

(1995) 04 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 611 of 1994

Gulzar Singh alias Kalu

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-04-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1995) 04 P&H CK 0073

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

Bench : Single Bench

Judgement

V.K. Bali, J.—Gulzar Singh alias Kalu through present petition filed by him under Articles 226 227 of the Constitution of India seeks a writ in the nature of certiorari setting aside Order No. F. 673/85/93-Cus-VIII dt. 17.8.1993 passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act).

2. There are number of grounds asking for setting aside order Annexure P-1 dated 17.8.1993 but Mr. Ghai, Sr. Advocate Id. Counsel appearing for the petitioner being sure of the success of the case on the score that there is an unexplained delay in executing the order of detention throwing considerable doubt on the genuineness of the subjective satisfaction of the detaining authority as regards the necessity to detain the petitioner, has chosen to press this solitary point for setting aside the order of detention Annexure P-1.

3. The undisputed facts of the case reveal that the order of detention was passed on 17.8.1993, and was executed in July 1994. The Apex Court in P.U. Iqbal v. Union of India 1992 CAR 53 (SC) held that an order of detection is not a curative or reformatory or punitive action but a preventive action, the avowed object of which being to prevent the antisocial and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drug and psychotropic substances and that being the

purpose if there is unreasonable delay between the date of order of detention and the date of arresting of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner. The argument of the Id. Counsel being that as noticed above, the only question that requires to be determined in this petition is as to whether there was delay which has remained unexplained. The dates mentioned above with regard to the passing of the detention order and the execution thereof clearly show that there is a delay of 11 months. Coming to the explanation given by the respondents in its written statement, it is recited therein that the detention order dated 17.8.1993 could not be executed upon the detenu as he absconded. Thereafter, proceedings u/s 7(1) of the Act were drawn and detenu was declared absconder vide order dated 27.4.1994. The details regarding the proceedings u/s 7 of the COFEPOSA Act may kindly be given by the office of the detaining authority. It requires to be highlighted here that the detaining authority itself, while filing written statement has demanded details with regard to proceedings of Section 7 itself. The facts of P.U. Iqbal's case (supra) reveal that the detention order dated 21.8.1989 in the said case was received by the Superintendent of Police on 1.9.1989 who in turn directed the Circle Inspector of Police, Guruvayur to apprehend the warrantee and that the Circle Inspector of Police reported to the Superintendent of Police, Thrissur on 16.9.1989, 2.10.1989, 13.11.1989 and 5.1.1990 that the warrantee namely the detenu was reportedly working at Bombay and chances of his visit to his native place were awaited. Not being satisfied with the reports of the Circle Inspector of Police, the S.P. by his letter dated 24.11.1989 directed the Circle Inspector of Police to arrange to secure the detenu and execute the detention order at Bombay with the assistance of the local police. Despite the repeated order of the S.P. dated 31.1.1990, 12 & 19.2.1990 and 14 & 22.3.1990 directing the Circle Inspector to send reports about the compliance of his direction in executing the warrant, the Inspector sent a reply on 30.3.1990 to the S.P. informing that the police officers were being sent to Bombay to arrest the warrantee (i.e. the detenu). On 2.4.1990, the S.P. reported to the Government that the action was underway to execute the detention order by deputing officers to Bombay. On 23.4.1990, S.P. asked a report about the stage of matter from the Inspector of Police who thereupon on 20.5.1990 reported to the S.P. that the police party could not arrest the petitioner and execute the warrant. Then on 14.5.1990, the Government issued an order u/s 7(1)(b) of the Act and requested the Chief Judicial Magistrate, Thrissur to take action u/s 7(1)(a) of the Act. While it was so, on 9.8.1990, the Inspector of Police arrested the petitioner from Kandanisseri and reported the fact to the Superintendent of Police who in turn informed the Government and the Chief Judicial Magistrate about the execution of the warrant on 10.8.1990. On assumption of facts as have been reproduced above, the Supreme Court held as follows:

Even assuming the entire facts set out in the counter affidavit are true, it is very clear on the fact of this subsequent affidavit that from 24.11.1985 to 23.4.1990 no prompt and continuous effort or serious attempt was made to secure the detenu and serve the impugned order. It is apparent that the concerned officers particularly, the Circle Inspector of Police to whom the warrant had been sent for execution of the order of detention, had shown absolute callousness and they did not seem to have taken any sincere effect with assiduity in executing the warrant. The Government has made request to the Chief Judicial Magistrate to take action u/s 7(1)(a) only on 14.5.1990, that is after a period of 9 months from the date of the passing of the detention order.

4. Coming to the facts of this case, not a single word is mentioned in the entire written statement as to what efforts were taken from 17.8.1993 upto the date when proceedings u/s 7(1)(b) of the Act were initiated or from the date of order of detention till such time the petitioner was actually arrested. There is certainly a delay of about 8 months in passing the order u/s 7(1)(b) of the Act and as observed above, nothing is mentioned as to what steps were taken to arrest the petitioner who is stated to be absconding. The facts of P.U. Iqbal's case (supra) do reveal some efforts on the part of the police officer to secure the arrest of the petitioner in that case but in the present case, it appears from the contents of the written statement that no steps at all were taken but for passing of order u/s 7(1) of the Act on 27.4.1994. Under what circumstances the order u/s 7(1) was passed and what were the details of proceedings is also not made known to Court and it is rather strange to note that it has been mentioned in the written statement that such details may be given by the office of the detaining authority.

5. The matter is squarely covered in favour of the petitioner by the decision of the Supreme Court in P.U. Iqbal's case (supra) which I too followed in Cri. W.P. No. 588 of 1994 Baldev Singh @ Deba Adhi v. The State of Punjab and Ors. decided on 17th of January, 1995 and Cri. W.P. No. 638 of 1994 Amrik Singh v. State of Punjab and Ors. decided on 4th of April, 1995.

6. There is, thus, no choice but to quash the order Annexure P-1 and set the petitioner at liberty forthwith. So ordered. It shall, however, be open to the respondent authority to detain the petitioner if he is required in some other case.