

(1992) 01 P&H CK 0130

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 620 of 1991

Balkar Singh

APPELLANT

Vs

Union of India and anr.

RESPONDENT

Date of Decision : 28-01-1992

Acts Referred:

Citation : (1992) 1 AICLR 597 : (1992) 1 CurLJ 521 : (1992) 1 RCR(Criminal) 487

Hon'ble Judges : B.S.Nehra, J

Advocate : I.P.S. Sidhu, R.K. Garg, A.S. Sandhu, Advocates for appearing Parties

Judgement

B. S. Nehra, J.

1. This order will dispose of Criminal Writ Petitions Nos. 620 of 1991, 621, 1991 of 622 of 1991 and 623 of 1991 as these arise out of identically worded detention orders dated 1521991 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as the COFEPOSA Act) by respondent No. 1 against all the petitioners.

2. All the four petitioners have been detained under Section 3 of the COFEPOSA Act vide orders dated 1521991 passed by respondent No. 1 While in Criminal Writ Petition No. 620 of 1991, Balkar Singh was detained on 1831991, in Criminal Writ Petition No. 621 of 1991 Baldev Singh was detained on 12th April, 1991, in Criminal Writ Petition No. 622 of 1991 Subeg Singh was detained on 29th March, 1991 and in Criminal Writ Petition No. 623 of 1991, Labh Singh was detained on 1431991. It may be mentioned that Balkar Singh and Baldev Singh, petitioners, in Criminal Writ Petition No. 620 on 1991 and 621 of 1991 respectively are sons of Labh Singh petitioner in Criminal Writ Petition No. 623 of 1991, while Subeg Singh petitioner in Criminal Writ Petition No. 622 of 1991 is cultivating land adjacent to the land of Labh Singh. Gold biscuits numbering 5.0, weighing 59,466.0 grams of foreign origin and valuing Rs. 1,99,21, 110/ had been recovered from the possession of all the four petitioners on 31101990 by the Border Security Force party. This ground, amongst others, formed the basis

of the detention of the petitioners. The detention has been challenged by the petitioners on diverse grounds. The respondents, on the other hand, have controverted the allegations of the petitioners and submitted that there is no illegality in the orders of detention, passed against the petitioner.

3. Assailing the detention, orders, the first point raised by the learned counsel for the petitioners is that the letters were only supplied with the detention orders and the grounds of detention but the material documents on the basis which the grounds of detention were prepared were not supplied to them. The stand taken by the respondents is that the detention orders passed against the petitioners themselves constitute the material in support of the grounds served on them and, therefore, the contention of the learned counsel for the petitioners is untenable. There appears to be no merit in the plea taken by the respondents, for the law is wellsettled that it is necessary for the detaining authority to supply the material/documents forming the basis of the grounds of detention to the detenu along with the detention order and the failure to supply such material would render the detention order unsustainable. In *Pritam Nath Hoon v. Union of India and others*, AIR 1981 Supreme Court 92, it was held by the Supreme Court that where copies of documents forming basis of grounds of detention were supplied after a long delay of 32 days to the detenu, this constitutes denial of opportunity to make representation and hence the detention order was illegal. Again in *S. Gurdip Singh v. Union of India and others*, AIR 1981 Supreme Court 362, it was held by the Supreme Court that the service of grounds of detention is complete only when grounds of detention are accompanied by documents forming basis thereof. In this case since the material forming the basis of detection was not supplied to the petitioner, the detention order was quashed. In *Lallubhai Jogibhai Patel v. Union of India and others*, AIR 1981 Supreme Court 728, the detention of the detenu was held to be unsustainable on the grounds, inter alia, that the documents relied upon for detention were not forwarded to the detenu. In the instant case, the documents supporting grounds of detention were not supplied to the petitioners despite their representation seeking supply of such material. Relying on the judgments of the Supreme Court in *Pritam Nath Hoon's* case (supra), *Gurdip Singh's* case (supra) and *Lallubhai Jogibhai Patel's* case (supra), the detention of the petitioners cannot be sustained.

4. Before parting, another point; which was vehemently urged by the learned counsel for the petitioners deserves to be examined. In all these cases, the alleged activity, forming the basis of the detention of the petitioners attributed to them having taken place on 29/30/10/1990 but the detention order was passed against them on 15/2/1991. There was thus a delay of 3 1/2 months in passing the detention order. The point to be considered is as to whether the detention order, when passed after such a long delay can be sustained. It was held by the Supreme Court in *Rabindra Kumar Ghosel v. The State of West Bengal*, AIR 1975 Supreme Court 1408 that the whole purpose and object, of the Act is that persons who are likely to imperil public order are not allowed to be free to indulge in the dangerous activity. The chain of connection between the

dangerous activities relied on and the detention order passed is snapped by the long and unexplained delay of about three months. Therefore, the detention order was found unsustainable. It is true that this judgment was handed down by their Lordships in a case under the Maintenance of Internal Security Act but ratio of the judgment would equally apply to cases under the COFEPOSA Act as well and, therefore, the ratio of the judgment of the Supreme Court in Rabindra Kumar Ghosel's case (supra) would also be attracted to the facts of the present case and hence the orders of detention passed against the petitioners after a long delay of nearly 31/2 months of the alleged activity attributed to them would be rendered unsustainable.

5. Though the learned counsel for the petitioner attempted to assail the detention orders on various other grounds as well, it is considered unnecessary to deal with the same, for the detention orders against the petitioners have been found, to be unsustainable for the reasons recorded above.

6. For the foregoing reasons, these petitions are allowed and the detention orders dated 15/2/1991 passed against the petitioners are quashed. They be set at liberty forthwith unless, their detention is required in any other case.