
(1996) 04 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 666 of 1995

Bhawani Singh alias Bhawani Parshad Singh

APPELLANT

Vs

Deputy Secretary, Govt.of Punjab

RESPONDENT

Date of Decision : 29-04-1996

Acts Referred:

Citation : (1997) 4 AICLR 335 : (1996) 2 RCR(Criminal) 676

Hon'ble Judges : V.K.Jhanji, J

Advocate : S.K. Bhanot, Bipan Ghai, R.S. Ghai, Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. The present petition under Articles 226 and 227 of the Constitution of India has been filed for quashing of detention order dated 30.3.1995, Annexure P1, under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the Act).

2. On 30.10.1994, while the police party headed by Narinderpal Singh, Superintendent of Police Moga, was going in connection with patrolling and search of suspected notorious persons from village Killi Chehal towards village Churchak on Katcha Path, Ambassador car bearing registration No. PB297261 was seen coming from the opposite direction. Signal was given to stop the car. Petitioner was found driving the car and another person, later identified as Gurnaib Singh son of Dial Singh, resident of Sandhu Kalan, P.S. Bahadur, District Sangrur, was sitting beside the petitioner. The Superintendent of Police, after obtaining no objection from the petitioner and his associate, searched the car and as a result, two packets of opium wrapped in glazed paper were recovered from the backside of the front seat of the said car. Sample of 50 grams of opium was drawn out from each packet which was put in the two separate tins. The seizure Memo. was prepared and F.I.R. No. 73 dated 30.10.1994 was registered against the petitioner and his associate.

3. The State Government, after having satisfied itself that the petitioner has

been engaging in possession, sale and importing interstate narcotic drugs within the meaning of the Act, passed an order of detention with a view to preventing the petitioner from indulging in the above said prejudicial activities in future. The detention order and the grounds of detention have been assailed mainly on the following grounds :

(i) that the detention order was passed when the petitioner was already in judicial custody; the detaining authority had no material before it to come to the conclusion that the petitioner, if released on bail, would again indulge in prejudicial activities; nonshowing of the compelling reasons has vitiated the detention order;

(ii) that the petitioner made representation dated 26.5.1995, Annexure P3, to the State Government against the detention order but the same was decided on 11.8.1995 i.e. after a delay of 75 days; likewise representation dated 26.5.1995 was made to the Central Government and the same was decided on 17.7.1995 i.e. after a delay of 61 days; failure of Government to decide the representation expeditiously has vitiated the detention order.

4. In regard to the first ground, counsel for the petitioner urged that the detention under the Act is preventive and not punitive and is meant to check prejudicial or objectionable activities of the detainee. The purpose of detention is to prevent the petitioner from indulging in illicit traffic in narcotic drugs, sale and importing narcotic drugs. He contended that this could be done only if the petitioner is released from his earlier detention but when the petitioner was already in custody and his bail application had been rejected, there was no ground to order his detention.

5. In regard to the second contention, he contended that the State Government was bound to determine the representation of the petitioner with utmost expedition but in the present case, no explanation is forthcoming for each day's delay in consideration thereof.

6. In answer to these submissions, Mr. Bhanot, learned counsel for the respondents has contended that the detaining authority has passed the detention order on the basis of material on record after due application of mind. He submitted that the detaining authority was aware of the fact the petitioner was in judicial custody but it apprehended that the petitioner was likely to indulge in prejudicial activities in case he was released on bail. The detaining authority deemed it proper to pass the detention order. He further contended that there is no provision in the Act under which the detenu has any legal right to submit any representation against his detention and, therefore, delay if any, in deciding the representation of the petitioner, is of no effect.

7. After hearing the learned counsel for the petitioner as also the State counsel, I am of the view that the detention order in this case deserves to be quashed. In *Dharmendra Sugan Chand Chelawat and another v. Union of India and others*, 1990(1) Recent Criminal Reports 446 (SC) : AIR 1990 SC 1196 , a case of

preventive detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, it was held by the Apex Court that "an order for detention can be validity passed against a person in custody and for that purpose, it is necessary that the grounds of detention must show that, (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of antecedent activities of the detenu, it is likely that after his release from custody, he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities".

8. The facts of the present case, if examined in the light of the aforesaid principle, it can be said that the first condition is satisfied inasmuch as grounds of detention show that the detaining authority were aware of the fact that the petitioner was in custody on the date of passing of the detention order. The petitioner was arrested on 30.10.1994. He was produced before the Court on 31.10.1994. He filed application for bail on 24.11.1994 which was dismissed by the Sessions Judge, Faridkot on 8.12.1994. The detention order was passed on 30.3.1995 while the petitioner was in custody. The question which remains to be decided is whether there were compelling reasons for the detention of the petitioner although he was in custody. In the grounds of detention, the detaining authority has mentioned that there is likelihood that the petitioner may get himself released on bail in near future but no material has been disclosed in the grounds of detention which may lead to the conclusion that the petitioner was likely to be released on bail. The petitioner's application for bail had been rejected nearly three months before the passing of the order of detention. The grounds of detention disclose that the petitioner previously too was engaged in prejudicial activities which are offences punishable under the Act and as such, in view of the provisions of Section 37 of the Act, there was no possibility of his being released on bail. The detaining authority, in the written statement, has fairly stated that the petitioner could not get bail from the Sessions Court in view of the provisions of Section 37 of the N.D.P.S. Act. However, no material worth the name has been placed on record in support of the statement made in the grounds of detention that petitioner might have got himself released on bail and in that event, he could have again indulged in the same prejudicial activities. Rather, it has come on record that the High Court too had dismissed the bail application of the petitioner. In this view of the matter, the order of detention cannot be sustained.

9. The order of detention is also liable to be quashed on the ground of delay in deciding the representation of the petitioner by the State Government as well as by the Central Government.

10. The contention of Mr. Bhanot that there is no provision in the Act to submit any representation against his detention is without any merit. It stands settled by the Apex Court in Kamlesh Kumar Ishwardas Patel v. Union of India, 1995(2) RCR 276 that the detenu has not only a right to make representation but he must also be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the ground of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation. In this context, the Apex Court held that "Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFEPOSA and the PITNDPS Act the question posed is thus, answered. Where the detention order has been made under Section 3 of the Cofeposa Act and PITNDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by State Government and to the Central Government and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation".

11. In this case, the petitioner has specifically alleged in paras 10(b) and (c) of his petition that representation (Annexure P3) was made to State Government on 26.5.1995 but as is evident from the written statement filed by respondent No. 1, the representation was considered by the State Government on 11.8.1995 and by the Central Government on 17.7.1995 and was rejected. Respondent No. 1 has not given any explanation as to why representation was kept pending for more than two months and was not decided with utmost expedition. It has been held by the Supreme Court in K.M. Abdulla Kunhi v. Union of India, 1991(1) Recent Criminal Reports 423 : 1991(1) SCC 476 that "it is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. But the time imperative for consideration of representation can never be absolute or obsessive. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. It depends upon the facts and circumstances of each case, upon the necessities and the time at which the representation is made. The requirement is that there should not be supine

indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal".

12. In the case of the petitioner, what to talk of explanation with regard to delay in deciding the representation of the petitioner, the detaining authority has questioned the very right of the petitioner to submit representation against his detention. Accordingly, I have no option but to hold that the order of detention stands vitiated on account of unexplained inordinate delay in consideration of the representation.

13. For the reasons recorded above, this petition is allowed and the order of detention is set aside. It is, however, clarified that in case the petitioner is released from custody in criminal proceedings in F.I.R. No. 73 dated 30.10.1994, P.S. Mehna, under Sections 10, 61 and 85 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, the question of his preventive detention under the Act may be reconsidered by the appropriate authority in accordance with law and this decision would not be construed as an impediment for that purpose.