
(1994) 06 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 30 of 1994

Darshan Singh

APPELLANT

Vs

Union Territory

RESPONDENT

Date of Decision : 03-06-1994

Acts Referred:

Citation : (1995) CriLJ 1279 : (1994) 3 RCR(Criminal) 212

Hon'ble Judges : H.S. Brar, J

Bench : Single Bench

Advocate : H.S. Mattewal and Sukhbir Singh, for the Appellant; D.D. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Brar, J.—The petitioner seeks the quashment of Detention Order, dt. Oct. 6, 1993, which is yet to be served on him.

2. The learned counsel for the petitioner contends that the detention order is liable to be set aside prior to its execution stage on the basis of a decision of the Supreme Court in Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, (popularly known as Alka Gadia's case). He submits that the Detention Order is also liable to be quashed on the following grounds:

(i) that the Detention Order has been passed for a wrongful purpose;

(ii) that the Detention Order was passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 against the petitioner by the Deputy Secretary, Home, Union Territory Administration, New Delhi and, thus, the Detention Order has been passed by an Authority who is not competent to do so;

(iii) that the case of the petitioner was not sent to the Central Government within ten days from the date of the order.

3. The learned counsel for the petitioner argues that the Detention Order was passed in order to prevent the petitioner from smuggling of goods, which could not be passed in the facts and circumstances of the case. In the present case, according to him, only the foreign exchange currency in excess than the permissible limit was found from the possession of the petitioner at the Airport and the show cause Notice was issued to the petitioner in that regard and only that case is pending against him.

4. Written Statement has been filed by way of affidavit on behalf of the respondent. It is specifically stated in para 4 of the Reply that the order in question was passed by the Lt. Governor, Delhi. In sub-para (iv) of Para 5 of the Reply, it is submitted that the intimation regarding detention of the petitioner was sent to the Central Government within the prescribed time. It is also specifically mentioned in Para 4 of the Reply that copies of the Detention Order and Grounds of Detention, annexed as Annexures P2 and P3 are unauthorised and have, perhaps been obtained in collusion with the executing officers.

5. In view of the written statement filed by the respondent, Grounds, (ii) and (iii) are not tenable.

6. The learned counsel for the respondent also states that though the question of passing the Detention Order by the Competent Authority may not be allowed at the time of arguments as this ground has not been taken in the writ petition at all, yet in view of the specific answer given in the written statement, the objection of the petitioner in regard to jurisdiction is without any force.

7. I need not dilate upon the question of jurisdiction of this Court to decide the Petition as has been argued by the learned counsel, as the writ petition deserves dismissal on other grounds.

8. The learned counsel for the petitioner has cited *Amrik Singh v. State of Punjab* 1987 (1) CriLR 143 All and *Mohinuddin alias Moin Master Vs. District Magistrate, Beed and Others*, , in order to substantiate his argument that the question of jurisdiction can be taken up at any time. The learned counsel, however, loses sight of the fact that these cases are distinguishable, as the same are not the cases of pre-detention. It was after detention that in some particular circumstances of those cases, the observations by the Supreme Court were made. In any case in view of the reply given by the respondent, there is no force in the arguments of the learned counsel for the petitioner saying that the order is without jurisdiction having not been passed by the competent authority or that the case of the petitioner was not sent to the Central Government within ten days, and the same is repelled.

9. I have carefully considered the arguments of the learned counsel for the parties. I need not emphasise that the law relating to pre-detention is fully covered by the ruling of the Supreme Court in *Alka Godia's case* (supra), the relevant portion of which may be quoted hereunder with advantage :

"The Courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the Courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the Courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question." Unless and until any one of the grounds has been established, the Court is powerless to interfere. In other words, no interference at the pre-detention stage is permitted on any other ground, otherwise the very object of preventive detention is thwarted.

10. As a matter of fact, the same position is reiterated in *State of Tamil Nadu Vs. P.K. Shamsudeen*, and Criminal Appeal No. 662 of 1993 (*The Administration of the National Capital of Delhi v. Sh. Prem Singh* decided by the Supreme Court on Jan. 19, 1994).

11. So far as the argument of the learned counsel for the petitioner that the Detention Order has been passed for a wrongful purpose is concerned, it goes without saying that neither such a wrongful purpose is borne out nor has been substantiated from the facts of this case. This argument of the learned counsel also fails.

12. In view of what has been discussed above, I do not find any ground to interfere with the Detention Order at the pre-execution stage. No case is made out by the petitioner which could persuade me that his case falls in any of the grounds mentioned above in order to set at naught the Detention Order. As I have already stated above, no prima facie case is made out which could impel this Court to interfere with the Detention Order at the pre-execution stage.

13. This petition is, thus, dismissed. However, before parting with the judgment, I am constrained to mention here that admittedly the petitioner has filed the order of detention and the grounds of detention with this petition. In the reply filed on behalf of the Union of India, it has been specifically mentioned that the copies of the detention order and grounds of detention annexed as Annexures P2 and P3 with the petition are unauthorised and have, perhaps been obtained in collusion with the executing officers. The securing of these documents which have not yet been made public as they have not been served on the detenu-petitioner and placing the same on the record, is an act which requires condemnation by this Court. If these documents have either been stolen by the petitioner or have been procured by other illegal manner in connivance with the executing authorities, this act speaks volumes against the petitioner as well as

the executing officers. This unauthorised act was committed with impunity and yet the Authorities remained a mute witness to this type of unauthorised action. I hope, this observation of mine will be sufficient to send proper signal to the authorities concerned.