

(1990) 01 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Criminal Writ Petition No. 182 of

Gurdial Singh@ Bhai

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 09-01-1990

Acts Referred:

Citation : (1990) 1 AICLR 433 : (1990) 1 CurLJ 327 : (1990) 1 RCR(Criminal) 508

Hon'ble Judges : S.S.Grewal, J

Advocate : S. K. Bhatia, A. S. Khaira, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under Articles 226/227 of the Constitution of India relates to quashment of impugned order of detention passed against Gurdial Singh detenu by the District Magistrate, Amritsar, Annexure P1 dated 9th February, 1988. under Section 3(2) read with sections 3(3) and 14A of National Security Act, 1980 as amended upto date (hereinafter referred to as the Act).

2. The details of the alleged prejudicial activities find mention in the grounds of detention, Annexure P 2. These mainly relate to commission of murders, robbery and other criminal offences including those under Sections 3/4 of the Terrorists and Disruptive Activities (Prevention) Act.

3. In the written reply filed by the District Magistrate, Amritsar, it was pleaded that the detenu had been indulging in prejudicial activities as detailed in the grounds of detention. It was also pleaded that the detenu was arrested on 4th October, 1987 on solid and sound material and the order of detention was rightly passed against him on 9th February 1988 and the same was served on him on the following day in Central Jail, Amritsar. It was, however, admitted that the representation of the detenu was received in the office of the District Magistrate, Amritsar on 19th July, 1988, the same was sent to the Senior Superintendent of Police, Tarn Taran for comments on the following day. Comments from the latter

were received in the offices of the District Magistrate, Amritsar on 29th July, 1988. Next two days were holidays. Thereafter the District Magistrate examined the comments, made enquiries, and the same sent were to the Government on 2nd August, 1988.

4. The learned counsel for the parties were heard.

5. On behalf of the detenu it was mainly contended that since the detenu is in custody since 4th October, 1987 and there is no imminent possibility, of his being released on bail, the impugned order of detention cannot be legally sustained, particularly, when the question about his possible release on bail was not considered by the detaining authority. Reliance in this respect has been placed on the authority of the apex Court in *Binod Singh v. District Magistrate, Dhanbad, Bihar and others*, AIR 1986 SC 2000 where the order of detention under section 3(2) of the Act was served. upon the detenu, when he was already in jail in respect of a murder case and there was no indication that this factor or the question that the said detenu might be released, or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order of detention, the continued detention of the detenu under the Act would not be justified.

6. In the afore cited authority it was also observed that if a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. And if that is the position. then, however disreputable the antecedents of a person might have been, without consideration of all the aforesaid relevant factors, the detenu could not have been put into preventive custody.

7. The authority in *Binod Singh's* case (*supra*) is fully applicable to the facts of the case in hand, inasmuch as the impugned order of detention was served upon the detenu while he was in jail. The fact that the detenu is still in custody is not disputed by either side. In these circumstances the omission on the part of the detaining authority in not duly considering this aspect of the case is relevant and pertinent consideration for setting aside the impugned order of detention.

8. Another important aspect Of the case is that even though representation of the detenu was received by the District Magistrate, Amritsar through Superintendent Central Jail, Amritsar, on 19th July, 1988, the same was examined by the District Magistrate who sent the same along with his comments to the Government on 2nd August 1988. No separate reply on behalf of the State has been filed which could explain, or throw light as to whether the said explanation was actually considered or that the same was rejected after due consideration by the concerned authority. Even the delay of 18 days in sending the comments by the District authorities to the State has not been satisfactorily explained besides in the instant case, it is quite obvious that the representation of the detenu against his detention has not been, dealt with reasonable promptitude, which clearly violates the safeguards provided under, Article 22(5) of the Constitution.

9. I find support on this point from the authority of the apex Court in case Rama Dhondu Borade v. Shri V.K. Saraf, Commissioner of Police and ors, 1989(2) Recent Criminal Reports 100 , wherein referring to the various decisions it has been observed as under:

"The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release to consider the said representation with reasonable dispatch and to dispose of the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty the highly cherished right which is enshrined in Article 21 of the Constitution."

"...What is reasonable dispatch depends on the facts and circumstances of each case and no bard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authorities is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

10. For the foregoing reasons the impugned order of detention, Annexure P1, dated 9th February, 1988 cannot be legally sustained and the same is directed to be quashed. This petition is accordingly allowed. The detenu be set at liberty forthwith, unless his detention is required in any other case.