,000/ in Indian Currency and went to above said Javeed to village Ghurki and obtained from him 15 Kgs. of opium on payment of Rs. 10,000/ in Indian Currency. This opium was transported to India by you and Gian Singh on the mere back and sold to Achhar Singh @ Tunda resident of Kot Khalsa, Distt. Amritsar. You were paid Rs. 700/ for this trip by Bakhshish Singh above said. That on 11.8.1984, you and your said companion Gian Singh with Rs. 15,000/ in Indian Currency, crossed the IndoPak Border and went to Javeed in Ghurki you both paid Rs. 15,000/ in Indian Currency and obtained from him

23 Kgs. of smuggled opium. This opium was transported to India on a mere back and sold this smuggled opium to Acchar Singh alias Tunda, resident of Kot Khalsa. You paid Rs. 700/ for this trip to Gian Singh. That on the night intervening 25.26.3.1984, you and Gian Singh above said crossed the IndoPak Border at night and went to Javeed, Pak smuggler of village Ghurki with Rs. 30,000/ in Indian Currency. You paid this Indian currency to Javeed, Pak smuggler and obtained from him 42,500 Kgs. of opium while smuggled opium was given to Acchar Singh alias Tunda, Taxi owner Kot Khalsa. You both entered India through the area of Dhund on mare. You were challenged by BSF, on which you managed to escape and Gian Singh was captured with 42,500 Kgs. smuggled opium with mare. In this connection, cause F.I.R. No. 340 dated 28.8.1984 under section 9.1.1978 of opium Act, P.S. Jhabal was registered."

2. The detention of the petitioner was confirmed by the Advisory Board, appointed under section 8 of the Act, and the Government conveyed to the petitioner its decision in that regard, which is Annexure P2. Therein, mention is made that the Advisory Board had opined that there is sufficient cause for the detention of the petitioner.

3. The learned counsel for the petitioner has challenged the order of detention on a variety of ground"s. His first submission is that out of the four grounds, only one relating to the incident of the night intervening 2526th August, 1984, became the basis of a First Information Report. According to him, in that F.I.R., the petitioner was arrested and interrogated and then later released on bail. The petitioner has, however, not specified the date of his release. On that basis, the first three grounds of detention the learned counsel terms as vague and nonexistent, because there is no corroborative registration of cases. In either situation all the four grounds are termed by the learned counsel to be such as having no nexus between activities attributed to the petitioner and his detention. Reliance was placed on Harnek Singh v. State of Punjab and others A.I.R. 1982 S.C. 682.

4. Challenge to the order of detention on these grounds does not impress me. The order of detention was passed on 1.8.1985 and the petitioner was detained on 19.8.1985. Let it be assumed that on that date he was on bail in the criminal case, reference of which is made in ground No. 4. All the four incidents relate to July and August, 1984 within a short span of time. Undeniably the two coaccused of the petitioner namely Achhar Singh alias Tunda and Gian Singh made statements before the Custom Authorities and though Gian Singh was later detained under the provisions of the COFEPOSA he denied before the Advisory Board the incident as such but did not specifically say that the statement attributed to him was false altogether. This is the conceded position so far as Gian Singh is concerned. The activities of the petitioner were prejudicial enough for passing the order of detention so as to prevent further smuggling by the petitioner in that behalf especially when he stood released on bail by the Court. The case of Harnek Singh (supra) relied upon is distinguishable for the order of

detention itself was passed on 4th November 1981 and the detenu was detained as late as on 10th July, 1982 after a lapse of nearly ten months. The sole prejudicial activity, which formed the basis of detention was of 27th February, 1981. It is in these circumstances that the Supreme Court took the view that the time gap, when there was no explanation at all by the State, as to why quick action could not be taken, led the Court to believe that the detention took the character of being punitive, rather than having any preventive colour.

5. On the other limb of the argument that the grounds are vague or nonexistent, section 5(a) of the Act is the answer. The order cannot be held to be invalid or inoperative merely on these grounds. The Supreme Court has authoritatively held in *State of Gujarat v. Chamanlal Manjibhai Soni*. A.I.R. 1981 S.C. 1480 to the effect that what the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention. Even the ground of proximity is not available in view of section 5A (a) (iv) of the Act. Thus it is my considered view that the order of detention is unchallengable on these grounds.

6. The learned counsel for the petitioner has then contended that there is nothing to suggest in the order of the Government, Annexure P2 that section 9 of the COFEPOSA was ever employed and that the detention of the petitioner under section 8 of the COFEPOSA could in no case be more than one year, Reliance has been placed on a decision of the Supreme Court in *Satar Habib Hamdani v. K.S. Dalip Sinhji and others*, 1986(2) RCR(Crl.) 306 (SC) : A.I.R. 1986 S.C. 418. The Advisory Board, in the instant case as observed earlier opined that there is sufficient cause for the detention of the petitioner, but has nowhere given the opinion that there is sufficient cause for the continued detention of the petitioner. In other words, the Advisory Board seemingly was not made cognizant of the applicability of section 9(1) of the COFEPOSA. Had it been so, order Annexure P2 should have shown that *ex facie*. There is no mention of section 9 in the said order. Rather for continued detention of the petitioner for two years, Section 8(f) of COFEPOSA has been employed. Thus, the detention of the petitioner on the strength of *Satar Habib's* case (*supra*), cannot be for a term more than one year. Accordingly, the period of detention is reduced to one year.

7. For the above discussion, this petition partly succeed. No costs. This disposes of the Civil Misc. application for summoning of the record of the Advisory Board in the case of *Gian Singh*.