
(1988) 09 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1071 of 1988

Baljit Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 06-09-1988

Acts Referred:

Citation : (1988) 2 AICLR 910 : (1988) 2 RCR(Criminal) 494

Hon'ble Judges : K.S.Bhalla, J

Advocate : S.K. Bhatia, Navkiran Singh, Advocates for appearing Parties

Judgement

K.S. Bhalla, J.—Detention order (annexure P3) for detention of petitioner Baljit Singh was made by District Magistrate, Amritsar, under Section 3(2) of the National Security Act, on 17/9/1987. Baljit Singh was already in Judicial custody since 21/7/87 and that detention order was served upon him on 22/9/1987. His detention under National Security Act thus started with effect from 22/9/1987. The aforesaid order of the District Magistrate, Amritsar, was, however, revoked on 22/3/1988 vide revocation order of the same date, annexure P 4. Second detention order, annexure P1, was made simultaneously on the same date i.e. 22/3/1988. The detention is based on various incidents detailed in grounds of detention, annexure P2, ranging from 17.7.1987 to 21/7/1987. Petitioner was actually arrested for commission of the crimes which were made basis of detention on 21/7/1987. The earlier detention order admittedly was also based on the same grounds. Through this habeas corpus petition, petitioner Baljit Singh has sought quashing of detention order annexure P1 and all other such orders which were passed subsequently in this behalf.

2. Section 14A of the National Security Act, 1990, which was inserted through amendment Act No. 27 of 1987, permits detention of any person in respect of whom an order of detention has been made under the Act at any time before the 8th of June, 1988, without obtaining the opinion of the Advisory Board for a period not exceeding six months. It necessarily means that Government is under an obligation to complete the entire procedure and confirm detention order of a

person within six months of his detention. In the present case, the detention order was confirmed only on 16/1/1988. Beyond the period of six months, detention becomes bad in law and gets vitiated. As is clear from. Clauses (4) and (7) of Article 22, Constitution looks upon preventive detention with disfavor and has permitted the same only for a limited period without the intervention of an independent body with person of Judicial qualification of a high order on it. Lapse of the limited period without confirmation of the detention order, therefore, makes the detention illegal. In the present case, preventive detention of Baljit Singh having started on 22/9/1987, entire procedural formalities were required to be gone into by 21/3/1988 on which date the maximum period of six months expired and nothing done thereafter could legalise his detention.

3. Words used in Section 14A of the National Security Act are "not exceeding six months", meaning thereby that all steps are required to be taken within that period. The procedural requirements are the only safeguards available to a detenu since the Court is not expected to go behind the subjective satisfaction of the detaining authority. If any value is to be attached to the liberty of subject and the constitutional rights guaranteed to him in that regard, the procedural requirements are, therefore, to be strictly complied with. The order of revocation, annexure P4, and all subsequent orders including consultation of the Advisory Board having been made beyond 21/3/1988, are, therefore of no consequence. 'Within' means, before completion of six months and not beyond that limit. In a similar situation, while dealing with a parallel provision of Gujarat Act No. 16 of 1985, in *Abdul Latif Abdul Wahab Sheikh v. B.K. Jha and another*, 1987(2) Recent Criminal Reports 17 A.I.R. 1987 Supreme Court 725, it was observed, "It becomes imperative to read down Section 15 of the Gujarat Prevention of Anti-Social Activities Act, 1985, which provides for the making of successive orders of detention so as to bring it in conformity with Article 22(4) of the Constitution. If there is to be a collision between Article 22(4) of the Constitution and Section 15 of the Act, section 15 has to yield. But by reading down the provision, the collision may be avoided and Section 15 may be sustained. So, avoiding the collision course, we hold that if the report of the Advisory Board is not made within three months of the date of detention, the detention becomes illegal notwithstanding that it is within three months from the date of second order of detention". The Hon'ble Judges of the Supreme Court further observed therein, "We only desire to add that in a habeas corpus proceeding, it is not a sufficient answer to say that the procedural requirements of the constitution and the statute have been complied with before the date of hearing and the detention should be upheld". The order of detention in that case was quashed on that sole ground. In *Deb Sadhan Roy v. The State of West Bengal*, A.I.R. 1972 Supreme Court 1924 it was held that the confirmation of the opinion of the Advisory Board to continue the detention beyond three months must be within three months from the date of detention in conformity with the mandate in Clause (4) of Article 22. Now after the amendment of 1987, said period having been permitted to be longer than three months but not exceeding 6 months, the confirmation was

required to be made by the State Government within six months from the date of detention and the same having been done beyond six months cannot possibly be sustained.

4. Even otherwise, petitioner being already in custody for the last about 2 months could not have possibly indulged in any such activities so as to justify preventive detention. It is mentioned in the grounds Of detention that order of detention of the petitioner was passed with a view to preventing him from indulging in such prejudicial activities in future but it is neither made clear in the said grounds, annexure P2, or detention order, annexure P1, in what manner he was likely to indulge, in such activities in the near future, when at the time of passing of the detention order he was admittedly in custody. It is stated in bald manner in the impugned order that petitioner was taking steps to get himself released from custody and there was every likelihood of his being released, but the steps taken by him have not been spelt out. Petitioner has stated in the petition that there was no move on his part to get released on bail at the time of the making of the detention order and that assertion of his has not been refuted. There is no material on the record to show that the detenu would repeat misconduct or do anything else which would be prejudicial to the maintenance of the public order, and for that reason as well, orders of detention are liable to be set aside, because power of directing preventive detention is a preventive measure and not a punitive one. It was held in *Fazal Ghosi v. State of U.P. and others* etc. 1987(2) Recent Criminal Reports 321 : AIR 1987 Supreme Court 1877, "The District Magistrate it is true, has stated that the detention of the detenu was affected because he was satisfied that it was necessary to prevent them from acting prejudicially to the maintenance of public order, but there is no reference to any material in support of that satisfaction. We are aware that the satisfaction of the District Magistrate is subjective in nature, but even subjective satisfaction must be based upon some pertinent material. We are concerned here not with the sufficiency of that material but with the existence of any relevant material at all". In the absence of any such material, detention orders in respect of all the four detenus were quashed by the apex Court. In *Smt. Shashi Aggarwal v. State of U.P. and others* 1988(1) Recent Criminal Reports 579 : A.I.R. 1988 Supreme Court 596 , it was held that the possibility of the Court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. Rather there must be credible information or cogent reasons apparent on the record that the detenu would act prejudicially to the interest of public order. Relying on the said rulings, in the absence of any such material which might have been taken to be sufficient at the time of passing of the detention order to indicate the possibility of release of the petitioner from custody, who was involved in four different cases, in the near future, and further to show that he would repeat misconduct or do anything else which could be prejudicial to the maintenance of public order, the orders of detention are liable to be set aside.

5. For the aforesaid reasons, detention order dated 2231988 annexure P1

against the petitioner and all other such orders which were passed subsequently in this behalf are quashed. In the absence of any statement in the petition that the petitioner is on bail in the criminal cases registered against him, no order for his release is, however, made.