
(1995) 05 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 714 of 1994

Baljit Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 31-05-1995

Acts Referred:

Citation : (1995) 3 AICLR 219 : (1995) 4 Crimes 638 : (1995) 3 RCR(Criminal) 363

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

Advocate : G.S. Gill, D.D. Sharma, Bipan Ghai, R.S. Ghai, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.

1. This is a petition filed by Baljit Singh (hereinafter described as "the petitioner") under Articles 226/227 of the Constitution of India for directing the respondents to release the petitioner immediately or in other words quashing the order of detention dated 9.5.1994.

2. It is alleged that on basis of specific information a trap was laid near Adarsh Nagar Park, Jalandhar City on 8.4.1994. The petitioner alongwith his Bajaj Chetak scooter without any registration number was intercepted. Another person alongwith his Bajaj Chetak scooter was also intercepted. The petitioner was taken to the office of Assistant Collector Customs and Central Excise. Nothing incriminating was recovered from the petitioner. It is alleged that the petitioner admitted that the recovered foreign and Indian currency had been brought by him in his Bajaj Chetak scooter and he had delivered the same to Kamaljit Singh. The said currency was of the sale proceeds of 80 smuggled gold biscuits. From the other person the recovered foreign and Indian currency was worth Rs. 40,49,407/-. The petitioner is further alleged to have made voluntary statement dated 8.4.1994.

3. An order of detention was passed on 9.5.1994 alongwith grounds of detention.

4. Petitioner assails the said order of detention to be illegal and mala fide. It is asserted that no recovery has been effected from the petitioner. There is no assertion that after his release on bail, he has indulged in further illegal activities. The representations submitted by the petitioner are alleged to have not been considered by the appropriate authorities and that there is inordinate delay in deciding the representations.

5. The petition has been contested by the Union of India in particular and assertions, as such have been controverted.

6. Learned counsel for the petitioner highlighted the fact that petitioner submitted two representations which had to be considered by the Central Government and by the Advisory Board. The same has not been done and thus prejudice has been sent to the petitioner. To appreciate the said controversy, reference to some of the pleadings and orders passed would be useful. In paragraph 3(m) of the petition, the petitioner had made the averment :

"That the petitioner had sent two representations. One to the Central Government and the other was sent to Advisory Board. Both the representations were required to be dealt separately. Even Advisory Board has not sent any reply to the petitioner regarding decision of his representation. Thus the detention order is liable to be set aside."

7. The reply filed by the Union of India pertaining to said paragraph reads :

"As regards Para (1) and (m) of the petition, it is submitted that both the representations of the detenu were considered and rejected by the Central Govt. The detenu's representation dated 10.9.1994 addressed to the Advisory Board was received in the Ministry on 8.11.1994. This representation was also to be considered by the Central Govt. As such the case was processed and submitted to the Joint Secy. (COFEPOSA) on 9.11.1994, Joint Secy. considered and further submitted the file to Addl. Secretary who cleared the file on 10.11.1994. Since the Secretary (Rev) was on tour the file was submitted to Minister of State (R&E) who cleared the file on 11.11.1994 and submitted to the Minister of Finance for his consideration. Minister of Finance finally rejected the representation on 12.11.1994. 13th of Nov., 1994 being Sunday, the file was received back in the Section on 14.11.1994 and a memo, intimating the detenu about rejection of his representation by the Central Govt. also issued on 14.11.1994. Thus, both the representations dated 26.5.1994 (received at the predetention stage) and 10.9.1994 addressed to the Joint Secretary and to the Advisory Board were considered by the Central Government and the detenu was suitably replied to about rejection of his representations. The allegations made in these paras are baseless and, therefore, denied."

The reply filed clearly shows that petitioner submitted two representations, one for the Advisory Board and the other to the Central Government. The same were considered and decided by the Central Government and the Joint Secretary. What is being so stated is further established from the copies of the orders so passed

dated 11.10.1994 and 14.11.1994 respectively which reads as under

"With reference to his representation dated 10.9.1994 addressed to the Joint Secretary, Department of Revenue, Shri Baljit Singh @ Bhutto, COFEPOSA detenu is hereby informed that the above mentioned representation has been carefully considered by the Joint Secretary, Deptt. of Revenue but it is regretted that the same has been rejected."

"With reference to his representations dated 26.5.1994 and 10.9.1994, Shri Baljeet Singh @ Bhutto, COFEPOSA detenu is informed that the above representations have been carefully considered by the Central Government but it is regretted, the same have been rejected."

8. The law is well settled that the representations so made have to be considered separately. It is valuable right of the detenu. The Constitution Bench of the Supreme Court in the case of K.M. Abdulla Kunhi and B.L. Abdul Khader v. Union of India, 1991(1) Recent Criminal Reports 423 : JT 1991(1) SC 216 in paragraph 10 held :

"It is now beyond the pale of controversy that the constitutional right to make representation under clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. Secondly, the obligation of the Government to afford to the detenu an opportunity to make representation and to consider such representation is distinct from the Government's obligation to refer the case of detenu along with the representation to the Advisory Board to enable it to form its opinion and send a report to the Government. It is implicit in clauses (4) and (5) of Article 22 that the Government while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. The obligation of the Government to consider the representation is different from the obligation of the Board to consider the representation at the time of hearing the references. The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers the representation and the case of the detenu to examine whether there is sufficient case for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the Government. The right to have the representation considered by the Government, is safeguarded by clause (5) of Article 22 and it is independent of the consideration of the detenu's case and his representation by the Advisory Board under Clause (4) of Art. 22 read with Section 8(c) of the Act.....

9. The same principle was followed in the subsequent decision of the Supreme Court in the case of Smt. Gracy v. State of Kerala and another, 1991(1) Recent Criminal Reports 508 : 1991(2) CLR 247. It is clear from the aforesaid that it is the obligation of the Government to consider the representation. It is different

from the obligation of the Board to consider the representations. They are two separate remedies. In the present case, the Joint Secretary, as such, considered one application without any right and the other had been considered by the Government. Valuable right was lost to the petitioner and, therefore, prejudice must be held to have caused to him. The detention order cannot be sustained because the petitioner lost a right because one of the representations was decided by the authority not competent to do so. Thus, the order of detention cannot be sustained. Keeping in view the findings above, it is unnecessary to consider the other pleas of the petitioner.

10. For these reasons, the petition succeeds and the order of detention is quashed. It is directed that petitioner be set at liberty, if not required in any other case.