

**(1994) 09 P&H CK 0055**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Writ Petition No. 214 of 1994**

Ghulla Singh

APPELLANT

Vs

Secretary, Government of Punjab

RESPONDENT

**Date of Decision : 21-09-1994**

**Acts Referred:**

**Citation :** (1995) 1 AICLR 167 : (1994) 3 RCR(Criminal) 531 : (1995) 1 RCR(Criminal) 253

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

**Advocate :** A.S. Sandhu, D.D. Sharma, S.K. Bhanot, Advocates for appearing Parties

## Judgement

V.K. Jhanji, J.

1. The present petition under Article 226 of the Constitution of India has been filed for quashing Detention JUDGMENT No. 1/4/943HIII (COFEPOSA)/64 dated 20.1.1994, Annexure P1 and grounds of detention dated 20.1.1994, Annexure P1/A, passed by respondent No. 1 against the petitioner.

2. In brief, the facts as stated in the petition are that the petitioner, who is resident of village Varpal, District Amritsar, was arrested on 22.8.1993 under Section 104(1) of the Customs Act, 1962 (in short, 1962 Act) by the Customs Authorities. While the petitioner was in judicial custody, he was served with the detention order along with grounds of detention.

The detention order and grounds of detention are being assailed on the following grounds :

(1) That the events mentioned in the grounds of detention date back as 22.8.1993 and the order detention is dated 20.1.1994, i.e. five months after the events mentioned in the ground of detention;

(2) That the detaining Authority has not applied its mind while framing the grounds of detention, but had copied them from the ground taken in the dossier

prepared by the Customs Authorities; and

(3) That the detention order was passed while the petitioner was in judicial custody. The detaining Authority has not shown any compelling reasons for passing the detention order, i.e. if released on bail, the petitioner would again indulge in prejudicial activities. Nonshowing of compelling reasons has vitiated the detention order.

3. Mr. S.K. Bhanot, DAG, Punjab, for respondents 1 and 2 and Mr. D.D. Sharma, counsel for Union of India, respondent No. 3 have contended that delay has satisfactorily been explained and no prejudice on this account has been caused to the petitioner. As regards ground No. 2, counsel contended that the detaining Authority has passed the detention order on the basis of material on record and after due application of mind. As regards ground No. 3, it has been stated that the detaining Authority was aware of the fact that the petitioner was in judicial custody, but it was apprehended that he was likely to act in the same prejudicial manner in future and in view of these circumstances, the detaining Authority thought it proper for his continuous detention.

4. Taking the first submission, namely the passing of detention order, the petitioner was arrested under Section 104(1) of the 1962 Act on 22.8.1993. The detention order was passed on 20.1.1994, i.e. after five months of the events mentioned in the grounds of detention. In its reply, respondent No. 1 has explained that it took sufficiently long time in investigating the case at various levels, as the antecedents of the petitioner and his coassociates were to be verified and various links of the petitioner had to be proved and unearthed. After collecting and thoroughly examining the entire material on record, the sponsoring Authority sponsored the proposal on 5.11.1993 to the State Government for the detention of the petitioner which was received in the office of respondent No. 1 on the same day and the proposal was examined by the legal agency on 9.11.1993. Some additional information was called from the sponsoring Authority vide State Government letter dated 10.11.1993. The case was again examined on 17.11.1993 by the legal agency in the light of information received from the sponsoring Authority, which reached in the office of respondent No. 1 on 16.11.1993. In the meanwhile, the case was further examined and the original grounds of detention in Punjabi were prepared and the same were translated into English, which was quite a voluminous job. The case was further examined on 4.1.1994 by the legal agency, in the light of information received from the office. Ultimately, the proposal for passing the detention order of the petitioner was sent to the State Law Department on 6.1.1994, where it was examined on 7.1.1994, and the formal order was issued on 18.1.1994. Respondents have further stated that during the proceedings of the detention proposal, nearly 45 days, details of which have been given in the written statement, were holidays. These facts have not been shown to be untrue. In these circumstances, it can reasonably be held that nexus between the prejudicial activity and ground of detention had not become shaped and grounds

were not rendered stale. In *Rajendera Kumar Natvarlal Shah v. State of Gujarat*, 1988(2) Recent Criminal Reports 73, even an unexplained delay of five months in making the order was not found sufficient to vitiate the order if the grounds were not stale and the nexus between the grounds and the order of detention still existed. In that case, it was observed that a distinction must be drawn between the delay in making of an order of detention under a law relating to preventive detention like the COFEPOSA Act and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It was further held that rule as to unexplained delay in taking action is not inflexible. Mere delay in making of an order of detention under a law like the COFEPOSA Act enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence, have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of the delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the Court finds that the grounds are stale or illusory or that there was no real nexus between the grounds and the impugned order of detention." Applying the law laid down by the Supreme Court in *Rajendra Kumar Natvarlal Shah's* case (supra), to the facts of the present case. I am of the view that considering the explanation given by respondent No. 1 the nexus was not snapped and grounds on which detention order was passed, were not rendered stale. The first submission, therefore, shall stand rejected.

5. As regards the ground of nonapplication of mind by the detaining Authority, the petitioner has alleged that the detaining Authority did not apply its mind while framing the grounds of detention, but copied them from the grounds taken in the dossier prepared by the Customs Authorities. counsel referred to the list of documents supplied to the petitioner and make a pointed reference to the documents mentioned at Sr. No. 3, i.e. copy of brief facts of seizure of 40 gold biscuits on 22.8.1993 in Amritsar district by B.S.F. and Customs, in English, and the grounds of detention, mentioned at Sr.No. 2 of the list, and contended that on comparison, the grounds of detention are a verbatim copy of dossier prepared by the B.S.F. and Customs. In support of his submission, counsel relied upon a judgment of the Supreme Court in *Jai Singh and others v. State of Jammu and Kashmir*, AIR 1985 SC 764. In answer to this submission, counsel for the respondents have referred to para8 of the written statement by respondent No. 1, in which it has been stated that "the grounds of detention were prepared by the detaining Authority with due application of mind and on the basis of his subjective satisfaction. Therefore, the contention of the petitioner that the same were copies of the grounds supplied by Customs Authority is wrong and baseless. The grounds of detention are very such valid and the detention of the petitioner is very much genuine in the subject case, keeping into consideration his

involvement in nefarious activities of smuggling of gold and the petitioner has himself admitted his involvement in the subject case, in his voluntary statements dated 23.8.1993 and 25.8.1993." In *Jai Singh's* case (supra) the order of detention was quashed not only on the ground that the grounds of detention were verbatim reproduction of dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate, requesting that detention order may be issued, but also on the ground that there was nothing on record to indicate that the District Magistrate applied his mind to the question whether an order of detention under the J & K Public Safety Act was necessary despite the fact that the petitioners therein were already in custody in connection with the criminal case. In the present case if the grounds of detention are compared with dossiers prepared by the B.S.F. and Customs, it would be clear that all what the detaining Authority has done is to change the first three words "in his statement" into "in your statement." Likewise, words "both Ghulla Singh and Anoop Singh " into "both you and Anoop Singh" have been changed. Thereafter, word for word, the dossier is repeated and the word "his" wherever it occurs referring to Ghulla Singh, has been changed into "you", in the grounds of detention. In view of this, I am of the considered view that detention order has been passed in a very casual, indifferent and routine manner and, thus, cannot be sustained on this ground. The detention, in this case, is also liable to be quashed on ground No. 3. Admittedly, when the petitioner was served with detention order, he was in judicial custody in a case under Section 104(1) of the 1962 Act for having committed an offence under Section 135 of the 1962 Act. Though the grounds of detention indicate that the detaining Authority was aware of the fact that the petitioner was in judicial custody at the time of making of order of detention, yet no cogent material has been brought on record or any cogent ground furnished in support of order detaining the petitioner while in custody. The grounds of detention do not indicate that the detaining Authority was satisfied that in case the petitioner is released on bail, he may again indulge in smuggling activities. In *Dharmendra Suganchand Chelawat and another v. Union of India and others*, 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 of detention can be validly 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 the 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." The judgment of the Apex court in *D.S. Chelawat's* case (supra)

squarely applies to the facts of this case because as already noticed in the instant case, the detaining Authority, in the grounds of detention, has only mentioned that the petitioner is in judicial custody. The grounds of detention do not show that the detaining Authority apprehended that the petitioner would be released on bail or was satisfied having regard to his past activities or by credible information or cogent reasons that if he is enlarged on bail, he would again indulge in such activities. Thus, in these circumstances, I am of the view that order of detention qua the petitioner cannot be sustained and deserves to be set aside.

6. Consequently, this petition stands allowed with no order as to costs. Respondents are directed to set the petitioner at liberty forthwith.