

(1972) 05 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Criminal Original No. 33-M of 1972

Gurdial Singh

APPELLANT

Vs

The State of Punjab etc.

RESPONDENT

Date of Decision : 11-05-1972

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5), 22(6)
Criminal Procedure Code, 1898 (CrPC) — Section 491
General Clauses Act, 1897 — Section 21
Maintenance of Internal Security Act, 1971 — Section 11, 12, 12(1), 13, 14
Preventive Detention Act, 1950 — Section 3(2)

Citation : (1975) 1 ILR (P&H) 77

Hon'ble Judges : Mart Mohan Singh Gujral, J;A.D. Koshal, J

Bench : Division Bench

Advocate : Har Parshad and Bachittar Singh, for the Appellant; I.S. Tiwana, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

Mart Mohan Singh Gujral, J.—By two separate orders, dated 31st October, 1971 passed u/s 3(2) of the Maintenance of Internal Security Act, 1971= hereinafter called the Act, the District Magistrate, Amritsar; ordered the detention of Gurdial Singh, son of Hazara Singh of village Waan and Jarnail Singh, son of Santa Singh of village Rajoke on the ground that they were likely to act in a manner prejudicial to the security of. the State and the maintenance of. public: order. Gurdial Singh and Jarnail Singh challenged the order of their detention by two separate petitions--Criminal Original No. 33M of 1972 and Criminal Original No. 34M of 1972, u/s 491 of the Criminal Procedure Code. The petitions first came up before me sitting in Single Bench and during arguments in these petitions, one of the principal contentions raised was that the grounds of detention of the Petitioners were covered by Clause (a)(i) of Section 3(1) and the District Magistrate had, therefore, no jurisdiction to pass the order as he could only pass the order if the grounds were covered only by Clauses (a)(ii) and (iii) of Section

3(1) of the Act. Considering that this point was of considerable importance and was not covered by any authority of this Court or of the Supreme Court) the case was referred to a larger Bench and has now come before us for disposal.

2. Gurdial Singh Petitioner filed a representation against his detention on 17th November, 1971, through the Superintendent, Central Jail, Amritsar, which was addressed to Respondent No. 1, through the Home Secretary, Punjab Government, Chandigarh. In this representation, the detention of the Petitioner was challenged for the reason that the grounds supplied to him were vague and indefinite and were without substance. By order, dated 28th December, 1971 (Annexure C to Criminal Original No. 33M of 1972) the Petitioner was informed that the order of detention passed by the District Magistrate, Amritsar, was approved u/s 3 of the Act. It was also stated in the order that the Advisory Board had opined that there was sufficient cause for the detention of the Petitioner, and that in exercise of the powers u/s 12(1) of the Act the President, of India had confirmed the order of detention, and it was directed that Gurdial Singh Petitioner shall, continue to be in detention in the custody of the Inspector-General of Prisons, Punjab, in any jail of the State of Punjab for a period of twelve months from the date of detention.

3. Jarnail Singh, Petitioner in Criminal Original No. 34M of 1972 also filed his representation to Respondent No. 1 on 17th November, 1971, which was forwarded to the Superintendent, Central Jail, Amritsar, and his detention was challenged on the same grounds which had been mentioned by Gurdial Singh Petitioner in his representation. By order, dated 28th December, 1971, this Petitioner was informed that his detention had been approved by the President of India and that the Advisory Board had also opined that there was sufficient cause for his detention. The order of detention was also confirmed u/s 12(1) of the Act and the Petitioner was directed to be detained for a period of twelve months in any jail of the State of Punjab.

4. In both these petitions the order of detention has been challenged mainly on two grounds, both of which are common, and both the petitions will, therefore, be disposed of by the present judgment. It is firstly canvassed before us that the order of the District Magistrate was ultra vires his powers for the reason that grounds of detention related to the defence of India or the security of India, which was a matter covered by Clause (i) of Section 3(1) (a) of the Act. The precise argument raised is that if once any of the grounds was covered by Clause (a)(i) of Section 3(1) the District Magistrate had no jurisdiction to pass the order irrespective of the fact that the ground was also covered either by Clause (a)(ii) or (a)(iii) of Section 3(1). It is stated that in that eventuality only the Central Government or the State Government would have the jurisdiction to pass the order. Support for this argument was sought from a recent decision of this Court in Hazara Singh Bhallar v. District Magistrate, Amritsar Cr. W. No. 12 of 1972 decided on 30th March, 1972. In the grounds of detention supplied to the detenus in Bhallar's case, it was mentioned that he had met one Major Qayum

Khan of Sulej Rangers, Kasur, and had agreed to supply information about the Indian Army/B.S.F. units in Amritsar and also about the strength of the Army/B.S.F./Police posted on important bridges and power houses. Allegations against Hazara Singh Bhallar further were that he had actually conveyed some "information to Major Qayum and he and some others had met one Karim Din and had agreed to create Hindu-Sikh hatred and internal disorder in Punjab and also to cause damage to bridges, water reservoirs and power houses in anticipation of the imminent Indo-Pakistan War on the issue of Bangla Desh. On a consideration of these grounds, this Court in Hazara Singh Bhallar's case (1), came to the conclusion that the grounds show the detenu had been acting in a manner prejudicial to the defence of India or the Security of India. It was for this reason that it was held that the District Magistrate had acted without jurisdiction and that his order of detention, in so far as grounds (a) to (c) (to which reference has been made above) were concerned, was ultra vires his authority.

5. The argument that has now been raised before us was neither advanced in Hazara Singh Bhallar's case (1), nor was it considered in the perspective it is now place before us. No support is, therefore, available to the first argument raised on behalf of the Petitioners from the decision of this Court in Hazara Singh Bhallar's case (1).

6. Is there anything in the language of Section 3 of the Act, which would debar the District Magistrate from passing the order of detention if the activities of a person covered the subject-matter of Clauses (a)(ii) and (iii) of Section 3(1) merely because these activities were covered by Clause (a)(i) of Section 3(1) as well? In order to properly examine this question, reference will have to be made to the relevant portion of this provision which is as follows:

3. Power to make orders detaining certain persons.--(1) The Central Government or the State Government may, (a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to--

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or (b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained.

The above provision would show that if the Central Government or State Government finds that the activities of any person are covered by the three clauses of Section 3(1)(a) or by 3(1)(b), it may make an order directing that person's detention with a view to preventing his activities. Sub-section (2) of

Section 3 further provides that this power can also be exercised by the District Magistrate or other officers mentioned in this Sub-section provided that they are satisfied that the activities of the person to be detained are covered by Clauses (ii) and (iii) of Section 3(1)(a). In the wording of this Sub-section there is no indication that if the grounds of detention were such which related to the defence of India, the relations of India with foreign powers or the security of India, the District Magistrate would have no power to order the detention even if those grounds disclosed activities prejudicial to the security of the State or the maintenance of public order or the maintenance of supplies and services essential to the community. As I read Section 3, before passing the order all that the District Magistrate has to be satisfied about is that the ground of detention related to the security of the State or the maintenance of public order or the maintenance of supplies and services essential to the community. As long as these conditions were satisfied, the powers of the District Magistrate were not taken away merely because in those very grounds of detention it was also brought out that the detenu had been acting in a manner prejudicial to the defence of India, the relations of India with foreign powers or the security of India. I am, therefore, clearly of the view that there is no plausibility in the first contention raised on behalf of the Petitioners. It may also be mentioned at this stage that no support is available to the above argument on behalf of the Petitioners from the ratio of the decision in *Bdkhtawar Singh v. The State* AIR 1951 Simla 157 to which a reference has been made before us. In this case it was found that the ground of detention was vague. It was further observed, on the basis of the affidavits of the District Magistrate, that the reason which had predominantly moved the District Magistrate in passing the order of detention was that the acts which the detenu had done were such as to endanger the relations between India and Pakistan. In view of this it was observed that the District Magistrate was not competent to make the order because the defence of India, the relations of India with foreign powers, or the security of India was a matter regarding which the District Magistrate could not pass an order under Sub-section (2) of Section 3 of the Preventive Detention Act, 1950.

7. The second argument raised on behalf of the Petitioners is that there had been no proper consideration of their representations and that in any case the consideration was so delayed that it was violative of the guarantee under Article 22 of the Constitution of India. Before considering this argument in the light of the facts of the present case, it would be appropriate to examine the relevant provisions of the Act and of the Constitution and also to state the legal position with regard to the constitutional guarantee contained in Article 22 of the Constitution.

8. The order of detention is passed u/s 3 of the Act; and u/s 8, the detenu is to be informed of the grounds on which the order has been made. This information has to be conveyed "as soon, as may be but ordinarily not later than five days". In exceptional cases, however, and for reasons to be recorded in writing, the grounds could) be communicated within fifteen days from the date of detention.

Section 8 of the Act further provides that the authority making the order shall afford the earliest opportunity to the detenu of making a representation against the order to the appropriate Government. u/s 9, advisory boards are to be constituted and within thirty days from the date of detention the grounds of detention" on which orders have been made are to be placed before the advisory board. The procedure to be followed by the advisory board is detailed in Section 11. u/s 12, the report of the advisory board is to be considered; and if it is reported that there is sufficient cause for detention, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit. If, however, the advisory board has reported that no sufficient cause exists for the detention of the person, the order has to be revoked and the person has to be set at liberty forthwith. Section 13 provides the maximum period for which the order of detention can be passed and Section 14 deals with revocation of the detention order and reads as under:

14. (1) Without prejudice to the provisions of Section 21 of General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified-

(a) notwithstanding that the order has been made by an officer mentioned in Sub-section (2) of Section 3, by the State Government to which" that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government; by the Central Government.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section. 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.

9. Article 22, which provides a limitation upon the power of the legislature to make any law as to deprivation of personal liberty, is in two parts. One part deals with the person arrested under the ordinary law of crimes and the other deals with the person detained under the law of preventive detention. Clauses (4) to (7) deal with preventive detention and Clause (5), with which we are primarily concerned, is in the following terms:

22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order." This clause came up for interpretation before the Supreme Court in) Sk. Abdul Karim and Others Vs. State of West Bengal, , and it was ruled that "it is necessarily implicit in the language of Article 22(5) that the State Government to whom the representation is made should properly consider the representation as expeditiously as possible." It was also observed that the constitution of an advisory board did not relieve the State Government from the

legal obligation to consider the representation of the detenu as soon as it is received by it. It was further observed as under:

It is a necessary implication of the language of Article 22(5) that the State Government should, consider the representation made by the detenu as soon as it is made, apply its mind to it and, if necessary, take appropriate action. The constitutional right to make a representation guaranteed by Article 22(5) must be taken to include by necessary implication the constitutional right to a proper consideration of the representation by the authority to whom it is made. The right of representation under Article 22(6) is a valuable constitutional right and it is not a mere formality. It is obvious that apart from the procedure of reference to the Advisory Board, the State Government has ample power u/s 13 of the Act to revoke any order of detention at any time. If the right of representation in such a case is to be real and not illusory, there is a legal obligation imposed upon the State Government to consider the representation and to take appropriate action thereon. Otherwise the right of representation conferred by Article 22(5) of the Constitution would be rendered nugatory.

10. In *Pankaj Kumar Chakrabarty and Others Vs. The State of West Bengal*, , and *Jayanarayan Sukul Vs. State of West Bengal*, , the same view was again reiterated. Having regard to the ratio of these and other decisions of the Supreme Court the following principles with regard to the manner in which the representations of the detenus are to be dealt with emerge.

(1) The appropriate authority is bound to provide opportunity to the detenu for making representation.

(2) The duty imposed on the appropriate authority of considering the representation of the detenu is independent of the consideration of the representation by the Advisory Board.

(3) The representation has to be considered expeditiously and though no hard and fast rule can be laid down as to the measure of time to be taken by the appropriate authority for consideration, but the Government has to vigilantly safeguard the rights of citizens.

(4) It is the duty of the appropriate Government to exercise its opinion and judgment on the representation and to take action on it which includes an action u/s 14 of the Act to revoke the order, if the circumstances so demand. If the representation is not accepted by the appropriate Government, the case has to be sent to the Advisory Board along with the representation; and if the Board expresses an opinion in favour of the detenu, the detenu has to be released. On the other hand, even if the Advisory Board is of the opinion that there was sufficient cause for detention, still the Government has the power to release the detenu.

It is common case of the parties that the provisions of the Act relating to the affording of the earliest opportunity to the detenus of making a representation

against the order to appropriate Government are to be considered in the light of the view taken by the Supreme Court in the above cases, though in those cases the Supreme Court was considering the provisions of the Preventive Detention Act, 1950, as the provisions in both the Acts are almost similar and moreover the power of preventive detention in Section 3 of the Act is derived from Clause (5) of Article 22 which had been interpreted in the above cases.

11. Examining the facts of the two petitions, I find that in Gurdial Singh's case the relevant facts, as they emerge from the affidavits of Shri Kulwant Singh Ahluwalia, Home Secretary, Shri Sukhbir Singh, District Magistrate, Amritsar, and Shri Sukhpal Singh, Senior Superintendent of Police, Amritsar are as follows. The order of detention was passed on 31st October, 1971, and it was only on 19th November, 1971, that the Petitioner filed his representation. This was forwarded to the Government by the Superintendent, Central Jail, Amritsar, and was received by the Home Secretary on 24th November, 1971. It was mentioned that 20th and 21st November, 1971 were gazetted holidays and on 25th November, 1971 the representation was sent to the District Magistrate, Amritsar, for his comments. The representation was received by the District Magistrate on 26th November, 1971, and as 27th and 28th November, 1971, were holidays it was sent to the Superintendent of Police for certain information on 30th November, 1971. After collecting all the information on the lengthy representation of the Petitioner and some other detenus, the Senior Superintendent of Police, Amritsar, sent his report on 12th December, 1971, which was received by the District Magistrate on that very day. On the next day the comments were sent to the State Government which were received on 16th December, 1971. On this very day the representation was examined and was rejected. The relevant dates, in so far as the case of Jarnail Singh Petitioner is concerned, are also the same as his representation had also been received by the State Government on 24th November and was sent to the District Magistrate, Amritsar, on 25th November, 1971, for comments. After being processed by the District Magistrate on the basis of the information supplied by the Senior Superintendent of Police, Amritsar, the comments were forwarded to the Government on 13th December, 1971, and were received by the Government on 16th December, 1971, when the representation was considered in the light of the comments and was rejected. The representations of both the detenus were then forwarded to the Advisory Board the same day for consideration.

12. From the above, it would emerge that the time-gap between the receipt of the representation by the Government and the date of consideration was twenty-five days and the question that it posed for consideration is whether the gap can be treated as inordinate delay and, therefore, violative of the constitutional guarantee provided under Article 22(5) and invalidating the order of detention or its continuation thereafter. This matter came up for consideration before the Supreme Court recently in Nagendra Nath Mondal Vs. The State of West Bengal, , where there was a gap of thirty-four, days between the date of receipt of the representation and its disposal. It was observed that there could be no hard and

fast rule with regard to the time which the Government can or should take and that each case has to be decided on its own facts. It was, however, observed that the appropriate authority might have to make enquiries as to the situation in the locality, the nature of and the circumstances in which detention was found necessary, the previous history of the person detained, etc., and that the time spent in making these inquiries would not constitute delay. It is, therefore, not possible to agree with the learned Counsel for the Petitioners that there was considerable delay in considering the representations. The time taken in considering the representations has been fully explained in the affidavits of the Home Secretary, the District Magistrate and the Senior Superintendent of Police; and in view of these affidavits, there is no scope for the conclusion that inordinate delay had taken place in the consideration of the representations. At no time were the representations with the District Magistrate or the Home Secretary for more than a day or two; and as regards the time taken by the Senior Superintendent of Police, it is also reasonable considering that information had to be collected in respect of the facts stated in the lengthy representations of the Petitioners. On a perusal of the affidavits filed on behalf of the Respondents, a strong impression is created that the Government was fully aware of its duty to expeditiously consider the representations and that every effort was made to properly discharge this duty. The second argument is, therefore, found to be without any merit.

13. The second part of the argument, which is based on my decision in *Yoginder Mohan v. State of Punjab* and another Cr. Order 249-M of 1971 decided on 1st March, 1972, is again without merit. In that case, two of the Petitioners Gurnam Singh and Ajit Singh had made representations against their detention. In the affidavit filed by the Home Secretary to Government, Punjab, while the receipt of the representations had been admitted it was not disclosed as to when they were received and when considered and disposed of. In view of this reply, it was concluded that in the absence of the relevant data, it was not possible to hold that the State Government had fulfilled its obligation under Article 22(5) of the Constitution to consider the representations "as soon as possible". Notice, however, was also taken of the fact that no information had been sent to the detenus that their representations had been considered; and, viewed in the light of the other circumstances; it was inferred that there had not been proper consideration of the representations within the meaning of Article 22 (5). The view taken in *Yoginder Mohan's* case (7), (supra), cannot be interpreted to mean that whenever the result of the consideration and the decision is not communicated to the detenu it would amount to disregard of the guarantee provided under Article 22(5) of the Constitution.

14. In view of what has been stated above, both the petitions must fail and are consequently dismissed.

A.D. Koshal, J.

15. I agree.