
(1989) 04 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1919 of 1988

Bhagwant Singh @ Satnam Singh @ Bhinda

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 26-04-1989

Acts Referred:

Citation : (1989) 2 AICLR 269 : (1989) 2 CurLJ 359 : (1989) 2 RCR(Criminal) 95

Hon'ble Judges : S.S.Grewal, J

Advocate : P.S. Hundal, S.K. Bhatia, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under Article 226 of the Constitution of India relates to quashment of detention orders No. MA 128 dated 6.1.1988 (Annexure P1), and 4342HIII (NSA)88/3682 dated 23.6.1988 (Annexures P3), under Sections 3(2), 3(3), 12(1) and 14A of the National Security Act, 1980.

2. The facts relevant for the disposal of this case, are that the petitioner was arrested on 18.9.1987 in case FIR Nos. 181 and 183 of 1987 registered at Police Station Majitha under the Arms Act. Case FIR Nos. 101 dated 17.9.1987 under Sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'the Act') and 25/27 of the Arms Act, and 165 dated 4.8.1987 under Sections 392 of the Indian Penal Code, and 25/27 of the Arms Act, were registered in the said Police Station. The petitioner was also arrested in those cases. While in judicial custody, the petitioner was served with the impugned detention order (Annexure P1), passed on 6.1.1988. On 23.6.1988 vide order Annexure P3, the said detention order was confirmed by the State Government for two years, while the petitioner was still in custody.

3. On behalf of the State it was contended that the petitioner was an active member of the Khalistan Liberation Force headed by Avtar Singh Brahma, which, indulged in prejudicial activities in the murder of innocent persons; that the petitioner also indulges in activities prejudicial to the security of the State and

maintenance of public order, and, interfered with the efforts of the Government in coping with the terrorist and disruptive activities.

4. The counsel for the parties were heard.

5. On behalf of the petitioner it was mainly contended that it was virtually impossible for the petitioner to be released on bail in the criminal cases, particularly, regarding offences punishable under the Act.

6. A careful perusal of the straight provisions of Section 20(8) of the Act reveals that chances for grant of bail regarding such offences are quite remote until the unless the Public Prosecutor, appearing on behalf of the State, does not oppose the grant of bail in such cases. Where the Public Prosecution opposes the grant of bail in such case, bail can be granted only if the Court (Designated) is satisfied that there are reasonable grounds for believing that he is not guilty of such offences, and that he is not likely to commit any such offences, while on bail. At least in case under Terrorist and Disruptive Activities (Prevention) Act, 1987, the petitioner would remain in custody, as practically there would be no chance for him to be released on bail. Thus, there would hardly be any chance for him to interfere with the efforts of the Government in coping with the terrorist and disruptive activities, or indulge in other prejudicial activities, as contended on behalf of the State.

7. Apart from the registration of the criminal cases against the petitioner, referred to above, no other reliable material has been brought on the record to show that the petitioner, if released on bail, is `likely to commit activities prejudicial to the maintenance of public order, security of the State, or, that there were compelling reasons to justify his preventive detention, in spite of the fact that the petitioner is already under detention on various charges for committing criminal offences.

8. I am fortified in my view by the authoritative pronouncement of Supreme Court in case Smt. Shashi Aggarwal v. State of U.P., 1988(1) Recent Criminal Reports 579 wherein, following its earlier decision in case Binod Singh v. District Magistrate, Dhanbad, AIR 1986 SC 2090, it was held as under :

"Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. 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. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order. Where the detention order was passed against the detenu, who was already in jail, merely on the ground that the detenu was trying to come out on bail and there was enough possibility of his being bailed out and there was no material on record to show that the detenu, if

released on bail, was likely to commit activities prejudicial to the maintenance of public order, the order of detention would be illegal."

9. I am further supported in my view by the authority in case *Vijay Kumar v. Union of India*, AIR 1988 SC 934, wherein reviewing its earlier decisions on this point their Lordships held as follows :

"When a detenu is already under detention for an offence. Whether bailable or nonbailable, the Detaining Authority will take into his consideration the fact of detention of the detenu and, as laid down in *Shashi Aggarwal's* case (supra), there must be compelling reasons to justify his preventive detention in spite of the fact that he is already under detention on the charge of a criminal offence. There must be material for such compelling reasons and the material, or compelling reasons must appear from the grounds of detention that will be communicated to the detenu. In other words, two facts must appear from the grounds of detention, namely, (1) awareness of the Detaining Authority of the fact that the detenu is already in detention and (2) there must be compelling reasons justifying such detention, despite the fact that the detenu is already under detention."

10. Another important aspect of the case is that in last para of Annexure P1 direction for execution of the order was given to Senior Superintendent of Police, Amritsar, to the effect that he shall lodge Bhagwant Singh alias Satnam Singh alias Bhinda in Central Jail, Amritsar. The detenu was already in custody in Central Jail, Amritsar, as is apparent from the first para of the detention order. Thus, however, seems to be a formal description of the detenu, without the knowledge of the Detaining Authority. At any rate, the variance in the terminology, referred to above, indicates that the Detaining Authority did not arrive at its subjective satisfaction after due application of mind, before passing the impugned order.

11. A careful perusal of the grounds of detention (Annexure P2), supplied to the detenu, would indicate that the same was verbatim copy of the communication sent by the Superintendent of Police to the District Magistrate, whereby, detention of the present petitioner under Sections 3(2) read with Section 3(3) and 14A of the National Security Act, 1980, has been proposed. This aspect of the case further indicates that there was no proper, or, independent application of mind by the District Magistrate before passing the impugned detention order. Thus, subjective satisfaction arrived at by him in the instant case was more or less mechanical and cannot be deemed to be genuine.

12. In these circumstances, the impugned orders of detention, passed under Section 3(2) read with Sections 3(3) and 14A of the National Security Act, 1980, were not at all justified, and, the same cannot be legally sustained.

13. For the foregoing reasons, the impugned orders of detention are hereby quashed, and, the petitioner is directed to be set at liberty forthwith concerning his detention under Section 3(2) read with Sections 3(3) and 14A of the National

Security Act.

JUDGMENT accordingly.